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CRIMINAL JUSTICE DATA BANKS—1974

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-THIRD CONGRESS

SECOND SESSION

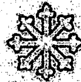
ON

S. 2542, S. 2810, S. 2963, and S. 2964

MARCH 5, 6, 7, 12, 13, AND 14, 1974

Printed for the use of the Committee on the Judiciary

Volume I



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CRIMINAL JUSTICE DATA BANKS—1974

TUESDAY, MARCH 5, 1974

U.S. Senate,
Subcommittee on Constitutional Rights
of the Committee on the Judiciary,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:05 a.m., in room 318, Russell Senate Office Building, Senator Sam J. Ervin, Jr. [chairman] presiding.

Present: Senators Ervin, Gurney, Hruska, Kennedy, and Bayh.

Also present: Lawrence M. Baskir, chief counsel; and Mark Gitenstein, counsel.

Senator Ervin. The subcommittee will come to order.

OPENING STATEMENT OF THE CHAIRMAN

The Subcommittee on Constitutional Rights opens hearings today on Federal legislation to protect the privacy and reputations of persons whose names appear in criminal justice data banks. These hearings are a continuation of the subcommittee's study of the general question of governmental data banks, records, and information policy and their impact on the freedom and integrity of Americans.

As I stated upon introduction of S. 2963, the Criminal Justice Information Control and Protection of Privacy Act of 1974, I see the controversies surrounding the establishment of criminal justice data banks as a microcosm of the general controversy about governmental data banks and the invasion of privacy. So I hope that in attempting to understand and resolve the issues that confront us in the development of workable criminal justice data bank legislation, we will be taking the first steps toward the development of a comprehensive policy on all data banks and the protection of personal privacy.

These hearings are opening in the midst of a growing bipartisan consensus in the Congress and in the executive branch on the importance of developing safeguards for the protection of privacy. That consensus began to appear in January when the President announced in his state of the Union address that he viewed the protection of privacy as a major component in his program for the coming year. His announcement was followed closely with the introduction on February 5 of S. 2964 by my friend the senior Senator from Nebraska, on behalf of the administration. I am a cosponsor of that bill as is a broadly representative group of our colleagues. On the same day I along with Senator Hruska and many of the other cosponsors of his bill introduced S. 2963, a bill which I have been working on for the past year. Both bills address the subject of the subcommittee's hearings, the collection and dissemination of routine law enforcement information and law enforcement intelligence.

Another significant sign of this developing consensus on the question of personal privacy is the two bills themselves. The Justice Department and I did not collaborate or communicate on these projects during the months they were in preparation. Yet, to everyone's surprise the two bills, though different in some significant respects, are essentially alike in approach. Just to highlight that fact I would like to introduce at this point in the subcommittee record a comparison prepared by the subcommittee staff.

[The document referred to follows:]

MEMORANDUM OF COMPARISON [1]

S. 2963 (Ervin)	S. 2964 (Administration)
SCOPE	
Bill would regulate all criminal justice data banks operated by federal, state, or local governments relying on the Commerce Clause and federal funding.	Applies to federal systems, federally-funded systems, and systems that participate in a federal or interstate system to the extent of their participation in that system.
FOCUS	
Bill is directed primarily at records subject to most abuse, i.e., arrest records and criminal history records. Bill would bar the computerization of criminal intelligence records.	Bill regulates what is referred to as criminal offender record information, criminal offender processing information, and criminal intelligence information. Places detailed restrictions on use and dissemination of arrest records. Determination of implementing regulations left to Attorney General.
GENERAL DISSEMINATION RULES	
Only conviction records can be disseminated to non-law enforcement agencies. Acquittal records cannot be disseminated to another law enforcement agency unless the agency has rearrested the subject. A raw arrest record can only be disseminated between criminal justice agencies if the arrest is less than a year old and prosecution is still pending, or if the subject of the record has applied to the criminal justice agency for a job.	Bill would allow dissemination of non-conviction records to non-criminal justice agencies where specifically provided for by statute, under the supervision of the Attorney General. Raw arrest records *cannot* be disseminated without inclusion of the disposition, if the disposition had been reported. Further restrictions on the exchange of criminal offender record information or criminal justice intelligence information are left to discretion of the Attorney General.
UPDATING	
Operators of data banks are required to keep records as accurate and up to date as is technically feasible. Establishes comprehensive accounting system: logs are required to be kept on the distribution of raw arrest records and other sensitive information for the purposes of accountability. Sealing: Records must be sealed if an individual has been free from the jurisdiction or supervision of a law enforcement agency for a period of five or seven years, depending upon his prior record. Records must be sealed immediately if the case is not to be prosecuted.	Similar provisions, but less specific. Federal, state, and local agencies concerned with the dissemination of criminal justice information are required to take steps to insure completeness and accuracy of criminal justice information. Contains similar sealing provisions, with exceptions for manual systems. Lacks provision for sealing of records where there is no prosecution.
RIGHT OF ACCESS	
Bill provides every citizen with right of access to any data bank (computerized or not) for purpose of challenge and correction. Challenge procedure includes hearing before supervisory personnel of the data bank, and appeal to U.S. District Court if necessary.	Similar provisions, but less specific. Each state or agency responsible for a data bank is required to adopt regulations to implement provisions of the section. Notice provision: If a non-criminal justice agency requests criminal justice information from a criminal justice agency, it is required to notify the individual in writing.
CIVIL AND CRIMINAL PENALTIES	
Civil Remedies: Both plaintiff and the Board can bring suit for injunctive relief. *Criminal Penalties:* Anyone guilty of a knowing violation can be fined $5,000 and/or imprisoned for not more than one year. *Enforcement:* Operating personnel are held civilly liable for negligent failure to comply with the letter of each provision. Liability can arise from both negligence and willfulness.	*Civil Remedies:* Allows plaintiff to bring suit for judicial review. Contains no specific provision for the Attorney General to bring suit for injunctive relief. *Criminal Penalties:* Any individual guilty of a knowing violation can be subject to a fine of $10,000 and/or up to one year in prison. Provides for statutory defense based on "good faith reliance" on the provisions of the act.
ADMINISTRATIVE PROVISIONS	
Bill would create a new federal-state board to oversee enforcement of the act. The agency will issue regulations, go to court to enjoin violations and could operate the federal interstate criminal history data bank (NCIC). Allows for greater state participation in enforcement, including a provision that each state will establish its own board within two years for the purpose of supervising state criminal information systems. Each state would promulgate statewide guidelines subject to approval by the national board.	Provides for no comparable enforcement structure. Provides for issuance of regulations and other enforcement provisions under discretion of the Attorney General. No state role specified.
SYSTEM AUDITS	
The Board is required to conduct random audits of federal and state criminal justice information systems at least once a year to insure compliance with the Act. Individual systems are required to conduct similar audits of their own practices. Reports are to be made available to the Board, and to Congress.	Conduct of audits is left to Attorney General.

[1] Prepared by the staff of the Subcommittee on Constitutional Rights, March 1974.

Senator ERVIN. In light of this, I feel quite optimistic that Congress will enact legislation on criminal justice data banks within the year. However, I also recognize that legislation as complex, controversial and important as that represented by these two bills will not be enacted if this spirit of accommodation and bipartisanship is not preserved. In that regard I pledge to representatives of State, Federal and local law enforcement agencies who are going to be so profoundly affected by this legislation that while my questioning and that of my colleagues and the staff may be rigorous, it will not be hostile. The purpose of these hearings is not to expose so-called law enforcement abuses to the public but to learn how law enforcement agencies collect, use and dis-

seminate information covered by this legislation. For if the Congress does not understand, it will legislate in a vacuum and risk shackling those courageous men who are on the streets preserving law and order. I want to emphasize this point to the representatives of the Federal Bureau of Investigation which I consider to be the most professional and competent law enforcement agency in the world.

In that regard I would like to reiterate what I have said on many occasions since the introduction of S. 2963 on February 5th. Neither I nor any of my colleagues who joined me in that bill are wedded to every provision. We have made this proposal for the purpose of provoking discussion as a focus or stepping-off point for representatives of law enforcement agencies and other witnesses. So while I recognize that many of the provisions of this bill and S. 2964 may have unintended effects upon law enforcement, I encourage law enforcement representatives to come before the subcommittee in the same spirit that we have come. Indeed some of the provisions of my bill, especially those regarding criminal justice intelligence, have been drawn deliberately to be provocative. I hope that law enforcement witnesses will not simply criticize such provisions but come forward with alternative language and suggestions for meeting the objectives of S. 2963 and S. 2964.

While we want to avoid any unnecessary impediments to proper and enlightened law enforcement, at the same time the need is clear that strong action must be taken to protect the privacy of American citizens. These systems are too dangerous to leave unguarded. I see no reason why we cannot come to a proper balance between rights of citizens and needs of law enforcement. That, after all, is the pattern of our constitutional system.

I am not going to summarize the historical background of the subcommittee's interest in the question of criminal justice data banks for I believe I covered that in sufficient detail in my statement upon introduction of S. 2963. Therefore I ask unanimous consent that that statement be inserted in the record at the conclusion of my opening statement.

I would like to concentrate today on several questions or issues which I had in mind as I worked on this legislation, problem areas which I believe we should use to evaluate these bills and the testimony before the subcommittee.

In setting out these issues I will attempt to illustrate each problem with actual cases. I think it will be useful in evaluating testimony and legislative proposals to ask whether the witness or the proposed legislation has adequately resolved the issues and whether the incident would have been avoided. I might make a caveat at this point. All of the incidents or cases I am about to describe have been brought to the attention of the subcommittee. However, we have not verified all of them nor can we absolutely vouch for their accuracy. But I am convinced that under existing rules and regulations, or lack thereof, these incidents are not only plausible but likely.

The first general issue or problem area concerns the quality and accuracy of information which should be allowed to circulate in the criminal justice data systems, whether or not those data systems are computerized. To be more specific, should incomplete or dated records, such as a record of an arrest without any indication of disposition, be allowed to circulate between law enforcement agencies or outside the law enforcement community? The President specifically mentioned this problem in his privacy message last week. Should records which resulted in acquittal or dismissal of charges be freely disseminated?

I have two cases which illustrate this problem area. The first involved a young man who had filed suit against a large metropolitan police department for harassment growing out of an arrest record. He was arrested while a senior in high school. A few months later he was acquitted of a robbery charge because of an apparent case of mistaken identity. He is now a college student and a national merit scholarship winner. According to his court complaint, on at least three occasions police have shown his photograph in neighborhoods where crimes have been committed, seeking to have him identified as the criminal in some new crime. Each time this has been done, his family and acquaintances have been interrogated anew.

The second case involves a man named Brian who was arrested as a public nuisance in 1970 and was tried and acquitted in 1971. Later he was arrested in California for possession of marijuana; the charges were dismissed. Two years later he was hired by a firm installing alarm systems in banks. The local police in the city where his employer was based did a security check with the FBI at the request of the employer and was informed of the man's arrests but not of the dispositions. This information was reported to the employer who fired Brian, but the employer told Brian that he would rehire him "if the record could be cleared up in the future."

Both of these incidents might have been prevented if there had been a ban on dissemination of incomplete records, or if there was a procedure for sealing or purging certain incomplete records or records which resulted in an acquittal or if there were accuracy and updating standards, and if these subjects had a statutory right to see and challenge their records. All of these proposals are contained in S. 2963 and S. 2964 in one form or another.

Of course the second of the cases which I have recited, the case involving the young man who was fired for having an arrest record, suggests an even more fundamental problem. What type of information should be available from police files to nonlaw enforcement agencies, especially commercial establishments? Two other cases illustrate this problem. The first involves a schoolteacher in California. Not long ago this man was walking near one of the subway stations of the new Bay Area Transit System, BART. He noticed a lot of television cameras surrounding a man whom he later recognized to be the Secretary of Transportation, Mr. Claude Brinegar. The man approached Secretary Brinegar and asked, "Excuse me, sir, could you tell me if you think the President should be impeached?" Mr. Brinegar made no comment, ignored the man, and suddenly the man was seized by four BART policemen and placed under arrest. The man was later turned over to the city police, fingerprinted, and charged with assaulting a Cabinet member as well as a number of misdemeanor assault and resisting arrest charges. At the arraignment the judge suggested that the prosecutor drop all charges and questioned why the prosecutor brought such an unwarranted case in the first place. The gentleman has sued BART for false arrest but in the course of developing the suit discovered that the State board of education had been informed of the arrest and was reviewing his case to decide whether to suspend his

teaching credentials. The man assumes that at least one set of fingerprints was circulated to the board of education.

Under my bill only conviction records can be released to noncriminal justice agencies and then only to such agencies and persons as are specifically authorized by State or Federal statute. S. 2964 is a bit looser on this point. In certain circumstances, arrest records without dispositions could be disseminated outside the criminal justice community. However, this is no simple issue. For example, if we completely cut this information off to persons outside the criminal justice community, we may inappropriately shroud crime and law enforcement agencies in a blanket of secrecy. Should the press be allowed to view a police blotter to determine who has been arrested, or to determine whether a candidate for office has ever been tried for a crime? How will the press be able to determine whether a local prosecutor has been corruptly dropping charges against organized criminals if there is no way for them to find out whether certain individuals have ever been arrested or charged with crimes and, if so, the disposition?

It will not be easy to develop the proper balance between the public's right to know how the police and the courts function on the one hand and the individual's right to privacy on the other. But I hope that the press will not overreact and see this legislation as an attack on freedom of the press. I, for one, believe that privacy and the free press are compatible and I have sought to protect the press' rights wherever I can.

A third problem concerns the types of civil remedies which should be available to a citizen to enforce the dissemination rules set out in Federal legislation or regulations issued persuant thereto. Should a citizen be able to enjoin a law enforcement agency from violating the statute, or are criminal penalties sufficient? Should agencies which operate data banks and their employees be civilly liable for damages if information is disseminated in violation of the statute?

Two cases which have come to my attention suggest the necessity of the remedies which have been included in both S. 2963 and S. 2964. In the first case a man was arrested and adjudged guilty but his record was expunged under a State expungement statute. However, he had been fingerprinted at the time of this arrest and his arrest record had been sent to the FBI's fingerprint file where it was available to police and certain nonlaw enforcement agencies all across the country. After the defendant got the expungement order, he attempted to get his rap sheet returned from the Bureau. A letter from Director Kelley responded that FBI policy states that records can only be returned if the reporting agency so requests. The police department involved would not request return of the records despite the State statute. Therefore, the record is being disseminated in violation of the State statute.

An even more disturbing case which illustrates the need for some type of effective civil remedy involves a service station operator who was arrested on a charge of maintaining and operating a gambling premise. The charge was dropped later when it was determined that the man was unaware of one of his employees running a numbers game in the busy service station. The man became obsessed with the idea of having an arrest record; he had worked hard all of his life and had never been in trouble before. He talked to many people about it, seeking advice. A lawyer told him to forget it because the legal proceedings would be too costly. He finally mentioned his problem to a friend on the county police force, who suggested that he write the county State's attorney stating all the facts. In a week or so he was advised that for a fee of $750 the record could be expunged.

A fourth problem area concerns the collection and dissemination of intelligence or investigative files. These are files on individuals maintained by law enforcement agencies which are nonpublic record in nature. They usually contain a considerable amount of very sensitive information, a great deal of which may be hearsay and conjecture. If we are going to propose restrictions upon the use of routine public record information such as arrest records, it is absolutely essential that we address the collection and dissemination of this much more embarrassing and sensitive information. We will hear from representatives of agencies which have computerized files or indexes of intelligence information on persons. Other agencies have automated files on investigative reports.

Some agencies have automated files on the modus operandi used in burglary cases. This gives the agency the capability of asking the computer for a list of persons who enter houses in a particular manner. However, should a man be listed in such a computer unless he has actually been convicted of such a crime or at least arrested and prosecuted?

It is not enough that we rely simply on assurances that these intelligence and investigative reports will not be abused. The time is long since passed for that. Before we permit computerization of this data, we must require rules to protect privacy at least as sophisticated as the ones we now propose for record information.

One final concern is probably the most difficult and important one which the subcommittee and the Congress must address. That is, who shall control and operate the manual and automated data systems covered by this legislation. Shall the law enforcement agencies themselves or an outside independent board make policy? On the Federal level, should policy and regulation issued under this legislation be the exclusive responsibility of the FBI or the Attorney General or should the States have an equal voice? This whole problem has been pointed up by the experience of Massachusetts in the past few years. We will hear from Governor Sargent today who has attempted to implement his State's new arrest records statute and at the same time participate in Federal information exchange programs such as NCIC and rap sheet exchange program operated by the Bureau.

I am sure Governor Sargent is going to describe to the subcommittee how he and his administration began to restrict access to law enforcement files only to be faced by a number of lawsuits not only by private users but also by the Federal Government. The Small Business Administration threatened to cut off almost $30 million in Federal funds to Massachusetts if it was not permitted access to police files.

The Defense Department threatened to freeze 2,400 defense related jobs in Massachusetts for the same reason. The Justice Department also sued the State for access to police files. In effect, the Federal Government was attempting to undermine the legitimate efforts of the people of Massachusetts to protect their own privacy. It is hard to imagine a more classic example of the case for States rights.

The automated arrest record exchange systems from the very beginning have placed a significant strain on Federal-State relations. When project SEARCH attempted its prototype computerized interstate exchange of arrest records in 1970, the data system was established as a purely State venture. All of the computerized files were to be maintained on a decentralized State-by-State basis. Therefore, each State could control access to its own files. However, when the FBI took over control of the SEARCH prototype in 1971, the Bureau announced that many of these files would be maintained in the Bureau in Washington.

There have also been troublesome questions about whether the FBI should be able to impose operational security and privacy regulations upon the States without the States having an opportunity to influence the development of those regulations. For example, how can a State like Massachusetts insure that information which it will contribute to the Federal data bank will be used by other States in a manner consistent with the Massachusetts statute?

My legislation attempts to resolve these problems. First, it would give precedence to State statutes or regulations which are more strigent than the Federal statute or regulations. However, even more important than this provision is title III of my bill which establishes a comprehensive Federal-State administrative structure. This would insure a sharing of policy and operational authority between the Federal Government and the States in this most difficult area. Because these systems involve more than just Justice Department interests, but those of the States, other Federal agencies, and ordinary citizens as well, we need an administrative structure that recognizes this diversity. Law enforcement is a local business. Privacy is a matter of the rights of individuals. Title III seeks to recognize these interests. It is a problem which cannot be ignored.

I know that this question and the proposals contained in title III of the bill are the most difficult but perhaps the most important which the subcommittee and the Congress must face in the development of criminal justice data bank legislation. However, I am struck by the fact that no one on the Federal level has ever seriously considered and resolved this problem. I would like to introduce at this point in the subcommittee record a report prepared last week by the General Accounting Office that bears directly upon this controversy.

[The report referred to follows:]

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., March 1, 1974.

Hon. SAM J. ERVIN, Jr.,
Chairman, Subcommittee on Constitutional Rights,
Committee on the Judiciary, U.S. Senate.

DEAR MR. CHAIRMAN: Your letter of February 21, 1974, requested that we provide your Subcommittee with information on the development and use of computerized criminal history information. You requested specific information in connection with hearings on legislation to guarantee the security and privacy of criminal history information (S. 2963 and S. 2964).

We have reviewed actions relating to the development of the Federal and State computerized criminal history information systems (CCH). Enclosed are our findings, which may be useful to your Subcommittee during its March hearings. We will provide the other information you requested after the hearings and further discussions with your staff.

Briefly, our findings indicate:

When the Attorney General authorized the Federal Bureau of Investigation (FBI) to operate the CCH system in December 1970, he did not inform the FBI of (1) the extent to which certain criminal history information should have been maintained in Federal rather than State computers or (2) what type of advisory policy board should be established to review the policies and procedures used for CCH. He had, however, received recommendations regarding both matters from the Office of Management and Budget, Executive Office of the President.

In the absence of such direction from the Attorney General, the FBI, with the concurrence of its National Crime Information Center Advisory Policy Board, developed the policy and operating procedures for CCH.

There is some question as to the extent of computerized criminal history information which should be retained in the FBI's computers.

Data is not available to indicate how computerized criminal history information has been used.

Both the FBI and the Law Enforcement Assistance Administration have either funded, or seek to develop, telecommunication system capabilities, to allow State and local criminal justice agencies to exchange administrative messages more effectively. The development of two systems could result in duplication and an unnecessary expenditure of Federal funds. Moreover, the Attorney General has not decided whether the FBI has legal authority to operate such a system.

The principal question which has resulted from our work to date, and which your Subcommittee might wish to pursue in its upcoming hearings, appears to be: What should the national policy be regarding development of computerized criminal history information systems, and to what extent should the various segments of the criminal justice community and appropriate Federal agencies participate in such policy development?

During the hearings the Subcommittee may wish to discuss with the Administration additional matters noted on pages 6, 8, and 10 of the enclosure.

We did not obtain comments from the Department on this report, but we did discuss the findings with cognizant officials, who generally agreed with the facts.

Sincerely yours,

ELMER B. STAATS,
Comptroller General of the United States.

Enclosure.

DEVELOPMENT OF THE COMPUTERIZED CRIMINAL HISTORY INFORMATION SYSTEM

BACKGROUND

A cooperative effort of several States established and demonstrated the feasibility of using a computerized system for the interchange of criminal histories. The States' effort was called the System for Electronic Analysis and Retrieval of Criminal Histories (SEARCH).

The SEARCH project began receiving Federal funds in 1969 from the Law Enforcement Assistance Administration (LEAA) as part of LEAA's effort to encourage States to improve their criminal justice systems. SEARCH was developed on the basis that all computerized criminal history records would be stored in the States and that a central computer would maintain an index of abbreviated summary data on arrested individuals.

On request, a State was furnished this summary—which contained information on the reasons for and number of arrests and convictions—and, if necessary, could query the State listed on the summary as having the individual's records for the detailed information. LEAA gave the States about $4 million to develop and operate SEARCH.

SEARCH proved that it was feasible to use a computerized system for the interchange of criminal histories. The question then facing the Department of Justice was how to make the system operational: Who should operate the system? What computerized criminal history information should be contained at the Federal or at the State level?

The Attorney General's Office, the Federal Bureau of Investigation (FBI), and LEAA discussed the alternatives during the summer of 1970. One concern of LEAA was that the central index might contain too much detailed information, possibly raising the specter of a national computerized data bank. Regarding the extent of information to be contained in the central index, an August 1970 memorandum from the FBI Director to the Attorney General stated:

"* * * no final decision has been made as to the exact details to be included in a national index criminal history record. This can only be done in coordination with the states. This Bureau plans no greater detail in the computerized criminal history record than is presently frequently available in the manually operated criminal identification record function."

Another issue was whether the FBI, LEAA, or the States should operate the system. The Assistant Attorney General for Administration supported the FBI's view that it was experienced in handling criminal information and should operate the system. LEAA basically proposed that it share operating responsibility with the FBI.

Before making any decisions the Attorney General requested the Office of Management and Budget (OMB) to study the alternatives for the future organization and operation of SEARCH. On September 3, 1970, the Associate Director of OMB recommended to the Attorney General that:

The FBI operate the SEARCH central index on a limited record-length basis, while the States continue to develop and operate their individual, but compatible, automated criminal history systems.

A strong Policy Control Board be established, which would report directly to the Attorney General, to decide the future development and operations of SEARCH. The Policy Control Board should include high-level officials from the FBI, LEAA, and the States, who should represent all elements of the criminal justice system (police, prosecutors, courts, corrections, and parole). Membership should be structured so that the States have an equal voice with the Federal Government in recommending policies for the future direction of SEARCH.

Planning be initiated to develop an integrated criminal justice system. This would bring together SEARCH and the related FBI activities. The Policy Control Board should be the center of this planning activity.

On December 10, 1970, the Attorney General informed LEAA and the FBI that the FBI would take over management responsibility for a computerized criminal history system. However, we were told that the Attorney General did [illegible] follow or advise either LEAA or the FBI of OMB's other recommendations.

The FBI named the system the Computerized Criminal History (CCH) Program and operated it as part of its National Crime Information Center (NCIC), using NCIC computers and communication lines.

OPERATION

Since CCH is part of NCIC, a brief description of the system is useful.

Since the 1920's the FBI has maintained, in a manual central file in Washington, D.C., records of all arrests reported by local law enforcement agencies and has disseminated such information, on request, to State and local law enforcement agencies. The arrests are reported to the FBI on fingerprint cards which are put in a file maintained for each arrested individual by fingerprint classification. Information from the fingerprint cards is transferred to a "rap sheet," making it a master list of all reported criminal activity for that particular individual. Disposition data is also supposed to be submitted by the arresting agency or the court on a disposition form and becomes part of the file maintained for each arrested person. Copies of the rap sheet are forwarded to local agencies in reply to requests for information on the particular individual.

The headings of information contained on rap sheets follow: (1) Contributor of fingerprints (usually arresting agency or correctional institution), (2) Individual's name, (3) Date arrested or received (i.e., sent to jail), (4) Nature of charge, and (5) Disposition.

The FBI began operating NCIC in 1967. Its current function is to supply, from a central data bank maintained by the FBI, an almost instantaneous response to inquiries from Federal, State, and local law enforcement agencies regarding fugitives; and stolen vehicles, license plates, securities, boats, guns, and other articles. Terminals at central State locations and at local law enforcement agencies are linked to a central computer, at FBI headquarters, which stores and disseminates this information on request. Other criminal justice agencies in the States can request NCIC information from these control terminals.

NCIC was developed with the assistance of an advisory group composed of State and local law enforcement personnel from agencies that either had computerized systems or were in the advanced planning stages of such systems.

The advisory group was replaced in 1969 by the NCIC Advisory Policy Board. The Board was composed primarily of State and local law enforcement personnel and made recommendations on NCIC policy to the FBI Director. Members were

elected by the criminal justice agencies which had computer terminals linked to NCIC—mainly law enforcement, rather than court or correction agencies. The Board obtains some input on how to operate the system from an annual meeting of users of the system.

Because CCH was an integral part of NCIC, the Board governing NCIC made recommendations to the FBI Director regarding CCH's development.

The NCIC Board, however, did not have as broad a composition as that of the board OMB envisioned when it made its September 1970 recommendations to the Attorney General; nor did it report directly to the Attorney General, as OMB had recommended.

In March 1971 the NCIC Board approved the operational concept, security requirements, and record content for the CCH program. The central data bank, as recommended by the Board and as agreed to by the FBI, would no longer merely point inquirers to the State where detailed criminal history information could be obtained. Instead, it would contain a detailed criminal history record on each offender whose record was entered by the States into the system. Basically, this detailed criminal history record would contain the information which the FBI had maintained manually on its offender rap sheets. It would consist of information showing the arresting agency, the reason and date of each arrest, and disposition and custody action, when available.

Maintaining the complete detailed record of each offender was to be an interim measure, according to the NCIC Board, because all users would not have the capability to fully participate in the beginning of the system. It would take time for the States to establish identification bureaus and develop fingerprint identification capability, information flow, and computer systems capability.

The ultimate concept of CCH, as envisioned by the Board, is a single-State, multi-State system. For single-State offenders NCIC would maintain only summary data and the States would maintain the detailed records. For multi-State offenders and for Federal offenders, NCIC would maintain the complete record. The summary record would include only the reason for arrests and number of arrests and convictions and specific information on the reason, date, and disposition of an offender's latest arrest and the criminal justice agencies involved. FBI studies have shown that about 70 percent of rearrests will be within the same State. Therefore, most detailed records will be for single-State offenders and ultimately maintained at the State level.

The NCIC Board in March 1971 had therefore committed itself to developing an operational system that went beyond the original SEARCH concept in terms of the Federal Government's involvement. The information in the FBI's computers would not be limited to abbreviated summary data for single-State offenders, but would include complete criminal data on each offender until the States could develop fully operational CCH State systems. The FBI endorsed this concept, and the Board stated that the States should have fully operational systems by July 1, 1975.

State participation in CCH, in terms of entering records into the computer, is voluntary. But, any State which complies with the NCIC Board's security and confidentiality requirements can assess information in the system.

Because the Attorney General did not follow all of OMB's recommmendations, OMB officials held a meeting on April 26, 1971, with Department of Justice, LEAA, and FBI representatives to discuss CCH. Two of the major findings, according to a May 11, 1971, OMB memorandum of the meeting, were that:

Neither the FBI nor LEAA had received copies of the September 1970 OMB report to the Attorney General.

The FBI was building a central data bank of all criminal records instead of operating a central index as OMB recommended.

On May 13, 1971, the OMB Associate Director reported to the Attorney General that:

The NCIC Board governing CCH had all police representatives instead of representatives from the total criminal justice system, including the courts, corrections, prosecutor, and parole segments, as OMB recommended.

The NCIC computer system's policies limited CCH to police use. OMB intended that the system be used by the total criminal justice system.

The rap sheets used in recording data included data on corrections and courts but those agencies did not have access to that data under the CCH system.

Although authority existed for using statistical data from the system for criminal justice research, no firm commitments existed for making the data available for this purpose.

A September 1973 NCIC Board paper discussed the need for detailed information at the national level, noting that such information:

"* * * is required to efficiently and effectively coordinate the exchange of criminal history among State and Federal jurisdictions and to contend with interstate criminal mobility.

* * * * * * *

"* * * sufficient data must be stored in the national index to provide all users, particularly those users who do not have the capability to fully participate in the beginning system, the information necessary to meet basic criminal justice needs."

The same paper reiterated that for the system to be a truly national system the States must create fully operational systems by July 1, 1975.

Both FBI and LEAA officials, however, advised us that it is questionable whether many States can meet the July 1975 deadline. The proability exists that, because of the difficulty of developing systems in all the States, the FBI will retain detailed computerized criminal history information on single-State offenders for a substantial period.

In September 1973 the NCIC Board recommended that the FBI Director appoint some non-law-enforcement officials to its Board, since up to that time none of the Board members represented the court, prosecution, or correction segments of the criminal justice system. In February 1974 the Director appointed two prosecutors, two judges, and two correction officials to the Board. As of February 27, 1974, five had accepted the appointment.

Matter for consideration by the Subcommittee

The Subcommittee may wish to explore with the Attorney General whether he believes OMB's September 1970 recommendations are appropriate and, if so, how he intends to implement them.

Use of CCH

On November 30, 1971, the CCH system became operational. As of February 17, 1974, six States and the District of Columbia, in addition to the Federal Government, had supplied computerized records to the system in the numbers shown below.

Arizona	18, 497
California	72, 522
District of Columbia	45, 099
Florida	70, 480
Illinois	28, 954
New York	46, 285
Pennsylvania	10, 177
U. S. Government [1]	156, 487
Total	448, 501

[1] Federal offenders are entered by the FBI.

This number represents only about 2 percent of the approximately 20 million individuals on whom the FBI has criminal history information. The CCH system, therefore, currently provides criminal justice agencies only a small portion of the total information they receive from the FBI.

Summary data the FBI gave us on the inquiries to CCH in January 1974 gives some indication of the type of requests coming to CCH. About 31,470 requests were received for either summary or complete CCH information. Of the approximately 25,900 requests for summary information, such as would be contained in the national index for single-State offenders, the CCH file contained information on 2,925, or about 11 percent. Of the approximately 5,570 requests for complete criminal history data to be transmitted back to the requestor by computers, the CCH file contained information on about 4,290, or 77 percent.

Data is not available at the national level to indicate for what purpose State and local criminal justice agencies use CCH information. The CCH system can identify the control agency terminals making inquiries to the system, but not the agencies within the State making requests of the control terminals. The States, however, would have such data. Moreover, there is no way to determine, from the computerized printouts, the purposes of inquiries.

An evaluation of SEARCH [2] attempted to determine police use of SEARCH, but the evaluation report noted that:

"The observation of local police use of the system was not realized; therefore, this portion of the findings come from detailed interviews and not from operational experience. The most consistent opinion expressed by local police at all organizational levels is that criminal history is not vital prior to an arrest.

* * * * * * *

"The requirement is for a reliable source of accurate and timely information during the investigative phase, after an offender has been arrested."

The report, however, did not indicate the number of local police interviewed, their duties (such as patrol or identification), or whether those interviewed were randomly selected from all local police. Without such information, it is not possible to determine whether the views expressed to the evaluators are representative.

The SEARCH evaluation report did not address how court and correction agencies used computerized criminal history information, but noted that before SEARCH the "lack of criminal history data in the courts and correction functions was appalling."

Matter for consideration by the Subcommittee

We believe it is necessary to know what use is made of computerized criminal history information to determine what type of security and privacy provisions should be applied to the data and to provide management with sufficient information to determine how best to meet user needs. The Subcommittee may wish to discuss this matter with the Attorney General.

Administrative message switching

An important collateral development to the CCH system is the development of the communication system over which law enforcement agencies can exchange administrative messages on such matters as details of thefts of automobiles, or the transportation of arrested individuals.

The primary system used by the States is the National Law Enforcement Teletype System (NLETS). A consortium of States established NLETS in 1966 as a nonprofit corporation for the interjurisdictional exchange of criminal justice administrative messages. Teletype terminals in the States, accessible to local criminal justice agencies, interfaced with a central message-switching terminal in Phoenix. NLETS was operated entirely on teletype equipment and had no data storage capability. The FBI was linked to the system with the same capabilities as the States. Each State financed its own participation in the network.

In 1973 LEAA and State and local law enforcement agencies became concerned that this low-speed system had become obsolete and could not meet the high-speed telecommunication needs of law enforcement agencies. Therefore, LEAA entered into an agreement with the National Aeronautics and Space Administration to have one of the Administration's contractors, the Jet Propulsion Laboratory of the California Institute of Technology, develop alternatives for nationwide telecommunication systems to cover interstate criminal justice telecommunication needs up to 1983. The study will cost LEAA $500,000. The Jet Propulsion Laboratory is to issue its final report in mid-1974.

As an interim measure, LEAA gave the States $1.5 million in June 1973 to upgrade NLETS over a 42-month period so computers could be used to exchange information over high-speed communication lines. During the first 18 months NLETS was authorized to spend about $1.2 million to buy computer equipment, organize and install the high-speed communication lines, and bring in technical experts to implement the system. This upgrading, the initial phase of which was substantially completed in January 1974, enables computer-to-computer messages to be transmitted over the lines. As of January 31, 1974, about $741,000 had been spent.

Concurrently, the FBI expressed interest in operating law enforcement interstate administrative message switching. On July 11, 1973, the FBI Director requested the Attorney General's concurrence in his opinion that statutory authority for the FBI's NCIC included authority to provide expanded communications support for NCIC, including the switching of administrative messages and other

[2] The evaluation, completed on October 23, 1970, was done by Data Dynamics, Inc., Arlington, Virginia, for the California Crime Technological Research Foundation.

interstate criminal justice communications. FBI officials advised us that the request to the Attorney General had been delayed until a permanent Director took office. Under the FBI's proposal, the FBI, rather than the States, would operate the central message switching unit to enable the different computerized information systems of the States to communicate directly.

The FBI pointed out that message switching is an integral part of the CCH system and that the NCIC communication network would be capable of handling all message switching requirements with minimal additional communication lines and upgrading of computer hardware.

According to an August 6, 1973, memorandum from the Department's Office of Legal Counsel to the Attorney General, it is arguable whether there is adequate legislative authority to support the FBI's proposal to acquire administrative message switching. Moreover, if the FBI obtains administrative message switching capability, there is a question whether NLETS needs to exist.

As of February 27, 1974, the Attorney General had made no decision on the FBI's request.

Matters for consideration by the Subcommittee

Before moving forward with either LEAA's plans to continue upgrading NLETS or the FBI's proposal to implement administrative message switching, such Federal agencies as the Department of Justice, OMB, and the Office of Telecommunication Policy of the Executive Office of the President, should agree on what overall Federal involvement should be in computerized criminal justice telecommunication systems. The Subcommittee may wish to discuss these matters with the Attorney General.

Senator ERVIN. I was surprised to learn in reading the GAO report that the Office of Management and Budget considered the question of control and content of a Federal criminal justice data bank before the Attorney General made his decision in 1970 but that the Attorney General apparently ignored OMB's recommendations. OMB's recommendations are not unlike what I suggest in title III. OMB suggested that any federally run interstate criminal justice data bank should be decentralized and subject to the policy control of an independent board which reports directly to the Attorney General, composed of representatives of all components of the criminal justice system. OMB proposed that membership on the board be structured so that the States have an equal voice with the Federal Government in recommending policies. The fact is that LEAA and the FBI were not informed of OMB's recommendations and these proposals were never seriously considered in the establishment of the NCIC/CCH system. Judging from the positive response to title III of S. 2963 by several of my colleagues, especially my friend, the senior Senator from South Carolina, and by several witnesses who will testify in the hearings, there is considerable support for this proposal in the Congress and in the State governments.

Another fundamental issue is also raised by this GAO report, and was the subject of an earlier one of January 1973. This is whether these data programs have been properly evaluated in terms of their cost, their development, and their usefulness. In the words of the 1973 report:

The cost to develop and operate the criminal history exchange system has not been determined and problems related to the system's operation effectiveness have not been resolved. No one has determined what a fully operational system will cost. Therefore, the participants cannot determine whether they will be able, or willing, to meet the financial requirements of developing and operating the system. Although the reporting of arrest and disposition data within the states is known to be incomplete, neither LEAA nor the FBI has insured that all information entered into the system is complete. About half the states do not have laws requiring that arrests and dispositions be reported to central state identification units.

The most recent GAO report raises this issue again. According to GAO, no data is available either from NCIC or the original SEARCH experiment indicating exactly how this information is being used by local police. It is my understanding that it is not even clear that police need CCH on an instantaneous basis prior to arrest. According to GAO:

Data is not available at the national level to indicate for what purpose state and local criminal justice agencies use CCH information. The CCH system can identify the control agency terminals making inquiries to the system, but not the agencies within the state making requests of the control terminals. The states, however, would have such data. Moreover, there is no way to determine, from the computerized printouts, the purposes of inquiries.

GAO goes on to quote from the original evaluation of SEARCH:

The observation of local police use of the system was not realized; therefore, this portion of the findings come from detailed interviews and not from operational experience. The most consistent opinion expressed by local police at all organizational levels is that criminal history is not vital prior to an arrest.

In conclusion, I should like to emphasize the ultimate question we must ask ourselves and the witnesses who appear before the subcommittee: What should the national policy be on exchange of criminal justice information and who should make that policy? Perhaps Judge Gerhard Gesell stated it most effectively in the case of *Menard* v. *Mitchell*, in which the FBI's huge rap sheet dissemination was halted by a court order. Judge Gesell asked whether anyone, the Bureau, the Congress, or the local police departments, had effective control of this information exchange.

To illustrate this point, I would like to cite one last case. Several months ago a young man was arrested by a local police department on a traffic charge. At first, he was told he could pay a $15 fine and would be released. But then an officer told him he could not leave because the Marines "had a hold on him." A detective then showed him a copy of a computer printout listing someone with the same name as AWOL from the Marines and a deserter. This young man was not AWOL or a deserter from the Marines because he was not even a Marine. The arrest occurred more than a month after the young man had become a civilian and his discharge papers attested to this. The assistant police chief said that the police were not to blame for the arrests—this had not been his first arrest—because they were only following the computer's instructions.

If local police are blindly following instructions from some faceless computer, we are indeed in real trouble. The answer to Judge Gesell's question is that no one is in control of these data systems. I fear that this is unfortunately the case. But I hope that these hearings will suggest to the subcommittee and the Congress a method for creating a statutory scheme which will bring some order and control out of the chaos.

[The statement of Senator Ervin accompanying the introduction of S. 2963 follows:]

[From the Congressional Record, Feb. 5, 1974]

INTRODUCTION OF S. 2963—THE CRIMINAL JUSTICE INFORMATION CONTROL AND PROTECTION OF PRIVACY ACT OF 1974

Mr. ERVIN. Mr. President, with Mr. HRUSKA, Mr. MATHIAS, Mr. KENNEDY, Mr. BAYH, Mr. TUNNEY, Mr. YOUNG, Mr. BROOKE, Mr. MANSFIELD, Mr. ROBERT C. BYRD, Mr. BURDICK, Mr. ROTH, Mr. HUGH SCOTT, Mr. THURMOND, and Mr.

FONG, I introduce for appropriate reference the "Criminal Justice Information Control and Protection of Privacy Act of 1974." The purposes of this legislation are to impose certain restrictions upon the type of information which can be collected and disseminated by law enforcement agencies on the Federal, State, and local levels; to place limitations upon the interchange of such information both among such agencies and outside the criminal justice community and otherwise to protect the privacy and reputations of persons about whom the agencies have collected information.

This legislation deals with the most prized but also the most perishable of our civil liberties—the right to privacy. Although the bill is limited to the activities of criminal justice agencies, its enactment would represent an important first step in reestablishing a workable balance between the information needs of Government on the one hand and the sanctity, individuality, and privacy of American citizens on the other. To understand the impact on personal privacy and the urgent need for this legislation, let me first review the significance of recordkeeping by law enforcement and other Government agencies.

I. GOVERNMENT RECORDKEEPING AND THE RIGHT TO PRIVACY

During the past few decades the demands by Government for personal and sensitive information about its citizens have escalated. This insatiable appetite for information among Government policymakers and administrators is closely related to the increasing responsibility which we have placed upon government, especially the Federal Government, for our health, safety, and well-being. The Government is expected to manage the most complex economy in history; to collect and expend billions of tax dollars in a productive manner each year; as well as to study and attempt to ameliorate the various crises which seem to plague our country with depressing regularity, involving our environment, energy resources, crime, and so on. Most Americans are willing to cooperate by divulging information about virtually every aspect of their lives if they believe it will help the Government fulfill these responsibilities.

Yet if we have learned anything in this last year of Watergate, it is that there must be limits upon what the Government can know about each of its citizens. Each time we give up a bit of information about ourselves to the Government, we give up some of our freedom. For the more the Government or any institution knows about us, the more power it has over us. When the Government knows all of our secrets, we stand naked before official power. Stripped of our privacy, we lose our rights and privileges. The Bill of Rights then becomes just so many words.

Alexander Solzyhenitsyn, the Russian Nobel Prize winner, suggests how an all-knowing government dominates its citizens in his book "Cancer Ward":

"As every man goes through life he fills in a number of forms for the record, each containing a number of questions * * * There are thus hundreds of little threads radiating from every man, millions of threads in all. If these threads were suddenly to become visible, the whole sky would look like a spider's web, and if they materialized as rubber, banks, buses, trams and even people would all lose the ability to move, and the wind would be unable to carry torn-up newspapers or autumn leaves along the streets of the city. They are not visible, they are not material, but every man is constantly aware of their existence * * * Each man, permanently aware of his own invisible threads, naturally develops a respect for the people who manipulate the threads."

Perhaps it should come as no surprise that a Russian can master the words to describe the elusive concept we in America call personal privacy. He understands, in a way which we cannot, the importance of being a free individual with certain inalienable rights, an individual secure in the knowledge that his thoughts and judgments are beyond the reach of the state or any man. He understands those concepts because he has no such security or rights but lives in a country where rights written into law are empty platitudes.

Privacy, like many of the other attributes of freedom, can be easiest appreciated when it no longer exists. A complacent citizenry only becomes outraged about its loss of integrity and individuality when the aggrandizement of power in the Government becomes excessive. By then, it may be too late. We should not have to conjure up 1984 or a Russian-style totalitarianism to justify protecting our liberties against Government encroachment. Nor should we wait until there is such a threat before we address this problem. Protecting against the loss of a little liberty is the best means of safeguarding ourselves against the loss of all our freedom.

The protection of personal privacy is no easy task. It will require foresight and the ability to forecast the possible trends in information technology and the information policies of our Government before they actually take their toll in widespread invasions of the personal privacy of large numbers of individual citizens. Congress must act before those new systems are developed, and before they produce widespread abuses. The peculiarity of those new complex technologies is that once they go into operation, it is too late to correct our mistakes or supply our oversight.

Our Founding Fathers had that foresight when they wrote the Bill of Rights. The first, fourth, and fifth amendments are among the most effective bulwarks to personal freedom conceived by the mind of man. Justice Brandeis in his classic dissent in the wiretapping case, *Olmstead* v. *United States*, 277 U.S. 438, 478 (1927), described with unsurpassed eloquence the importance of the right to privacy set out in the Constitution. These words do not go stale from repetition:

"The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognize the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men."

Government data collection on individuals is not a brand new phenomenon. The Federal Government has been collecting immense amounts of very sensitive information on individuals for decades. Income tax, social security, and census come to mind immediately. Various surveys by experts, private organizations such as the National Academy of Sciences, and a number of congressional committees have established the fact that the Federal Government stores massive amounts of information about all of us.

Several individual dossier files have received considerable publicity in recent years. For example, the Defense Department has several extensive files of very sensitive information, including dossiers on 1.6 million persons in its industrial security files. In the Justice Department alone, there is at least one civil disturbance file with 22,000 names; a file of approximately 250,000 names in the organized crime section; rap sheets or fingerprint cards on over 20 million individuals in the FBI's identification division files, and records on well over 450,000 persons in the FBI's National Crime Information Center—NCIC; and over 40 million names in the master index of the Immigration and Naturalization Service. The National Driver Register of the National Highway Safety Bureau contains 3,300,000 names. There are 69,000 names in the Secret Service files of persons considered potentially dangerous to the President, and the Secret Service computer contains hundreds of thousands of others.

Many of these records are in manual files as opposed to storage in computerized data banks. However, the trend is toward automation of the files so that information on an individual can be made instantly available to users. The FBI's 20 million fingerprint rap sheets are being automated. A survey which the Subcommittee on Constitutional Rights is conducting reveals that there are over 800 data banks in the Federal Government, many of which are automated, containing personal information on American citizens.

These figures and other information which the subcommittee's survey has revealed suggest that a revolution is about to take place within the huge information warehouses of the Federal Government. The revolution is going to be caused by two major developments within the Federal bureaucracy—both resulting from the application of highly sophisticated information technology to the Government's files.

First, with the advent of computers the Government is able to increase by geometric proportions the amount of information it can collect on individuals. Prof. Arthur Miller of the Harvard Law School, in his book "The Assault on Privacy," suggests that it will soon be technically feasible to store a 20-page dossier on every single American on a piece of tape less than 5,000 feet long. At the same time, the new technology permits the Government to reduce to microseconds the amount of time necessary to get access to the information. For example, the NCIC computer is able to locate one of its 450,000 criminal histories on an individual, reproduce it and transmit the file to a remote terminal in California or Florida in less than 5 seconds.

Second, and perhaps even more ominous than the computerization of the information, is the development of nationwide information networks by the Federal and State governments, utilizing telephone and other telecommunications lines.

These information networks are designed to increase dramatically the number of people and agencies which can access the computerized data banks operated by the Federal, State, and local governments. When the NCIC computerized criminal history is fully operational, it will be one of the largest data bank-information networks of personnal dossiers ever attempted. Eventually, roughly 40,000 State and local police departments will have instantaneous access to computerized files on an estimated 21 million individuals who at some time in their lives have been arrested by State, local, or Federal police. The General Accounting Office estimates that this ambitious project may cost over $100,000,000 in Federal, State, and local revenues. Already LEAA's allocations over the past 4 years is estimated at $50 million, not counting State and local expenditures.

The NCIC system is not the first of these systems nor will it necessarily be the largest. As Eugene Levin, an expert on data bank-information networks has pointed out, the Department of Defense has done the pioneering work in this area. The Advanced Research Projects Agency of the Department of Defense has implemented a network which ties together many huge and dissimilar scientific computers. However, the difference between NCIC and the types of systems pioneered by Defense is that the former has sensitive personal information on individuals while the latter is designed to facilitate the transfer of innocuous scientific information.

Mr. Levin suggests the dangers that this new computer-communications technology will have upon our lives once Government begins to use it to collect and disseminate information on individuals:

"The greatest deterrent to extensive government surveillance of individuals has not been the lack of technology of "bugging," nor do considerations of legality, morality, or ethics seem to carry much weight. The deterrent has been "data pollution," which buries an investigator under bits and bytes. It has not been possible to handle (gather, filter, store, process, retrieve, format, disseminate) the huge volume of information on all individuals in anything approaching a useful time frame. *Now it can be done.*"

If traditional Government recordkeeping practices and records policies have not yet posed an intolerable threat to personal privacy or reputations, it is only because of the benign inefficiency of these file-drawer record systems. Until very recently, significant amounts of information were not collected about individuals and therefore were not available to others. Use of information collected and kept on a decentralized basis is slow, inefficient, and frustrating. It requires an immense effort to collect information on a specific individual from a variety of different agencies, and then to have it sent out to the agency requesting it. It is ironic but true that what has thus far saved much of our privacy and our liberty has been the complacency, inefficiency, and intraagency jealousies of the Government and its personnel.

This decentralization, of course, is being radically changed by computerization and remote access through data networks. The information in Government files is often rather superficial and general and, in large part, dated and useless. The new technology allows for the collection of much more information on individuals as well as for systematic updating. With computerization and automatic remote access, the Government's ability to collect information increases astronomically and its capacity to broadcast what it ingests to every part of the Nation increases at the same rate. Once an individual gives up information about himself to the Government, he, and in most cases the Government, loses control over it. The citizen cannot, and the Government usually does not, control who can see the information. Nor can he or the Government insure the accuracy of what is broadcast. Increasingly, these systems will influence, if not determine, whether an individual will get Government benefits, be extended credit, get a job, or be considered a criminal and be harassed by police.

II. CRIMINAL JUSTICE DATA BANKS: A MICROCOSM

Over the past few years the Subcommittee on Constitutional Rights, which I chair, has been studying the impact of Government computerized networks and recordkeeping of personal information in the hope of developing legislation to reverse these trends. In the course of this effort, I have come to the conclusion that the need for legislative action respecting criminal justice data banks cannot wait for the development of a comprehensive legislative solution which applies generally to all Government data collection. Therefore, I have drafted legislation which deals with this area in the hope that the experience of developing and enacting this legislation will provide guidance in formulating a more complete Government policy on privacy.

The question of Government collection and dissemination of criminal records and other routine law enforcement information must be the first target for data bank privacy legislation. If Congress can successfully develop privacy safeguards for law enforcement information, collection and dissemination, then our experience may make easier the establishment of a more comprehensive policy. Some of the most advanced technology is being used in local, State, and Federal criminal justice data banks. The type of information being collected in such systems is as sensitive as any collected by Federal or State governments. The complexity of the questions of granting or denying access to subjects and other individuals are as difficult as those involved in any other area of government recordkeeping. I hope that Congress' consideration of the "Criminal Justice Information Control and Protection of Privacy Act of 1974" will be the first step in its effort to come to grips on a national level with the assault on privacy by governments and private enterprise wherever it may exist.

Criminal recordkeeping has a long history. Since the 1920's the FBI has been providing a nationwide manual exchange of arrest records for State and local police departments. The purpose of this system is to supplement the files of State and local police departments by making available the arrest record of any person even arrested for a crime by any police agency. The police utilize these records, called rap sheets, for investigative purposes, even though many of the records never indicated whether the subject has ever been prosecuted, much less convicted of the crime for which he was arrested.

To my mind, a record of an arrest without any indication of a disposition of the charges arising out of that arrest is virtually useless for law enforcement purposes, and is highly prejudicial if used for non-law enforcement purposes. Yet I understand that in several states as many as 70 percent of the records do not contain dispositions. I would not be surprised to find that the percentage of incomplete records is even higher in FBI files since those files are based on State files and the FBI depends upon States and localities for record updating.

A record which shows a disposition of no prosecution, dropped charges, or acquittal may have more value, but it is also highly prejudicial if controls on its dissemination do not exist. The number of such records in Federal, State, and local files is significant. In 1972 there were 8.7 million arrests in the United States. Of those 8.7 million arrests, about 1.7 million were for what the FBI terms serious offenses—homicide, rape, robbery, assault, and so forth. According to the FBI, almost 20 percent of the adults arrested for these serious offenses are never even prosecuted and, of those prosecuted, approximately 30 percent are not convicted. For juvenile arrests and arrests for the 7 million less serious crimes, the percentage of no prosecutions and no convictions is much higher. This suggests that there are probably several million so-called criminal records on persons who were never prosecuted or convicted of the charge for which they were arrested, but which are added to the FBI files each year and available for distribution to any local police department, State civil service commissions, and certain private concerns.

The rap sheet distribution system by the Identification Division of the FBI operates without formal rules. Custom and several letters from the Director of the FBI to local police departments seem to be the only limitation on access to the information. The rap sheets are made available to government licensing agencies, government personnel departments, and, in all too many cases, either directly or indirectly to private employers. By 1973 the magnitude of the dissemination was immense. Each day the Identification Division receives over 11,000 requests for record searches, a large portion of which are from non-law-enforcement agencies.

Unfortunately, when an employer obtains this so-called criminal record information, he is not so concerned with whether the arrest contains disposition of charges or whether the subject was convicted. As far as most employers are concerned, the subject of such a record is a "criminal" and his application is automatically rejected. One survey of New York City employment agencies found that 75 percent would not accept for referral an applicant with an arrest record, whether or not he was convicted. Although the Bureau discourages dissemination of rap sheets to private enterprise for employment purposes, once the information is in the hands of local police, it is effectively out of the control of the Bureau. For example, a few months ago a grand jury in Massachusetts began hearing evidence that State police officers were selling police records to department stores and other private businesses and credit agencies. This unfortunate abuse continues in case after case.

The FBI sends rap sheets to State and municipal civil service commissions as a matter of course. One study found that most state, local and municipal employers consider an arrest record, even one short of a conviction, in determining employment eligibility. As many as 20 percent of these Government employees automatically disqualify someone with an arrest record regardless of the disposition on the record. When you consider these employment policies in light of the fact that the FBI may have rap sheets on almost 10 percent of the population and the fact that Federal, State, and local government employment totals 18 percent of the work force, the impact of this dissemination should be obvious. The FBI does not now have the necessary authority and tools to deal with these and other problems. One purpose of this legislation is to supply the legislative authority that so far is absent.

In 1970, the Law Enforcement Assistance Administration funded a prototype computerized network for sharing criminal offender records. The experiment, called Project SEARCH—system for the electronic analysis and retrieval of criminal histories—took place in the summer of 1970 and demonstrated to the satisfaction of the Justice Department the feasibility of a nationwide computerized network for the exchange of such information. In December of 1970 Attorney General Mitchell authorized the FBI to assume operation of the project SEARCH computerized criminal history—CCH—project. The Bureau transferred the CCH file to its National Crime Information Center—NCIC—where it already had operational computerized files on stolen securities and persons with outstanding arrest warrants interfaced with a nationwide telecommunications network. The Bureau's ultimate plan is to convert rap sheets received after January 1970 to the CCH file and to also enter into the NCIC/CCH file arrests made by any state, local or federal police office. By 1984 there will be some 8 million records on American citizens contained in NCIC and instantly available to approximately 40,000 local police departments.

The law enforcement community is aware of the dangers inherent in collection and dissemination of criminal history information. According to a recent Justice Department report:

"The potential for misusing a criminal record has been amply demonstrated in court cases involving nonautomated records, particularly affecting employment eligibility. Thoughtful law enforcement officials recognize the danger which comes with automation and the interstate exchange of records. The potential problems arising from disclosure, whether authorized or not, are increased many times over those existing in the manual systems.

"Most modern law enforcement officials seriously desire to protect the individual's reasonable right to privacy, particularly in those cases where inclusion in the file may have been a mistake or an unjustified result of the formality of criminal justice processes."

Both Project SEARCH and NCIC have made good faith efforts to develop privacy and security guidelines for the operation of their computerized criminal history files. Project SEARCH created a special committee on privacy and security. Their original Privacy and Security Report, Technical report No. 2—popularly called "Tech 2"—was the first comprehensive proposal for adopting privacy rules to the operation of computerized record systems. This bill, and indeed, most other legislation, can trace its antecedents to this original work. NCIC also established a policy advisory committee for its CCH file soon after it took over operation of the SEARCH/CCH file. That group has drafted informal privacy and security guidelines which are revised periodically and do deal with some of the more difficult issues. However, the regulations are largely hortatory. They place most of the security responsibilities on the local data banks which plug into NCIC and do not provide effective enforcement mechanisms. In all fairness, the Bureau cannot be blamed for these inadequacies. It no doubt feels that without special Federal legislation, it lacks the authority to require State and local users to comply with Federal standards on use and collection of criminal justice information. In any case, the most effective remedies, both civil and criminal, must be firmly based in Federal statutory law. Director Kelley recognizes that and has called for Federal legislation which would replace and supplement the informal guidelines pursuant to which NCIC, is presently operated. Both Attorney General Saxbe and his predecessor Attorney General Richardson have recognized the need for legislative action, and have taken the lead in developing administration policy in this area.

III. PRIVACY LEGISLATION ON CRIMINAL JUSTICE DATA BANKS

In preparing legislation on this topic I have been influenced greatly by the writings of Prof. Alan Westin of Columbia Law School and Arthur Miller of Harvard Law School, two of the Nation's experts on data banks and privacy. Also, much credit must be given to the HEW Advisory Committee on Automated Personal Data Systems. I have attempted to draft legislation which comports with the recent report of the National Advisory Committee on Criminal Justice Standards and Goals. This Justice Department Commission sets out four basic "potential hazards to the right of privacy" which any privacy legislation relating to criminal justice data banks must address.

"Certainly, privacy can become seriously damaged when the information contained in the national system is (a) inaccurate, (b) incomplete, (c) unjustified, or (d) improperly disseminated."

All of the privacy standards proposed by the Commission, and all of the provisions of the legislation which I am introducing today are addressed to these potential hazards.

The Advisory Commission placed a high priority in reducing, if not eliminating, the amount of inaccurate information in criminal justice information systems. In the Commission's words:

"Joseph A. Burns, 28, of Magnolia Street could have his entire life seriously harmed because of an unwitting confusion between him and Joseph A. Burns of Cass Avenue or Joseph A. Burns, 19, of no known address."

It proposes several standards to govern the quality of information allowed into criminal justice information systems, and access by data subjects for the purpose of review and challenge of their own records. The Commission also takes a strong position against the distribution of incomplete data, such as a record of an arrest with no indication of the disposition of the charges arising out of that arrest. The recommendations oppose the inclusion of any intelligence information in such systems. According to the Commission:

"The criminal justice information system should not supply any information such as the fact that Mr. A was refused entry across the Canadian border in 1970 for lack of sufficient funds, that Mr. A was identified twice in 1969 by police photo-intelligence personnel in the company of leaders of a peace demonstration, or that Mr. A was a passenger in a car that was stopped and searched—and was permitted to proceed—by New Jersey authorities in 1969. Even though such information might exist in police intelligence files—and the Commission takes no position here on whether it should—it has no place in the criminal justice information system."

In my judgment, this is one of the most important issues, and my legislation fully endorses this position.

The report proposes a number of enforcement mechanisms to insure that its standards are obeyed. It recommends civil and criminal sanctions, the creation of state regulatory commissions and mandatory system audits to insure compliance. My legislation contains similar provisions.

The most difficult question with which the Commission deals and which is also addressed in my legislation, is the question of who shall have access to information contained in criminal justice data banks. In particular, should criminal justice information be made available to noncriminal justice agencies? The Commission answers that question as follows:

"Easy availability of criminal justice information files for credit checks, pre-employment investigations, and other non-criminal justice activities is highly prejudicial to the operation of a secure information system designed only for law enforcement agencies."

I heartily agree and my legislation reflects that position.

IV. THE CRIMINAL JUSTICE INFORMATION CONTROL AND PROTECTION OF PRIVACY ACT OF 1974

The Criminal Justice Information Control and Protection of Privacy Act of 1974 is intended to provide a basis for discussion and hearings. It does not pretend to be a final statement on the subject. However, the bill is quite detailed and attempts a resolution of all the major privacy and security issues which have arisen in the development of law enforcement data banks. It endeavors to balance

the legitimate needs of law enforcement with the requirements of individual liberty and privacy. It would for the first time give firm statutory authority for criminal justice data banks, a major obstacle in the development of such systems. It would impose upon the data banks strict but manageable privacy limitations. Not the least important, the bill also attempts to solve fundamentally important questions of Federal-State relationships in these comprehensive national information systems.

The bill is divided into three titles. The first title sets out the definitions of 19 terms used in the act. The second title sets out general statutory rules for the collection and dissemination of routine information as well as the more sensitive intelligence information. In the most controversial areas this title sets out specific legislative solutions. For example, there is a complete ban on non-criminal justice use of incomplete information such as raw arrest records. In certain areas, such as right of access, this title sets out general rules but leaves discretion to the States and localities. The third title of the act establishes a joint Federal-State administrative structure for enforcement of the act and for actual operation of interstate criminal justice data banks such as NCIC. This title also requires the States to establish a similar administrative structure for intrastate computer systems.

The highlights of the bill are as follows:

Scope.—The bill would reach criminal justice data banks operated by Federal, State, or local governments. Comprehensive legislation must reach every possible component of the complex interstate data bank network which has grown up in the past decade. Congress cannot depend solely upon internal State legislative action because no one State can effectively regulate what happens to arrest records, and other criminal justice information or intelligence information which finds its way into a data bank in another State. The fact that these systems use interstate communications facilities, are connected with other State systems, or joined with interstate and Federal networks provides, together with the widespread Federal financial support, the necessary constitutional nexus for the legislation.

Focus.—The bill is directed primarily and in the greatest detail at those types of records which have been abused the most—arrest records and so-called "criminal history" records. With regard to records where there are few reported cases of abuse, such as identification records, wanted records or outstanding warrant records, the legislation is much more flexible. In the case of intelligence records, where the potential for abuse is great, the legislation bars computerized information systems. I expect that in the course of hearings on this legislation technical problems will be raised with the specific language used for arrest and criminal history records; that abuses of identification records will be identified; and that law enforcement agencies may make a case for specific exceptions to the ban on computerization of intelligence information or propose concrete suggestions for the regulation of these systems in lieu of an outright prohibition on computerization. One purpose of this bill is to serve as a basis for hearings and discussion on the privacy and data banks controversy.

General dissemination rules.—The bill adopts the position of the Senate in its twice unanimously adopted Bible-Ervin rider to recent Justice Department appropropriation bills and permits only complete conviction records to be distributed to private employers and other non-law-enforcement users. Here again the bill opts in favor of limited dissemination in the case of records which have an established history of abuse—incomplete arrest and criminal history records. On the question of exchange between law enforcement agencies, the bill adopts a position similar to that of the National Advisory Commission. Generally, only conviction records could be exchanged between police departments. A criminal history record or even a raw arrest record could be given to another department only after the requesting agency had rearrested the subject. It may be the hearings will suggest other limited instances in which raw arrest records can be used.

Updating.—Operators of criminal justice data banks would have to keep all of their records as up to date as is technically feasible and records would have to be accurate. Each data bank must also keep logs reflecting those to whom raw arrest records and certain other sensitive information is sent so that incomplete, inaccurate, or challenged records can be tracked down and corrected or destroyed. The purpose of these provisions is to create an accounting system for information which is permitted to enter and circulate in the data bank network. Strict rules on collection and dissemination are unenforceable if there is no method for keeping track of information flow and meaningless without a requirement that information be as accurate and up to date as possible.

Right of access.—The bill provides every citizen with a right to access any data bank, whether computerized or not, for the purpose of challenge and correction. The challenge procedure includes a hearing before the supervisory personnel of the data bank and if necessary, an appeal to a U.S. District Court. Every significant piece of privacy legislation, including the two administration arrest records bills introduced in the last Congress, contain a citizen access provision similar to the one proposed in this bill.

Civil and criminal penalties.—Operators of data banks will be held criminally and civilly liable for violations of the act. Liability will arise where there is negligence as well as willfulness. Liquidated damages of $100 for each violation would be available, plus complete recovery for all actual and general damages, and where appropriate, exemplary damages, litigation costs and attorneys' fees. This legislation will only command respect if operating personnel and their agencies are held civilly liable for their negligent failure to comply with the letter of each provision.

Administrative provisions.—The bill would create a new independent Federal-State cooperative agency to oversee enforcement of the act. The agency will issue regulations, go to court to enjoin violations and actually take over policy control of the Federal interstate criminal history data bank (NCIC). The purpose of these provisions is to create an agency, which is outside the present law enforcement community and without vested interests in present law enforcement data banks, to administer the act. These provisions of the bill also would give the States their proper role in the development of policy. Representatives of each State will share in the formulation of regulations issued pursuant to the act.

These administrative provisions reflect the concern expressed by many representatives of State and local law enforcement agencies that legislation not delegate great powers to the Federal Government and thereby subordinate the States in the operation of a law-enforcement responsibility that is properly theirs. While none of us in Congress or in the Federal Government desire to see a Federal police force, we must recognize that Federal involvement inevitably leads to Federal control. We must be alert to this trend in law enforcement even if we have been a little lax in other areas over the years. Total Federal control over the information systems of State and local police forces is one sure path to a federalized police system in fact if not in name. It might be best to return to the original LEAA plan for project SEARCH. That was a State-controlled, State-operated interstate system, with the Federal Government playing a limited role in providing financing and research. If that is not possible, then the next best approach is a true Federal-State arrangement such as I have proposed in his bill. This is one area where the President's ideal of a New Federalism ought to take concrete form. Since I expect that the States will welcome a return to greater State responsibility and the idea does conform to the New Federalism idea, I have great hopes of a general agreement on this important aspect of the bill.

System audits.—The bill provides for audits of practices and procedures of criminal justice data banks on a random basis by the new independent Federal-State agency and by the States themselves. Most privacy experts agree that systematic audits by outside agencies is a necessary adjunct to civil remedies and citizen rights of access and challenge for enforcement of effective legislation. As long as data bank operators realize that they are subject to random audit by independent computer experts, they are unlikely to ignore the restrictions set out in the act.

V. CONCLUSION

In conclusion, I would like to reaffirm my earlier statement that this legislation is introduced to provoke discussion and to serve as the basis of hearings. Neither I, nor any of the cosponsors feel wedded to all of the provisions of the bill. The Justice Department has been working on similar legislation for the past several months. The President described this legislation in his state of the Union address. I understand that the administration's bill is quite similar in approach to my own, though there are significant technical differences of the two bills. I welcome the administration's effort in this regard and I firmly believe that this issue is both of sufficient national importance and is of such technical complexity that a bipartisan approach is absolutely necessary. In this spirit, I am announcing today hearings before the Subcommittee on Constitutional Rights, which has jurisdiction over this subject, for the purpose of a complete and objective review of both proposals. I consider both my proposal and the Justice Department's forthcoming proposal of equal interest to the subcommittee. I hope that through the hearings

which will begin in the near future, we can work out a consensus both within the subcommittee and with the administration so that privacy legislation relating to criminal justice data banks can be enacted before the end of the Congress.

I ask unanimous consent that the bill, a section-by-section analysis of the bill, two columns written by William Safire and Tom Wicker from the New York Times, an editorial in the Washington Post, calling for Federal legislation on this question, be reprinted at this point in the Congressional Record.

The PRESIDING OFFICER. The bill will be received and appropriately referred; and without objection, the bill and the material will be printed in the Record, as requested.

[The material follows:]

S. 2963

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Criminal Justice Information Control and Protection of Privacy Act of 1974".

TITLE I—FINDINGS AND DECLARATION OF POLICY; DEFINITIONS

CONGRESSIONAL FINDINGS AND DECLARATION POLICY

SEC. 101. The Congress finds and declares that the several States and the United States have established criminal justice information systems which have the capability of transmitting and exchanging criminal justice information between or among each of the several States and the United States; that the exchange of this information by Federal agencies is not clearly authorized by existing law; that the exchange of this information has great potential for increasing the capability of criminal justice agencies to prevent and control crime; that the exchange of inaccurate or incomplete records of such information can do irreparable injury to the American citizens who are the subjects of the records; that the increasing use of computers and sophisticated information technology has greatly magnified the harm that can occur from misuse of these systems; that citizens' opportunities to secure employment and credit and their right to due process, privacy, and other legal protections are endangered by misuse of these systems; that in order to secure the constitutional rights guaranteed by the first amendment, fourth amendment, fifth amendment, sixth amendment, ninth amendment, and fourteenth amendment, uniform Federal legislation is necessary to govern these systems; that these systems are federally funded, that they contain information obtained from Federal sources or by means of Federal funds, or are otherwise supported by the Federal Government; that they utilize interstate facilities of communication and otherwise affect commerce between the States; that the great diversity of statutes, rules, and regulations among the State and Federal systems require uniform Federal legislation; and that in order to insure the security of criminal justice information systems, and to protect the privacy of individuals named in such systems, it is necessary and proper for the Congress to regulate the exchange of such information.

DEFINITIONS

SEC. 102. For the purposes of this Act—

(1) "Information system" means a system, whether automated or manual, operated or leased by Federal, regional, State, or local government or governments, including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of information.

(2) "Criminal justice information system" means an information system for the collection, processing, preservation, or dissemination of criminal justice information.

(3) "Criminal justice intelligence information system" means an information system for the collection, processing, preservation, or dissemination of criminal justice intelligence information.

(4) "Automated system" means an information system that utilizes electronic computers, central information storage facilities, telecommunications lines, or other automatic data processing equipment used wholly or in part for data collection, analysis, or display as distinguished from a system in which such activities are performed manually.

(5) "Disposition" means information disclosing that criminal proceedings have been concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings and also disclosing the nature of the termination in the proceedings; or information disclosing that proceedings have been indefinitely postponed and also disclosing the reason for such postponement. Dispositions shall include, but not be limited to acquittal, acquittal by reason of insanity, acquittal by reason of mental incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to insanity, charge still pending due to mental incompetence, guilty plea, nolle prosequi, no paper, nolo contendere plea, convicted, deceased, deferred disposition, dismissed-civil action, extradited, found insane, found mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial-defendant discharged, or executive clemency.

(6) "Dissemination" means the transmission of information, whether orally or in writing.

(7) "Criminal justice information" means information on individuals collected or disseminated, as a result of arrest, detention, or the initiation of criminal proceeding, by criminal justice agencies, including arrest record information, correctional and release information, criminal history record information, conviction record information, identification record information, and wanted persons record information. The term shall not include statistical or analytical records or reports, in which individuals are not identified and from which their identities are not ascertainable. The term shall not include criminal justice intelligence information.

(8) "Arrest record information" means information concerning the arrest, detention, or commencement of criminal proceedings on an individual which does not include the disposition of the charge arising out of that arrest, detention, or proceeding.

(9) "Correctional and release information" means information on an individual compiled by a criminal justice or noncriminal justice agency in connection with bail, pretrial or posttrial release proceedings, reports on the mental condition of an alleged offender, reports on presentence investigations, reports on inmates in correctional institutions or participants in rehabilitation programs, and probation and parole reports.

(10) "Criminal history record information" means information disclosing both that an individual has been arrested or detained or that criminal proceedings have been commenced against an individual and that there has been a disposition of the criminal charge arising from that arrest, detention, or commencement of proceedings. Criminal history record information shall disclose whether such disposition has been disturbed, amended, supplemented, reduced, or repealed by further proceedings, appeal, collateral attack, or otherwise.

(11) "Conviction record information" means information disclosing that a person has pleaded guilty or nolo contendere to or was convicted on any criminal offense in a court of justice, sentencing information, and whether such plea or judgment has been modified.

(12) "Identification record information" means fingerprint classifications, voice prints, photographs, and other physical descriptive data concerning an individual which does not include any indication or suggestion that the individual has at any time been suspected of or charged with criminal activity.

(13) "Wanted persons record information" means identification record information on an individual against whom there is an outstanding arrest warrant including the charge for which the warrant was issued and information relevant to the individual's danger to the community and such other information that would facilitate the regaining of the custody of the individual.

(14) "Criminal justice intelligence information" means information on an individual on matters pertaining to the administration of criminal justice, other than criminal justice information, which is indexed under an individual's name or which is retrievable by reference to identifiable individuals by name or otherwise. This term shall not include information on criminal justice agency personnel, or information on lawyers, victims, witnesses, or jurors collected in connection with a case in which they were involved.

(15) "The administration of criminal justice" means any activity by a governmental agency directly involving the apprehension, detention, pretrial release, posttrial release, prosecution, defense adjudication, or rehabilitation of accused persons or criminal offenders or the collection, storage, dissemination, or usage of criminal justice information.

(16) "Criminal justice agency" means a court sitting in criminal session or a governmental agency created by statute or any subunit thereof created by statute,

which performs as its principal function, as expressly authorized by statute, the administration of criminal justice. Any provision of this Act which relates to the activities of a criminal justice agency also relates to any information system under its management control or any such system which disseminates information to or collects information from that agency.

(17) "Purge" means to remove information from the records of a criminal justice agency or a criminal justice information system so that there is no trace of information removed and no indication that such information was removed.

(18) "Seal" means to close a record possessed by a criminal justice agency or a criminal justice information system so that the information contained in the record is available only (a) in connection with research pursuant to section 201(d), (b) in connection with review pursuant to section 207 by the individual or his attorney, (c) in connection with an audit pursuant to section 206, or (d) on the basis of a court order pursuant to section 205.

(19) "Judge of competent jurisdiction" means (a) a judge of a United States district court or a United States court of appeals; (b) a Justice of the Supreme Court of the United States; and (c) a judge of any court of general criminal jurisdiction of a State who is authorized by a statute of that State to enter orders authorizing access to criminal justice information.

(20) "Attorney General" means the Attorney General of the United States.

(21) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

TITLE II—COLLECTION AND DISSEMINATION OF CRIMINAL JUSTICE INFORMATION AND CRIMINAL JUSTICE INTELLIGENCE INFORMATION

DISSEMINATION, ACCESS, AND USE—GENERALLY

SEC. 201. (a) Criminal justice information may be maintained or disseminated, by compulsory process or otherwise, outside the criminal justice agency which collected such information, only as provided in this Act.

(b) Criminal justice information may be collected only by or disseminated only to officers and employees of criminal justice agencies: *Provided, however,* That beginning two years after enactment of this Act such information may be collected only by or disseminated only to officers and employees of criminal justice agencies which are expressly authorized to receive such information by Federal or State statute. Criminal justice information shall be used only for the purpose of the administration of criminal justice.

(c) Except as otherwise provided by this Act, conviction record information may be made available for purposes other than the administration of criminal justice only if expressly authorized by applicable State or Federal statute.

(d) Criminal justice information may be made available to qualified persons for research related to the administration of criminal justice under regulations issued by the Federal Information Systems Board, created pursuant to title III. Such regulations shall require preservation of the anonymity of the individuals to whom such information relates, shall require the completion of nondisclosure agreements by all participants in such programs and shall impose such additional requirements and conditions as the Federal Information Systems Board finds to be necessary to assure the protection of privacy and security interests. In formulating regulations pursuant to this section the Board shall develop procedures designed to prevent this section from being used by criminal justice agencies to arbitrarily deny access to criminal justice information to qualified persons for research purposes where they have otherwise expressed a willingness to comply with regulations issued pursuant to this section.

DISSEMINATION OF CERTAIN CRIMINAL JUSTICE INFORMATION TO CRIMINAL JUSTICE AGENCIES

SEC. 202. (a) Except as otherwise provided in this section and in section 208, a criminal justice agency may disseminate to another criminal justice agency only conviction record information.

(b) A criminal justice agency may disseminate arrest record information on an individual to another criminal justice agency—

(1) if that individual has applied for employment at the latter agency and such information is to be used for the sole purpose of screening that application,

(2) if the matter about which the arrest record information pertains has been referred to the latter agency for the purpose of commencing or adjudicating criminal proceedings and that agency may use the information only for a purpose related to that proceeding, or

(3) if the latter agency has arrested, detained, or commenced criminal proceedings against that individual for a subsequent offense, and the arrest record information in the possession of the former agency indicates (A) that there was a prior arrest, detention, or criminal proceeding commenced occurring less than one year prior to the date of the request, and (B) that active prosecution is still pending on the prior charge. In computing the one-year period, time during which the individual was a fugitive shall not be counted. The indication of all revelant facts concerning the status of the prosecution on the prior arrest, detention, or proceeding must be sent to the latter agency and that agency may use the information only for a purpose related to the subsequent arrest, detention, or proceeding.

(c) A criminal justice agency may disseminate criminal history record information on an individual to another criminal justice agency—

(1) if that individual has applied for employment at the latter agency and such information is to be used for the sole purpose of screening that application,

(2) if the matter about which the criminal history information pertains has been referred to the latter agency for the purpose of commencing or adjudicating criminal proceedings or for the purpose of preparing a pretrial release, posttrial release, or presentence report and that the agency may use the information only for a purpose related to that proceeding or report, or

(3) if the requesting agency has arrested, detained, or commenced criminal proceedings against that individual for a subsequent offense or if the agency is preparing a pretrial release, posttrial release, or presentence report on a subsequent offense and such information is to be used only for a purpose related to that arrest, detention, or proceeding.

(d) A criminal justice agency may disseminate correctional and release information to another criminal justice agency or to the individual to whom the information pertains, or his attorney, where authorized by Federal or State statute.

(e) This section shall not bar any criminal justice agency which lawfully possesses arrest record information from obtaining or disseminating dispositions in order to convert that arrest record information to criminal history information. Nor shall this section bar any criminal justice information system to act as a central repository of such information so long as a State statute expressly so authorizes and so long as that statute would in no way permit that system to violate or to facilitate violation of any provision of this Act. Nor shall this section bar any criminal justice agency from supplying criminal history information to any criminal justice information system established in the Federal Government pursuant to section 307 of this Act.

DISSEMINATION OF IDENTIFICATION RECORD INFORMATION AND WANTED PERSONS RECORD INFORMATION

SEC. 203. Identification record information may be disseminated to criminal justice and to noncriminal justice agencies for any purpose related to the administration of criminal justice. Wanted persons information may be disseminated to criminal justice and noncriminal justice agencies only for the purpose or apprehending the subject of the information.

SECONDARY USE OF CRIMINAL JUSTICE INFORMATION

SEC. 204. Agencies and individuals having access to criminal justice information shall not, directly or through any intermediary, disseminate, orally or in writing, such information to any individual or agency not authorized to have such information nor use such information for a purpose not authorized by this Act: *Provided, however,* That rehabilitation officials of criminal justice agencies with the consent of the person under their supervision to whom it refers may orally represent the substance of such individual's criminal history record information to prospective employers if such representation is in the judgment of such officials and the individual's attorney, if represented by counsel, helpful to obtaining employment for such individual. In no event shall such correctional officials disseminate records or copies of records of criminal history record information to any unauthorized individual or agency. A court may disclose criminal justice information on an individual in a published opinion or in a public criminal proceeding.

METHOD OF ACCESS AND ACCESS WARRANTS

SEC. 205. (a) Except as provided in subsection 201(d) or in subsection (b) of this section, an automated criminal justice information system may disseminate arrest record information, criminal history record information, or conviction record information on an individual only if the inquiry is based upon positive identification of the individual by means of identification record information. The Federal Information Systems Board shall issue regulations to prevent dissemination of such information except in the above situations, where inquiries are based upon categories of offense or data elements other than identification record information. For the purpose of this section "positive identification" means identification by means of fingerprints or other reliable identification record information.

(b) Notwithstanding the provisions of subsection (a), access to arrest record information, criminal history record information, or conviction record information contained in automated criminal justice information systems on the basis of data elements other than identification record information shall be permissible if the criminal justice agency seeking such access has first obtained a class access warrant from a State judge of competent jurisdiction, if the information sought is in the possession of a State or local agency or information system, or from a Federal judge of competent jurisdiction, if the information sought is in the possession of a Federal agency or information system. Such warrants may be issued as a matter of discretion by the judge in cases in which probable cause has been shown that (1) such access is imperative for purposes of the criminal justice agency's responsibilities in the administration of criminal justice and (2) the information sought to be obtained is not reasonably available from any other source or through any other method. A summary of each request for such a warrant, together with a statement of its disposition, shall within ninety days of disposition be furnished the Federal Information Systems Board by the Judge.

(c) Access to criminal justice information which has been sealed pursuant to section 206 shall be permissible if the criminal justice agency seeking such access has obtained an access warrant from a State judge of competent jurisdiction if the information sought is in the possession of a State or local agency or information system, or from a Federal judge of competent jurisdiction, if the information sought is in the possession of a Federal agency or information system. Such warrants may be issued as a matter of discretion by the judge in cases in which probable cause has been shown that (1) such access is imperative for purposes of the criminal justice agency's responsibilities in the administration of criminal justice, and (2) the information sought to be obtained is not reasonably available from any other source or through any other method.

SECURITY, ACCURACY, UPDATING, AND PURGING

SEC. 206. Each criminal justice information system shall adopt procedures reasonably designed—

(a) To insure the physical security of the system, to prevent the unauthorized disclosure of the information contained in the system, and to insure that the criminal justice information in the system is currently and accurately revised to include subsequently received information. The procedures shall also insure that all agencies to which such records are disseminated or from which they are collected are currently and accurately informed of any correction, deletion, or revision of the records. Such regulations shall require that automated systems shall as soon as technically feasible inform any other information system or agency which has direct access to criminal justice information contained in the automated system of any disposition relating to arrest record information on an individual or any other change in criminal justice information in the automated system's possession.

(b) To insure that criminal justice information is purged or sealed when required by State or Federal statute, State or Federal regulations, or court order, or when, based on considerations of age, nature of the record, or the interval following the last entry of information indicating that the individual is under the jurisdiction of a criminal justice agency, the information is unlikely to provide a reliable guide to the behavior of the individual. Such procedures shall, as a minimum, provide—

(1) for the prompt sealing or purging of criminal justice information relating to an individual who has been free from the jurisdiction or supervision of any law enforcement agency for (A) a period of seven years if such individual has previously been convicted of an offense classified as a felony under the laws of the jurisdiction where such conviction occurred, or (B) a period of five years, if such individual has previously been convicted of a nonfelonious offense as classified under the laws of the jurisdiction where such conviction occurred, or (C) a period of five years if no conviction of the individual occurred during that period, no prosecution is pending at the end of the period, and the individual is not a fugitive; and

(2) for the prompt sealing or purging of criminal history record information in any case in which the police have elected not to refer the case to the prosecutor or in which the prosecutor has elected not to commence criminal proceedings.

(c) To insure that criminal justice agency personnel may use or disseminate criminal justice information only after determining it to be the most accurate and complete information available to the criminal justice agency. Such regulations shall require that, if technically feasible, prior to the dissemination of arrest record information by automated criminal justice information systems, an inquiry is automatically made of and a response received from the agency which contributed that information to the system to determine whether a disposition is available.

(d) To insure that information may not be submitted, modified, updated, disseminated, or removed from any criminal justice information system without verification of the identity of the individual to whom the information refers and an indication of the person or agency submitting, modifying, updating, or removing the information.

ACCESS BY INDIVIDUALS FOR PURPOSES OF CHALLENGE

SEC. 207. (a) Any individual who believes that a criminal justice information system or criminal justice agency maintains criminal justice information concerning him, shall upon satisfactory verification of his identity, be entitled to review such information in person or through counsel and to obtain a certified copy of it for the purpose of challenge, correction, or the addition of explanatory material, and in accordance with rules adopted pursuant to this section, to challenge, purge, seal, delete, correct, and append explanatory material.

(b) Each criminal justice agency and criminal justice information system shall adopt and publish regulations to implement this section which shall, as a minimum, provide—

(1) the time, place, fees to the extent authorized by statute, and procedure to be followed by an individual or his attorney in gaining access to criminal justice information;

(2) that any individual whose record is not purged, sealed, modified, or supplemented after he has so requested in writing shall be entitled to a hearing within thirty days of such request before an official of the agency or information system authorized to purge, seal, modify, or supplement the criminal justice information at which time the individual may appear with counsel, present evidence, and examine and cross-examine witnesses;

(3) any record found after such a hearing to be inaccurate, incomplete, or improperly maintained shall, within thirty days of the date of such finding, be appropriately modified, supplemented, purged, or sealed;

(4) each criminal justice information system shall keep and, upon request, disclose to such person the name of all persons, organizations, criminal justice agencies, noncriminal justice agencies, or criminal justice information systems to which the date upon which such criminal justice information was disseminated;

(5)(A) beginning on the date that a challenge has been made to criminal justice information pursuant to this section, and until such time as that challenge is finally resolved, any criminal justice agency or information system which possesses the information shall disseminate the fact of such challenge each time it disseminates the challenged criminal justice information. In the case of a challenge to criminal justice information maintained by an automated criminal justice information system, such system shall automatically inform any other information system or criminal justice agency to which such automated system has disseminated the challenged information in the past, of the fact of the challenge and its status;

(B) if any corrective action is taken as a result of a review or challenge filed pursuant to this section, any agency or system which maintains or has ever received the uncorrected criminal justice information shall be notified as soon as practicable of such correction and immediately correct its records of such information. In the case of the correction of criminal justice information maintained by an automated criminal justice information system, any agency or system which maintains or has ever received the uncorrected criminal justice information

shall if technically feasible be notified immediately of such correction and shall immediately correct its records of such information; and

(6) the action or inaction of a criminal justice information system or criminal justice agency on a request to review and challenge criminal justice information in its possession as provided by this section shall be reviewable by the appropriate United States district court pursuant to a civil action under section 308.

(c) No individual who, in accord with this section, obtains criminal justice information regarding himself may be required or requested to show or transfer records of that information to any other person or any other public or private agency or organization: *Provided, however*, that if a Federal or State statute expressly so authorizes, conviction record information may be disseminated to noncriminal justice agencies and an individual might be requested or required to show or transfer copies of records of such conviction record information to such noncriminal justice agencies.

INTELLIGENCE SYSTEMS

SEC. 208. (a) Criminal justice intelligence information shall not be maintained in criminal justice information systems.

(b) Criminal justice intelligence information shall not be maintained in automated systems.

TITLE III—ADMINISTRATIVE PROVISIONS; REGULATIONS; CIVIL REMEDIES; CRIMINAL PENALTIES

FEDERAL INFORMATION SYSTEMS BOARD

SEC. 301. (a) CREATION AND MEMBERSHIP.—There is hereby created a Federal Information Systems Board (hereinafter the "Board") which shall have overall responsibility for the administration and enforcement of this Act. The Board shall be composed of nine members. One of the members shall be the Attorney General and two of the members shall be designated by the President as representatives of other agencies outside of the Department of Justice. The six remaining members shall be appointed by the President with the advice and consent of the Senate. Of the six members appointed by the President, three shall be either directors of statewide criminal justice information systems or members of the Federal Information Systems Advisory Committee at the time of their appointment. The three remaining Presidential appointees shall be private citizens well versed in the law of privacy, constitutional law, and information systems technology. The President shall designate one of the six Presidential appointees as Chairman and such designation shall also be confirmed by the advice and consent of the Senate.

(b) COMPENSATION OF MEMBERS AND QUORUM.—Members of the Board appointed by the President shall be compensated at the rate of $100 per day for each day spent in the work of the Board, and shall be paid actual travel expenses and per diem in lieu of subsistence expenses when away from their usual places of residence, as authorized by section 5703 of title 5, United States Code. Five members shall constitute a quorum for the transaction of business.

(c) AUTHORITY.—For the purpose of carrying out its responsibilities under the Act the Board shall have authority to—

(1) issue regulations as required by section 303;

(2) review and disapprove of regulations issued by a State agency pursuant to section 304 or by any criminal justice agency which the Board finds to be inconsistent with this Act;

(3) exercise the powers set out in subsection 307(d);

(4) bring actions under section 303 for declaratory and injunctive relief;

(5) operate an information system for the exchange of criminal justice information among the States and with the Federal Government pursuant to section 307;

(6) supervise the installation and operation of any criminal justice information system or criminal justice intelligence information system operated by the Federal Government;

(7) conduct an ongoing study of the policies of various agencies of the Federal Government in the operation of information systems;

(8) require any department or agency of the Federal Government or any criminal justice agency to submit to the Board such information and reports with respect to its policy and operation of information systems or with respect to its collection and dissemination of criminal justice information or criminal justice intelligence information and such department or agency shall submit to the Board such information and reports as the Board may reasonably require; and

(9) conduct audits as required by section 306.

(d) OFFICERS AND EMPLOYEES.—The Board may appoint and fix the compensation of a staff director, legal counsel, and such other staff personnel as it deems appropriate.

(e) REPORT TO CONGRESS AND TO THE PRESIDENT.—The Board shall issue an annual report to the Congress and to the President. Such report shall at a minimum contain—

(1) the results of audits conducted pursuant to section 306;

(2) a summary of public notices filed by criminal justice information systems, criminal justice intelligence information systems, and criminal justice agencies pursuant to section 305; and

(3) any recommendations the Board might have for new legislation on the operation or control of information systems or on the collection and control of criminal justice information or criminal justice intelligence information.

FEDERAL INFORMATION SYSTEMS ADVISORY COMMITTEE

SEC. 302. (a) CREATION AND MEMBERSHIP.—There is hereby created a Federal Information Systems Advisory Committee (hereinafter called the Committee) which shall advise the Board on its activities. The Committee shall be composed of one representative from each State appointed by the Governor, who shall serve at the pleasure of the Governor. However, once the State has created an agency pursuant to subsection 304(b), the State's representative on the Committee shall be designated by that agency and shall serve at the pleasure of that agency.

(b) CHAIRMAN AND SUBCOMMITTEE.—The Committee shall be convened by the Board and at its first meeting shall elect a chairman from its membership. The Committee may create an executive committee and such other subcommittees as it deems necessary.

(c) AUTHORITY.—The Committee shall make any recommendations it deems appropriate to the Board concerning the Board's responsibilities under this Act, including its recommendations concerning regulations to be issued by the Board pursuant to section 303, concerning the Board's operation of interstate information systems pursuant to section 307, and concerning any recommendations which the Board might make in its annual report to Congress and the President.

(d) OFFICERS AND EMPLOYEES.—The Committee shall have access to the services and facilities of the Board and if the Board deems necessary the Committee shall have its own staff.

FEDERAL REGULATIONS

SEC. 303. The Board shall, after appropriate consultation with the Committee and other representatives of State and local criminal justice agencies participating in information systems covered by this Act and other interested parties, promulgate such rules, regulations, and procedures as it may deem necessary to effectuate the provisions of this Act. The Board shall follow the provisions of the Administrative Procedures Act with respect to the issuance of such rules. All regulations issued by the Board or any criminal justice agency pursuant to this Act shall be published and easily accessible to the public.

STATE REGULATIONS AND CREATION OF STATE INFORMATION SYSTEMS BOARD

SEC. 304. Beginning two years after enactment of this Act, no criminal justice agency shall collect criminal justice information from, nor disseminate criminal justice information to, a criminal justice agency—

(a) which has not adopted all of the operating procedures required by sections 206 and 207 and necessitated by other provisions of the Act; or

(b) which is located in a State which has failed to create a State information systems board. The State information systems board shall be an administrative body which is separate and apart from existing criminal justice agencies and which will have statewide authority and responsibility for:

(1) the enforcement of the provisions of this Act and any State statute which serves the same goals;

(2) the issuance of regulations, not inconsistent with this Act, regulating the exchange of criminal justice information and criminal justice intelligence information systems and the operation of criminal justice information systems and the operation of criminal justice intelligence information systems; and

(3) the supervision of the installation of criminal justice information systems, and criminal justice intelligence information systems, the exchange of information by such systems within that State and with similar systems and criminal justice agencies in other States and in the Federal Government.

PUBLIC NOTICE REQUIREMENT

SEC. 305. (a) Any criminal justice agency maintaining an automated criminal justice information system or a criminal justice intelligence information system shall give public notice of the existence and character of its system once each year. Any agency maintaining more than one system shall publish such annual notices for all its systems simultaneously. Any agency proposing to establish a new system, or to enlarge an existing system, shall give public notice long enough in advance of the initiation or enlargement of the system to assure individuals who may be affected by its operation a reasonable opportunity to comment. The public notice shall be transmitted to the Board and shall specify—

(1) the name of the system;
(2) the nature and purposes of the system;
(3) the categories and number of persons on whom data are maintained;
(4) the categories of data maintained, indicating which categories are stored in computer-accessible files;
(5) the agency's operating rules and regulations issued pursuant to sections 206 and 207, the agency's policies and practices regarding data information storage, duration or retention of information, and disposal thereof;
(6) the categories of information sources;
(7) a description of all types of use made of information, indicating those involving computer-accessible files, and including all classes of users and the organizational relationships among them; and
(8) the title, name, and address of the person immediately responsible for the system.

(b) Any criminal justice agency, criminal justice information system, or criminal justice intelligence information system operated by the Federal Government shall satisfy the public notice requirement set out in subsection (a) of this section by publishing the information required by that subsection in the Federal Register.

ANNUAL AUDIT

SEC. 306. (a) At least once annually the Board shall conduct a random audit of the practices and procedures of the Federal agencies which collect and disseminate information pursuant to this Act to insure compliance with its requirements and restrictions. The Board shall also conduct such an audit of at least ten statewide criminal justice information systems each year and of every statewide and multistate system at least once every five years.

(b) Each criminal justice information system shall conduct a similar audit of its own practices and procedures once annually. Each State agency created pursuant to subsection 304(b) shall conduct an audit on each criminal justice information system and each criminal justice intelligence information system operating in that State on a random basis, at least once every five years.

(c) The results of such audits shall be made available to the Board which shall report the results of such audits once annually to the Congress by May 1 of each year beginning on May 1 following the first full calendar year after the effective date of the Act.

PARTICIPATION BY THE BOARD

SEC. 307. (a) Subject to the limitations of subsections (b) and (c) of this section, the Board may participate in interstate criminal justice information systems, including the provision of central information storage facilities and telecommunications lines for interstate transmission of information.

(b) Facilities operated by the Board may include criminal history record information on an individual relating to a violation of the criminal laws of the United States, violations of the criminal laws of two or more States, or a violation of the laws of another nation. As to all other individuals, criminal justice information included in Board facilities shall consist only of information sufficient to establish the identity of the individuals, and the identities and locations of criminal justice agencies possessing other types of criminal justice information concerning such individuals.

(c) Notwithstanding the provisions of subsection (b), the Board may maintain criminal history record information submitted by a State which otherwise would be unable to participate fully in a criminal history record information system because of the lack of facilities or procedures but only until such time as such State is able to provide the facilities and procedures to maintain the records in the State, and in no case for more than five years. Criminal history record information maintained in Federal facilities pursuant to this subsection shall be limited to information on offenses classified as felonies under the jurisdiction where such offense occurred.

(d) If the Board finds that any criminal justice information system or criminal justice agency has violated any provision of this Act, it may (1) interrupt or terminate the exchange of information as authorized by this section, or (2) interrupt or terminate the use of Federal funds for the operation of such a system or agency, or (3) require the system or agency to return Federal funds distributed in the past, or it may take any combination of such actions or (4) require the system or agency to discipline any employee responsible for such violation.

CIVIL REMEDIES

SEC. 308. (a) Any person aggrieved by a violation of this Act shall have a civil action for damages or any other appropriate remedy against any person, system, or agency responsible for such violation after he has exhausted the administrative remedies provided by section 207.

(b) The Board or any State agency created pursuant to subsection 304(b) shall have a civil action for declaratory judgments, cease and desist orders, and such other injunctive relief against any criminal justice agency, criminal justice information system, or criminal justice intelligence information system within its regulatory jurisdiction.

(c) Such person, agency, or the Board may bring a civil action under this Act in any district court of the United States for the district in which the violation occurs, or in any district court of the United States in which such person resides or conducts business, or has his principal place of business, or in the District Court of the United States for the District of Columbia.

(d) The United States district court in which an action is brought under this Act shall have exclusive jurisdiction without regard to the amount in controversy. In any action brought pursuant to this Act, the court may in its discretion issue an order enjoining maintenance or dissemination of information in violation of this Act, or correcting records of such information or any other appropriate remedy except that in an action brought pursuant to subsection (b) the court may order only declaratory or injunctive relief. In any action brought pursuant to this Act the court may also order the Board to conduct an audit of the practices and procedures of the agency in question to determine whether information is being collected and disseminated in a manner inconsistent with the provisions of this Act.

(e) In an action brought pursuant to subsection (a), any person aggrieved by a violation of this Act shall be entitled to a $100 recovery for each violation plus actual and general damages and reasonable attorneys' fees and other litigation costs reasonably incurred. Exemplary and punitive damages may be granted by the court in appropriate cases brought pursuant to subsection (a). Any person, system, or agency responsible for violations of this Act shall be jointly and severally liable to the person aggrieved for damages granted pursuant to this subsection. Any criminal justice information system or any criminal justice intelligence information system which facilitates the transfer of information in violation of this Act shall be jointly and severally liable along with any criminal justice agency or person responsible for a violation of this Act.

(g) For the purposes of this Act the United States shall be deemed to have consented to suit and any agency or system operated by the United States, found responsible for a violation shall be liable for damages, reasonable attorneys' fees, and litigation cost as provided in subsection (f) notwithstanding any provisions of the Federal Tort Claims Act.

CRIMINAL PENALTIES

SEC. 309. Whoever willfully disseminates, maintains, or uses information knowing such dissemination, maintenance, or use to be in violation of this Act shall be fined not more than $5,000 or imprisoned for not more than five years, or both.

PRECEDENCE OF STATE LAWS

SEC. 310. (a) Any State law or regulation which places greater restrictions upon the dissemination of criminal justice information or criminal justice intelligence information or the operation of criminal justice information systems or criminal justice intelligence information systems or which affords to any individuals, whether juveniles or adults, rights of privacy or protections greater than those set forth in this Act shall take precedence over this Act or regulations issued pursuant to this Act.

(b) Any State law or regulation which places greater restrictions upon the dissemination of criminal justice information or criminal justice intelligence information or the operation of criminal justice information systems or criminal justice intelligence information systems or which affords to any individuals, whether juveniles or adults, rights of privacy or protections greater than those set forth in the State law or regulations of another State shall take precedence over the law or regulations of the latter State where such information is disseminated from an agency or information system in the former State to an agency, information system, or individual in the latter State. Subject to court review pursuant to section 308, the Board shall be the final authority to determine whether a State statute or regulation shall take precedence under this section and shall as a general matter have final authority to determine whether any regulations issued by a State agency, a criminal justice agency, or information system violate this Act and are therefore null and void.

APPROPRIATIONS AUTHORIZED

SEC. 311. For the purpose of carrying out the provisions of this Act there are authorized to be appropriated such sums as the Congress deems necessary.

SEVERABILITY

SEC. 312. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

REPEALERS

SEC. 313. The second paragraph under the headings entitled "Federal Bureau of Investigation; Salaries and Expenses" contained in the "Department of Justice Appropriations Act, 1973" is hereby repealed.

EFFECTIVE DATE

SEC. 314. The provisions of this Act shall take effect upon the date of expiration of the one-hundred-and-eighty-day period following the date of the enactment of this Act: *Provided, however*, That section 311 of this Act shall take effect upon the date of enactment of this Act.

CRIMINAL JUSTICE INFORMATION CONTROL AND PROTECTION OF PRIVACY ACT OF 1974

SECTION-BY-SECTION DISCUSSION

Title I—Findings and declaration of policy: definitions

Section 101 summarizes the constitutional, legal and practical reasons Congress is taking action to regulate the exchange of criminal justice information. It also states the constitutional authority to legislate: the Commerce clause and the Federal participation in state and interstate information systems.

Section 102 lists definitions of terms used in the proposed legislation. The definitions are important because they establish the scope of coverage of the legislation. For example "criminal justice agency" is defined so that the restrictions on data collection and dissemination contained in the bill cover any state, local or Federal governmental agency maintaining such data.

"Criminal justice information" is defined so that limited exchange of routine information reflecting the status of a criminal case and its history, or reports compiled for bail or probation can be exchanged between governmental agencies. All other information referenced under an individual's name and related to criminal activity is called "criminal justice intelligence" and is placed under stricter limitations.

Title II—Collection and dissemination of criminal justice information and criminal justice intelligence information

Section 201 sets the general policy on the collection and dissemination of criminal justice information. Criminal justice information can only be used for criminal justice purposes unless a state or Federal statute specifically authorizes dissemination of conviction records to non-criminal justice agencies. The section permits researchers access to the information only if the privacy of the subjects of the information is protected.

Sections 202 and 203 deal with the exchange of criminal justice information among criminal justice agencies. The general rule is that only conviction records may be exchanged. However, there are limited exceptions to that general rule. For example, corrections and release information can be disseminated outside of the agency which collected it only where expressly authorized by state or Federal statute. Fingerprint information may be freely disseminated as long as no stigma is attached. Wanted persons information, that is identifying information on a fugitive, may be disseminated liberally for the purpose of apprehending the fugitive. Raw arrest records and records of criminal proceedings which did not result in conviction could be exchanged in certain carefully defined situations.

Section 204 prohibits agencies or persons who lawfully gain access to information from using the information for a purpose or from disseminating the information in a manner not permitted by the legislation.

Section 205 is based on a provision contained in Project SEARCH's model state statute and the Massachusetts arrest records statute. It places limitations on access to criminal justice information via categories other than name. For example, it would require investigators to get a court order before accessing a criminal justice data bank by offense—i.e., a printout on all persons charged with Burglary I with certain physical descriptions and from a certain geographical area. According to the commentary on the SEARCH model statute: "(the provision) is modeled on the provisions which now govern wiretapping and electronic eavesdropping. It is intended to interpose the judgment of an impartial magistrate to control the usage of an investigative method that may, if misused, create important hazards for individual privacy". Section 205 creates a similar procedure for the opening of sealed records.

Section 206 requires every agency or information system covered by the act to promulgate regulations on security, accuracy, updating and purging and sets out in general terms what those regulations must provide. The regulations must provide a method for informing users of changes in disseminated information and for the purging of old, outdated and irrelevant information.

Section 207 requires every agency or information system covered by the act to establish a process for access and challenge of incorrect or inaccurate information. The section sets out in considerable detail what those regulations must provide. This section should be read along with section 308 which provides court review procedures where the agency fails to comply with section 207 or any other provision of the Act.

Section 208 places simple but very strict limitations on the collection and dissemination of intelligence information. Such information may not be maintained in automated systems and must be kept separate and apart from all other criminal justice files.

Title III—Administrative provisions; regulations; civil remedies; criminal penalties

Title III creates a novel Federal-state administrative structure for enforcement of the Act. Section 301 establishes a Federal Information Systems Board, an independent agency with general responsibility for administration and enforcement of the Act. The Board would be composed of representatives of the Department of Justice and two other Federal agencies, plus six other members nominated by the President, with the advice and consent of the Senate. Of the latter six members, three must be representatives of state governments and three private citizens well versed in civil liberties and computer technology. The President would also designate a chairman from the latter six members.

The Board would have the authority to issue general regulations applying the Act's policies. It could operate the interstate information system authorized by section 307. It would conduct audits pursuant to section 306, and would have other necessary enumerated powers as well as authority to conduct general studies of information systems and make recommendations to the Congress for additional legislation.

Section 302 creates an Information Systems Advisory Committee composed of one representative from each State. The Committee shall advise the Board on all of the Board's responsibilities under the Act and in particular provide advice on the Board's operation of the interstate information system established pursuant to Section 307 and the Board's promulgation of regulations pursuant to Section 303.

Section 303 requires the Federal Information Systems Board to issue regulations which implement this Act.

Section 304 requires each State to establish a central administrative agency, separate and apart from existing criminal justice agencies, with broad authority to oversee and regulate the operation of criminal justice information systems in that State. This section is based upon the concept embodied in the Project SEARCH model statute and the Massachusetts statute. Beginning two years after enactment no information system or agency could exchange information with a system or agency in a State which has not created such an agency or with a system or agency which has not adopted all of the regulations required by sections 206 and 207 or elsewhere in the Act.

Section 305 is based upon a suggestion contained in the Report of the Secretary's Advisory Committee on Automated Personal Data Systems of the Department of Health, Education, and Welfare. It requires every information system or agency to give public notice, once annually, of the type of information it collects and disseminates, its sources, purpose, function, administrative director or other pertinent information. It also requires every system or agency to give public notice of an expansion and any new system to give public notice before it becomes operational so that interested parties will have an opportunity to comment.

Section 306 requires audits of systems and agencies which collect and disseminate information. The audits are to be conducted by the Federal Information Systems Board, by an independent state agency created pursuant to Section 304 and by each criminal justice agency.

Section 307 is a general grant of authority permitting the Federal Government to operate an interstate criminal justice information system under the policy control of the Federal-State board. However, the Federal role is carefully circumscribed. Information contained in such a Federal system is limited to a simple index containing the subject's name and the name of the state or local agency which possesses a more complete file. The Federal Information Systems Board could maintain more complete files on violations of a criminal law of the United States, violations of the criminal law of two or more states, or violations of the laws of another nation. Only persons charged with felonies could be listed in the data banks. If a given state lacks the facilities to operate an automated information system the Information Systems Board could provide the facilities for a period of five years.

The section also lists certain administrative actions that may be taken by the Federal Information Systems Board in the event that a criminal justice information system is found to have violated any provision of the Act.

Section 308 provides the judicial machinery for the exercise of the right granted in Section 207 and elsewhere in the Act. The aggrieved individual may obtain both injunctive relief and damages, $100 recovery for each violation, actual and general damages, attorneys' fees, and other litigation costs whether violations were willful or negligent.

Section 309 provides criminal penalties for violations of the Act.

Section 310 provides that any state statute, state regulation or Federal regulation which imposes stricter privacy requirements on the operation of criminal justice information systems or upon the exchange of criminal justice information takes precedence over this Act or any regulations issued pursuant to this Act or any other state law when a conflict arises. Subject to court review pursuant to section 308, the Federal Information Systems Board would have the administrative decisions as to which statute or regulation governs, and whether a regulation comports with this Act.

Section 311 authorizes the appropriation of such funds as the Congress deems necessary for the purposes of the Act.

Section 312 is a standard severability provision.

Section 313 repeals a temporary authority for the Federal Bureau of Investigation to disseminate Rap sheets to non-criminal justice agencies.

Section 314 makes this Act effective six months after its enactment.

[The preceding material is concluded.]

Senator ERVIN. Senator Gurney?

OPENING STATEMENT OF HON. EDWARD J. GURNEY, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator GURNEY. Thank you, Mr. Chairman. I have no formal statement at this time, but I do want to commend you on your most excellent and thorough presentation in your statement of the purpose and importance of these hearings on this whole question of the right to privacy, and especially how we use these criminal data banks and disseminate or not disseminate the information in them.

I guess probably one could say that the importance of this subject is highlighted most by the fact that both the ranking Republican Member of our full committee and others have joined your bill, and you have joined his bill. Indeed it is a bipartisan effort and a bipartisan concern of the Judiciary Committee and others in Congress as to whether we may not be invading a person's privacy too much in the dissemination of criminal information. And I judge these hearings as some of the most important we have ever had in the U.S. Senate on this subject.

And again I commend you for your most thorough and excellent statement.

Senator ERVIN. Thank you very much.

Senator Hruska?

I might add, Senator Hruska and I have been concerned about this problem and its various implications for 4 years.

OPENING STATEMENT OF HON. ROMAN L. HRUSKA, A U.S. SENATOR FROM THE STATE OF NEBRASKA

Senator HRUSKA. That is right, Mr. Chairman. This legislation does have a history that goes back some 5 or 6 years. It was in 1970 that the Senator from Maryland, Senator Mathias, proposed an amendment to the 1968 Omnibus Crime Control Act to require LEAA to submit recommendations for legislative action in this security and privacy area. I supported that amendment in 1970, and in the following year LEAA did propose a bill which I introduced by request for the purpose of complying with the so-called Mathias amendment.

Nothing was done by way of processing that bill, because it was felt that the whole concept should be examined more carefully, more thoroughly. And that was done, both by the Department of Justice on its own, and then of course the Senator from North Carolina in his bill.

There has been that consistent effort to recognize the problem and to deal with it.

We are happy to have Senator Mathias here as one of the opening witnesses, because he has had a great deal of concern and an abiding interest in the subject.

The chairman has outlined well the principal concepts and fundamental bases of both bills. He and his staff are to be congratulated for their long-time interest and worthy endeavors on this subject.

The criminal justice system has experienced an information explosion since the late sixties. There have been steadily increasing demands for greater capability in gathering, processing, storing, using, and transmitting information. In 1968, according to the "1972

Directory of Automated Criminal Justice Information Systems," only 10 States in the Nation had automated State-level criminal justice information systems. By 1972, 47 States had automated information systems in operation. The directory showed that there are some 39 different police functions, 23 different court functions, and 13 different corrections functions performed by automated information systems in one or more States. This information explosion has important privacy considerations. As the National Advisory Commission on Criminal Justice Standards and Goals noted in its report, "A National Strategy to Reduce Crime":

> The permanent storage, rapid retrieval, and national coverage of a computer-based criminal justice information system can deprive a citizen of his "right to privacy"—his right to be free from unwarranted instrusion in his affair.

Criminal justice data has utility with a wide range of activities and agencies outside the criminal justice system. Presently, it is being used for background investigations for potential employees of public agencies and private industry. It is used for determining eligibility for loans and for credit evaluation and it is used for general public information which is supplied to the public media. If the data in a criminal justice system is inaccurate, incomplete, misleading, or disseminated widely to persons outside the criminal justice system there is a grave danger to privacy.

Both bills before us recognize the need to limit direct access to criminal justice information by agencies outside the criminal justice system. Both bills recognize the need to authorize some legitimate noncriminal justice uses of criminal justice information while restricting such uses to the maximum degree possible. Both bills also provide for a right review of the criminal justice information by the individual involved in an effort to eliminate inaccurate, incomplete, or misleading information. All of these provisions, Mr. Chairman, are important and as we take testimony from the various witnesses I would hope that we explore these areas.

There are other areas that I also hope we can explore during these hearings. The media has legitimate needs for access to criminal histories, criminal offender records, arrest records, and the like, and I would specifically hope that we would seek witnesses from the media or from organizations representing the media to present their views on the degree of access that should be given the media to criminal justice information systems.

I would hope we would explore the issues involving the dissemination and use of intelligence information and the use of automated systems for maintaining this information. I also feel that we should fully examine the need for the sealing or purging of criminal justice records and the question of what restrictions should or should not be placed on the use of sealed or purged information.

These all are very important issues that are raised by the legislation before us. I am very interested to learn the views on these issues of the witnesses who are scheduled to testify before this subcommittee. Many of these witnesses are individuals who work directly with criminal justice information systems or whose endeavors are dependent in some respect upon the operation of such systems. Their testimony should be considered carefully when this committee prepares to markup the legislation before us. I am hopeful that through these

hearings we will be able to come up with a bill that is useful, acceptable, and workable as widely as possible for all parties and to the American people.

Senator ERVIN. I want to join Senator Hruska in his commendation of the work of the subcommittee staff. I know of no subcommittee which has a more dedicated, diligent, or industrious staff than the Subcommittee on Constitutional Rights.

Senator Bayh?

OPENING STATEMENT OF HON. BIRCH BAYH, A U.S. SENATOR FROM THE STATE OF INDIANA

Senator BAYH. Mr. Chairman, I would just like to offer one word of thanks to you for including in the context of your study not only the two bills, S. 2963 and S. 2964, but also including S. 2542, which is the bill I introduced in the Senate sometime ago, and which Mr. Koch of New York also introduced, which is really a broader approach to the compilation of knowledge in all areas. It seems to me that perhaps we should start and give initial attention to the areas which have been alluded to earlier, and which the chairman is especially interested in.

But I am deeply concerned about a lot of the information which is compiled in the noncriminal area. And I appreciate very much the fact that the chairman would permit this investigation and study to include that as well.

Senator ERVIN. Senator Kennedy?

OPENING STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KENNEDY. Mr. Chairman, I just join the other members of the committee in commending you for having this set of hearings on a matter which I think is of great significance and importance. I had the opportunity to follow this issue closely over a period of time. I have a very brief comment which I would like to make at the time I introduce and present the Governor of Massachusetts, Governor Sargent. I want to join those who commend you in developing these hearings and holding them today.

Senator ERVIN. Thank you very much.

And I would say to both Senator Bayh and Senator Kennedy, I know of no two Members of the Senate who have been more acutely interested in the protection of the fundamental rights of privacy of the American citizens on all occasions.

The committee is delighted to welcome Senator Mathias, who has also shown a great understanding of the implications of the invasions of privacy and has labored hard to that end for a long time. I would like to welcome you as our first witness.

TESTIMONY OF HON. CHARLES McC. MATHIAS, JR., A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator MATHIAS. Thank you, Mr. Chairman. I welcome the opportunity to say a few words on this subject, and I appreciate both

your own generous words and the generous words of Senator Hruska in his historical analysis of the history of this subject.

I think that with this hearing today the Senate has demonstrated that it has regained the courage of its convictions. As Senator Hruska has pointed out, the Senate earlier took a stand on this whole problem. Although there has been slow progress, I think we are demonstrating today that there is progress. I think it is a very heartening sign.

I have a statement, Mr. Chairman, but in view of the many scholarly and distinguished witnesses awaiting to appear before the committee, I would be very happy to summarize and then commit the whole statement to you.

Senator ERVIN. That will be all right. The complete statement will be printed in the record immediately following your remarks.

Senator MATHIAS. Thank you, Mr. Chairman.

The general commitment among Americans to the preservation of privacy stems from an underlying recognition of the worth of the individual. This Anglo-American value was expressed by an Englishman much admired in America, John Stuart Mill, when he wrote:

> A people, it appears, may be progressive for a certain length of time, and then stop. When does it stop? When they cease to possess individuality.

This notion seems quaint to some in a modern world which has raised many challenges against it. These have included the closing of the American frontier and the urbanization of our continent, the coming of the industrial and technical revolutions and their need and capacity for information, and the emergence of the American state as a dominant factor in global politics.

The legislation we are considering today, the Criminal Justice Information Center and Privacy Act of 1974, is a response to this type of challenge. The challenge here stems from the computer and its potential for increasing the capability for the collection and organization of information and speeding its dissemination.

To recognize this is not to reject the beneficial uses of the new technology. Rather, our task here is to reconcile them with other values where the two are in competition and to strike a balance which will serve both society and the individual.

With the systems that are now available, any participating police agency will be able, almost instantaneously, to obtain criminal information from any point in the United States. The potential benefits to law enforcement from such capability are enormous. But the potential for abuse is likewise enormous as the chairman has pointed out by some of the examples he has cited.

The Federal Government has made some effort to anticipate these and other types of abuses and has attempted to include safeguards in its contractual arrangements with users of the system. However, the only effective sanction for dealing with violations is termination of the contract—a remedy of such severity as to make its use practical in only the most flagrant cases. There are currently no criminal penalties for individuals who violate these restrictions, an omission which the legislation before us today attempts to remedy.

I hope that the hearings which are beginning today will bring much new and needed information. This problem already has a lengthy history of consideration in the Congress, as Senator Hruska has pointed out. I believe that we are familiar with the potential for abuse and

with the broad outlines of the rights we wish to preserve. But what we lack is detailed and accurate knowledge of how the system actually works, and I believe our thinking about methods of control is particularly primitive.

Some of this failure stems from problems of terminology and definition; some of it stems from the failure of legislators to pursue lines of questioning into unfamiliar areas until the true significance of that terminology is understood. We must rectify this failure if we are to draft the best legislation and find the best method of securing the rights of individuals with the minimum restriction on law enforcement.

Both S. 2963 and S. 2964 provide for citizen access to criminal justice records for the purpose of correcting them or taking other actions. This is an important and essential element of any meaningful regulation. Of course, its primary purpose is fairness to the individual who has a right to know what the files his government maintains on him contain. But in addition, the ability of individuals to obtain such information is also an important supplement to the process of purging extraneous or incorrect information from the system.

If the right to inspect and challenge is not to be a hollow one, the individual also needs to have access to his file which is realistic and practical. In a series of written questions I directed to both former acting FBI Director Patrick Gray and FBI Director Clarence Kelley during their confirmation hearings, I attempted to explore the mechanics by which such review would be obtained. The goal which I had in mind was a system which would allow the individual to tap into the national computer system at any point and receive all the information on himself which the system contains. Chief Kelley's answers to my questions suggest that all inquiries must be made through the arresting agency. However, the FBI's Law Enforcement Bulletin for January 1974 indicates that it would be proper for an individual to make "a request of a law enforcement agency which has access to the NCIC/CCH file." This apparent contradiction needs to be resolved. My view is that the individual has the right to see whatever a search by an authorized law enforcement officer might turn up.

Attention also needs to be given to potential problems that can arise when a correction of files is in order. A meaningful method of access to a file should be accompanied by meaningful procedures for correction. In part, NCIC operates merely as a switching agency, with files physically remaining, even though stored in computers, in the State systems. Wherever the file may be, I believe that the system should be treated as fully integrated for the purpose of corrections. Thus, it should be the responsibility of the Federal board to make corrections whenever necessary and the authority to accomplish this should be granted. It should be hollow indeed to bestow a right of access to records and then have citizens forced to wander within the State and Federal bureaucracies to obtain corrections.

Further consideration might be given by this subcommittee to the limitations that might be placed on the use of data under challenge. S. 2963 currently provides that data under challenge shall carry a notation to that effect when disseminated. I wonder if this goes far enough. Should information under challenge automatically be excluded from dissemination until the challenge is settled? Should provision for an administrative stay on the use of such information be included?

In connection with access, the FBI bulletin referred to above and S. 2964 envision the fingerprinting of a citizen as a condition of checking whether any file on him exists. This seems to me to be catch 22. Is there no other way to keep the system secure? Of course, John Doe should not be able to obtain somebody else's files by impersonating him. But fingerprinting seems to me to be a last resort and should only be undertaken on condition that the prints may be used only for that limited purpose and must be destroyed. The subcommittee might explore the feasibility of certification under penalty of perjury or some other system.

Another issue to which I would like to address myself is the question of who shall control criminal information systems. Information is power, and in my view concentration of power in the Federal Government is to be avoided. This is in keeping with our traditional American view of law enforcement, and the Congress needs no reminder of the continuing concern it has shown in this area.

The decision by former Attorney General Mitchell in 1970 to transfer the criminal information file system to the FBI was, in my view, not in keeping with this tradition.

The solution set forth in S. 2963, I believe, is a sensible one. That bill would provide for a Federal Information Systems Board which would include State representation. A Federal statute is needed to meet the potential problems raised by the criminal data banks, and such a statute, of necessity, means some Federal control. But a division of shared responsibility is an absolute minimum in an area as sensitive as this one.

These and other issues which I have not commented upon—sealing, investigative files, security, access, dispositions—will have to be dealt with by this subcommittee. I am confident that this will be done thoroughly and completely and hopefully that this legislation will be enacted this year. And I hope that what is done here will lead soon to a reconsideration of and help provide a model for all sensitive information in the hands of Government. I am pleased to be a part of this effort this morning.

[Senator Mathias' statement in full follows:]

PREPARED STATEMENT OF HON. CHARLES McC. MATHIAS, JR., A U.S. SENATOR FROM THE STATE OF MARYLAND

The process of securing the liberties of the American people is never completed. Today, we are witness to another step in that process with the commencement of these hearings on legislation designed to serve an important facet of the right of American citizens to privacy. As a co-sponsor of this legislation and as a citizen who has long been concerned with the collection and use by Government and others of information about citizens, I am heartened and honored to be a part of that process.

The general commitment among Americans to the preservation of privacy stems from an underlying recognition of the worth of the individual. This value was expressed by an Englishman much admired in America, John Stuart Mill, when he wrote:

"A people, it appears may be progressive for a certain length of time, and then stop. When does it stop? When they cease to possess individuality."

This notion seems quaint to some in our modern world which has raised many challenges against it. These have included the closing of the American frontier and the urbanization of our continent, the coming of the industrial and technical revolutions and their need and capacity for information, and the emergence of the American State as a dominant factor in global politics.

The legislation we are considering today, the Criminal Justice Information Center and Privacy Act of 1974, is a response to this type of challenge. The challenge here stems from the computer and its potential for increasing the capability for the collection and organization of information and speeding its dissemination.

To recognize this is not to reject the beneficial uses of the new technology. Rather, our task here is to reconcile them with other values where the two are in competition and to strike a balance which will serve both society and the individual.

The American people should take heart from the consideration and, I hope, rapid passage, of this legislation. I note with pleasure that the President has appointed a Cabinet-level committee to investigate the broader issue of privacy. I am equally pleased that in this area of computerized criminal justice information the Congress and the Department of Justice have already been hard at work for several years, and are in a position to take relatively rapid action in this area.

The National Crime Information Center now has over five million files of which nearly 500,000 are criminal history records. Computerization of these files permits them to be interfaced with State operated systems of similar nature. This process has been underway for some time and has now reached a degree of development which requires Congress to act. In addition, the NCIC has switching functions to perform, linking the States with each other.

With this system, any participating police agency will be able, almost instantaneously, to obtain criminal information from any point in the United States. The potential benefits to law enforcement from such capability are enormous.

However, the potential for misuse of this capability and for its adverse impact on individual citizens is also enormous. I would like to relate three different incidents which have been brought to the attention of the subcommittee. The importance of these incidents is not in their details but in the plausible potential for abuse of these systems which they suggest.

In Lexena, Kansas, a police officer was found to be distributing information about individuals which he obtained from a regional criminal information system. Such distributions were made to a rental agency and other businessmen.

A man arrested on a traffic charge in the mid-west was detained and told it was because the Marines "had a hold on him." He was shown a computer print-out which showed that he was AWOL from the Marines. He had, in fact, been discharged. This was not the first time that he had been held as a deserter, but the police disclaimed responsibility, saying they were only following the computer's instructions.

A service station operator in a Baltimore suburb was arrested on a charge of maintaining and operating a gambling premises. The charge was later dropped when it was determined that one of his employees was running a numbers game in his busy service station. In seeking to have his record expunged, he was advised that this could be done, for a fee of $750.

And Finally, Mr. Chairman, although the best witness on this example will appear before your subcommittee later when the honorable Francis Sargent, Governor of the Commonwealth of Massachusetts, testifies, I want to cite the experiences of his State because it is so instructive. When Massachusetts passed a statute limiting access to its criminal information file, numerous agencies came forward to complain—agencies that the commonwealth did not even know had been receiving information.

The Federal Government has made some effort to anticipate these and other types of abuses and has attempted to include safeguards in its contractual arrangements with users of the system. However, the only effective sanction for dealing with violations is termination of the contract—a remedy of such severity as to make its use practical in only the most flagrant cases. There are currently no criminal penalties for individuals who violate these restrictions, an omission which the legislation before us today attempts to remedy.

The problem, as the committee knows, already has a lengthy record of consideration by the Congress, the authority of the Federal Government to disseminate criminal records information to the States and to non-law enforcement organizations has been called into question by many people, myself included. Certain types of such dissemination were prohibited by court order as a result of the case of *Menard* v. *Mitchell* and for a time after that the FBI operated the NCIC system under temporary authority set forth in its appropriations bill. But the history of the Bureau's current authority under the legislative history surrounding those appropriations bills is, at best, cloudy, as you well know, Mr. Chairman. You are to be commended, Mr. Chairman, for your diligent efforts to clarify this authority in such cases.

Following the failure of the House to extend FBI authority in this year's appropriation bill, I was pleased to join with you last fall, Mr. Chairman, in introducing legislation to help avoid another *Menard* type court order limiting the authority of the FBI and creating possible disruption of law enforcement. The legislation we are considering today will hopefully resolve this question of authority.

Moreover, I hope that the hearings which are beginning today will bring much new and needed information. I noted that this problem already has a lengthy history of consideration in the Congress. This is true. I believe that we are familiar with the potential for abuse and with the broad outlines of the rights we wish to preserve. But what we lack is detailed and accurate knowledge of how the system actually works. And I believe our thinking about methods of control is particularly primitive.

Some of this failure stems from problems of terminology and definition; some of it stems from the failure of legislators to pursue lines of questioning into unfamiliar areas until the true significance of that terminology is understood. We must rectify this failure if we are to draft the best legislation and find the best method of securing the rights of individuals with the minimum restriction on law enforcement.

The bills before this subcommittee present a number of issues which will require careful study. I would like to highlight a few of them.

Both S. 2963 and S. 2964 provide for citizen access to criminal justice records for the purpose of correcting them or taking other actions. This is an important and essential element of any meaningful regulation. Of course, its primary purpose is fairness to the individual who has a right to know what the files his Government maintains on him contain. But in addition, the ability of individuals to obtain such information is also an important supplement to the process of purging extraneous or incorrect information from the system.

If the right to inspect and challenge is not to be a hollow one, the individual also needs to have access to his file which is realistic and practical. In a series of written questions I directed to both former acting FBI Director Patrick Gray and FBI Director Clarence Kelley during their confirmation hearings, I attempted to explore the mechanics by which such review would be obtained. The goal which I had in mind was a system which would allow the individual to tap into the national computer system at any point and receive all the information on himself which the system contains. Chief Kelley's answers to my questions suggest that all inquiries must be made through the arresting agency. However, the FBI's Law Enforcement Bulletin for January, 1974, indicates that it would be proper for an individual to make "a request of a law enforcement agency which has access to the NCIC/CCH file." This apparent contradiction needs to be resolved. My view is that the individual has the right to see whatever a search by an authorized law enforcement officer might turn up.

Attention also needs to be given to potential problems that can arise when a correction of files is in order. A meaningful method of access to a file should be accompanied by meaningful procedures for correction. In part, NCIC operates merely as a switching agency, with files physically remaining (even though stored in computers) in the state systems. Wherever the file may be, I believe that the system should be treated as fully integrated for the purpose of corrections. Thus, it should be the responsibility of the federal board to make corrections whenever necessary and the authority to accomplish this should be granted. It would be hollow indeed to bestow a right of access to records and then have citizens forced to wander within the state and federal bureaucracies to obtain corrections.

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Another issue to which I would like to address myself is the question of who shall control criminal information systems. Information is power and in my view concentration of power in the Federal government is to be avoided. This is in keeping with our traditional American view of law enforcement and the Congress needs no reminder of the continuing concern it has shown in this area.

The decision by former attorney general Mitchell in 1970, to transfer the criminal information file system to the FBI was, in my view, not in keeping with this tradition.

The solution set forth in S. 2963, I believe, is a sensible one. That bill would provide for a federal information systems board which would include state representation. A federal statute is needed to meet the potential problems raised by the criminal data banks, and such a statute, of necessity, means some federal control, but a division of shared responsibility is an absolute minimum in an area as sensitive as this one.

These and other issues which I have not commented upon—sealing, investigative files, security, access, dispositions—will have to be dealt with by this subcommittee. I am confident that this will be done thoroughly and completely and hopefully that this legislation will be enacted this year. And I hope that what is done here will lead soon to a re-consideration of and help provide a model for all sensitive information in the hands of government. I am pleased to be a part of this effort.

Senator ERVIN. Thank you very much for a very excellent statement in a field where you are as knowledgeable as any member of the Congress in my judgment.

Senator MATHIAS. Thank you, Mr. Chairman.

Senator ERVIN. Senator Gurney?

Senator GURNEY. Just one question of the Senator.

Could you explain a little more fully what the policy of the FBI is now in securing information about what is on hand? You mention that on page 7 of your prepared transcript. I am not exactly sure I was clear on that.

Senator MATHIAS. That is with reference to the Law Enforcement Bulletin for January 1974.

Perhaps it would be helpful to the committee if I offered the bulletin itself as an exhibit at this point.

Senator GURNEY. Perhaps it would be. I expect we will be going into that further. That is a very key point.

Senator MATHIAS. Mr. Chairman, I will offer then that portion of the FBI Law Enforcement Bulletin for January 1974 which describes the procedures which I mentioned in my statement.

Senator ERVIN. It will be received and printed in full as this point in the record.

[The bulletin referred to follows:]

31-999—74——4

The National Crime Information Center

A Special Report ■ ■ ■

The NCIC is a computerized information system established as a service to all law enforcement agencies—local, State, and Federal. The system operates by means of computers, data transmission over communication lines, and telecommunication devices. Its objective is to improve the effectiveness of law enforcement through the more efficient handling and exchange of documented police information.

The NCIC will serve as a national index for the eventual development of 50 statewide computerized law enforcement information systems. The States need to centralize crime information for management, operational, and research purposes. The State agency operating the centralized statewide system is identified as a control terminal in the NCIC system. The development of State and metropolitan area computerized systems is strongly urged by NCIC in order that the NCIC, which complements these systems, can become fully effective. Through these State and metropolitan area systems, the NCIC becomes available for use by all law enforcement agencies.

The original network of 15 law enforcement control terminals and one FBI field office has expanded to 90 law enforcement control terminals and to terminals in all FBI field offices, providing NCIC service to all 50 States, the District of Columbia, and Canada. From the beginning, a control terminal has been defined as a State agency or large core city operating a metropolitan area system which shares with the FBI the responsibility for overall system discipline as well as for the accuracy and validity of records entered in the system.

The first computer-to-computer interface was with the California Highway Patrol in April 1967. The tie-in of the St. Louis, Mo., Police Department computerized system soon followed. These events marked the first use of computer communication technology to link together local, State, and Federal governments in an operational system for a common functional purpose.

In the beginning, there were five computerized files: namely, wanted persons; stolen vehicles, license plates, and guns; and stolen identifiable articles. In 1968, a securities file was added, and the vehicle file was expanded to include aircraft and snowmobiles. In the following year, a boat file was added. The most recent addition was in November 1971, when a file of offenders' criminal histories was made operational. It is identified as the Computerized Criminal History (CCH) file.

Through the telecommunication equipment in possession of criminal justice agencies which access NCIC, inquiries may be made using specific codes and formats. Through the same pieces of equipment, the updating of records in the system may be made online.

In September 1968, NCIC staff and Working Committee members met to discuss standards, procedures, and policies for a CCH file. At this meeting, a criminal history summary and a complete criminal history record were examined for the first time. By February 1969, the basic offense classification standards were established. Late in 1969 and during 1970, the Law Enforcement Assistance Administration (LEAA) sponsored Project SEARCH (System for Electronic Analysis and Retrieval of Criminal Histories). The purpose of this project was to demonstrate the feasibility of exchanging criminal history data interstate by means of a computerized system.

The Attorney General of the United States on December 10, 1970, authorized the FBI to develop and implement a program for the interstate exchange of criminal history records through the NCIC which operates a telecommunication network over dedicated lines, to criminal justice agencies in each of the 50 States, 29 metropolitan areas, and some Federal agencies.

The CCH file is now one of the eight files in NCIC. The other seven files relate to wanted persons and stolen property. The purpose of CCH is to speed up the criminal justice process. A more rapid flow of criminal offender information can bring about more realistic decisions with regard to bail, sentencing, probation, and parole. For over 49 years, the FBI has been exchanging criminal history information with police, courts, and correctional agencies in the form of the criminal identification record using the U.S. mails. The NCIC system offers a more efficient and effective means of handling this essential service.

The CCH record is segmented to include identification information concerning the individual, as well as available significant data concerning arrests, court dispositions, and custody/supervision status changes following conviction.

The CCH program operates on the basis of computer storage of local, State, and Federal criminal offense information, which information is supplied to the computer by the FBI with respect to Federal offenses and by State control terminal agencies with respect to State and local offenses. It was never intended nor does the practice exist for information on every arrest in the Nation to be stored in a central computer. Many State computer systems have been developed and each State storing such data has developed its own policy as to how detailed such information will be within that State.

When criminal offender information, however, is furnished by a State for storage in the NCIC computer, policy provisions developed by criminal justice members of NCIC and approved by the NCIC Advisory Policy Board must be followed. This policy provides that criminal history information on persons currently involved in the criminal justice process only may be entered into the NCIC/CCH file. Such information must be documented by a fingerprint card for each arrest and this information is to be restricted to serious and/or significant violations. Excluded is information on juvenile offenders, as defined by State law (unless the juvenile is tried in court as an adult); charges of drunkenness and/or vagrancy; certain public order offenses such as disturbing the peace, curfew violations, loitering, and false fire alarm; traffic violations (except data will be stored on arrests for manslaughter, driving under the influence of drugs or liquor, and "hit-and-run"); and nonspecific charges of suspicion or investigation.

Criminal history information in NCIC may be entered and/or retrieved by authorized criminal justice agencies only. Such an agency has management control over the computer equipment and personnel through which and by whom the interstate exchange of criminal history data is handled. NCIC criminal history data is made available to criminal justice agencies for criminal justice purposes and is not authorized to be disseminated for use in connection with licensing or local or State employment, other than with a criminal justice agency, or for other uses unless such dissemination is pursuant to Federal and State statutes.

As to updating or deleting criminal history information stored in the NCIC computer, one of the policy requirements for entry of such data in NCIC is for the entering agency to have updating capability and to properly exercise such capability. The policy also provides for the expunction of any arrest or related data upon court order or in compliance with statutory authority. Every effort is made to encourage inclusion of court disposition data and correctional information on any individual whose record is entered into NCIC. All NCIC participants have long recognized the need for following the above-mentioned policy provisions.

The ultimate concept of CCH is that there will be a national index to criminal history records of individuals arrested for serious or significant offenses. FBI studies have shown that about 70 percent of rearrests will be within the same State; therefore, an offender criminal history file, in scope and use, is essentially a State file and a State need. There is, however, substantial inter-

state criminal mobility which requires sharing of information from State to State. A national index is required to coordinate the exchange of criminal history data among State and Federal jurisdictions and to contend with interstate criminal mobility. These considerations give rise to the "multistate, single-State" concept. NCIC/CCH will maintain an abbreviated or summary record (index) on single-State offenders and a complete detailed record on multistate offenders.

Entries (except for Federal offenders which the FBI will enter) into the CCH file will be made from the State level with each entry supported by a fingerprint card. Should the State agency not be able to identify a fingerprint card in its State identification bureau, it would forward the card to the FBI which would conduct a technical fingerprint search in an effort to identify the individual with an existing CCH record from another State. If no identification is made, the submitting State would establish a CCH record. If an identification is made, the submitting State would update the existing CCH record with this arrest. Should this latter action have the effect of creating a multistate record, the abbreviated national record would be replaced by a complete detailed record.

Currently, the national file contains the complete record and will continue to do so until such time as all States develop essential services such as identification, information flow, and computer systems capabilities. The CCH program will be continually evaluated, looking toward implementation of the single-State/multistate concept.

The CCH program was initiated online through the NCIC system in November 1971. Currently, the States of Arizona, California, Florida, Illinois, New York, and Pennsylvania have supplied to the FBI computerized records for the national file. In addition, the FBI has been making entries on Federal offenders who have been arrested since January 1970, including entries for the District of Columbia. As of October 1973, records of 400,000 individuals were in the CCH file.

Not all criminal history records on file in the FBI's Identification Division have been entered in the NCIC/CCH file. However, assuming that an individual does have a criminal record supported by fingerprints and that record has been entered in the NCIC/CCH file, it is available to that individual on presentation of appropriate identification. Identification would include being fingerprinted for the purpose of insuring that he is, in fact, the person he purports to be and that the record on file can be validated as being his by comparing fingerprints.

It would be proper, should an individual wish to review his own criminal history record, to make such request of a law enforcement agency which has access to the NCIC/CCH file. That agency, within the limits imposed on it by State statutes or other regulations, could fingerprint him and ask for other identifiers or information which would assist in making positive identification, e.g., full name, other names used when arrested, birth date, etc.

If the cooperating law enforcement agency can make an identification with fingerprints previously taken which are on file locally and if the FBI Identification Number of the individual's record is available to that agency, it can make an online inquiry of NCIC to obtain his record online or, if it does not have suitable equipment to obtain an online response, obtain the record from Washington, D.C., by mail. The individual would then be afforded the opportunity to see that record. Each agency which has access to NCIC/CCH records has agreed to the principle that an individual has the right to see and challenge the contents of his NCIC/CCH record.

Should the cooperating law enforcement agency not have the individual's fingerprints on file locally, it would be necessary for that agency to relate his prints to an existing record by having his identification prints compared with those already on file in the FBI or, possibly, in the State's central identification agency.

The FBI will not knowingly act in any manner which would infringe upon individual rights to privacy, and safeguards against such infringement have been incorporated in the policies of NCIC which are supported by all agencies entering records in the CCH file. Understanding NCIC, especially the operation of the CCH program, should allay any concern of a violation of individual rights. The FBI also encourages the enactment of Federal legislation which the Congress may deem to be appropriate to the preservation of rights of the individual and of our society.

Senator ERVIN. Senator Kennedy?

Senator KENNEDY. No questions.

Senator ERVIN. Senator Hruska?

Senator HRUSKA. I have no questions at this time of the witness, Mr. Chairman.

Senator MATHIAS. Thank you, Mr. Chairman.

Senator ERVIN. We would be glad to have you join us up here and participate in the hearing.

Senator MATHIAS. Thank you, Mr. Chairman. I will be glad to do that.

Senator ERVIN. The committee is delighted to have a man who as a public official has been particularly interested in this and who is the Governor of a great Commonwealth which I think has blazed a trail which this committee and the Congress should follow. And I am going to give to one of his Senators the privilege of presenting the Governor of the Commonwealth of Massachusetts to the committee.

Senator Kennedy?

Senator KENNEDY. Mr. Chairman, it is a pleasure to present to this committee the Governor of the Commonwealth of Massachusetts. We welcome him here as perhaps the outstanding public official who has questioned the evergrowing use of computer data banks by governmental agencies. I have had an opportunity to work closely together on this problem in the past, and I look forward to welcoming his testimony today.

As an example of the leadership that Massachusetts has taken in this area, I would like to just point out a few of the facts about Massachusett's role in their fight against the abuse of privacy. This committee is well aware of the President's Crime Commission Report of 1967 which urged the use of computer technology in law enforcement to more effectively track criminal offenders. The Attorney General in 1970 ordered the FBI to establish the National Crime Commission Center Data Bank on criminal history. And in our own State of Massachusetts in 1972 the Criminal History Systems Act became law which created a statewide data bank and established extremely strict procedures for the handling of that information. And this system was designed to tie into the FBI national crime information computerized system.

But at that time the Federal regulations did not provide adequate internal or external safeguards against potential abuse. For example, once Massachusetts gave information to the FBI, there was no assurance that this information would not be made available to groups which otherwise would have been prohibited from receiving that information under Massachusetts law. And therefore in June 1973 Massachusetts refused to join the NCIC until safeguards were adopted at the Federal level.

In response to this the story is well known now that the Justice Department, representing the Small Business Administration, and the Defense Department, sued Massachusetts, seeking to force them to join the NCIC. That suit was later dropped, and the Justice Department issued a proposed regulation governing the standards used in disseminating information from NCIC.

I don't think anyone would argue that Massachusetts has been in the vanguard among the States in calling our attention to the potential national abuses which are brought about by a computerized data information bank. And so I want to welcome the Governor here this morning. I know that his experience and interest in this particular issue will benefit those of us on this committee. And I think we will benefit greatly from his observations in what steps the State has taken to assure the protection of individual rights and the right to privacy. And I want to welcome the Governor here before the committee.

Senator ERVIN. I think the experience of Massachusetts in this field shows the wisdom of the Federal system. In former days before we started to centralize all power in Washington we recognized that among the great values of the Federal system was the fact that each State could conduct experiments in government. And if the experiment turned out to be a success, then it could be adopted by the other States,

or by the Federal Government on a Federal level. But if it turned out to be anything except a success, only one State was disadvantaged by the unfortunate experience. And from my study of this subject I think that the Commonwealth of Massachusetts has adopted a fine system in this field, which enables the State to assist law enforcement officers in a way that is consistent with the highest aspiration in the field, and at the same time protect what Justice Brandeis said is the greatest right any Americans had, and that is the right to be let alone by the Government in certain areas and have his rights protected by the Government.

Governor, it is a great privilege to welcome you to the committee.

TESTIMONY OF HON. FRANCIS W. SARGENT, GOVERNOR OF THE STATE OF MASSACHUSETTS

Governor SARGENT. Mr. Chairman, members of the committee, I am very pleased and honored to have the opportunity to appear before you. And I particularly appreciate your thoughtful comments regarding our experience in Massachusetts. And I am pleased to be so thoughtfully introduced by my colleague, Senator Kennedy of Massachusetts.

Mr. Chairman, few basic rights are more important to a democracy than the right of the individual to his privacy.

In the past year, this country has reeled as day after day stories of bugging, burglary, and surveillance, burst forth from the Nation's Capital. For the first time millions of Americans are aware of an assault on personal privacy.

Yet in the long run, I believe, the true danger lies not in the dramatic adventures of Watergate but rather with the more persistent centralization of power in the Federal Government.

The public challenge of Watergate, I am confident, will be dealt with. But the unseen challenge of a Federal takeover of State responsibilities and the intrusion of the Federal Government into the lives of individuals threatens to continue unabated.

Today we meet to consider one facet of this growing Federal power: the unregulated expansion of massive Federal computer systems. These machines are designed and programed to track millions of Americans for hundreds of different reasons.

I am especially concerned with the Federal Government's current project which will link their centralized criminal history systems with those of the States.

In the last few years millions of dollars have been devoted to the establishment of a huge Federal computerized system. But viturally nothing has been done at the national level to protect the individual citizen against computer abuse.

The time has come for action, Mr. Chairman. These hearings give us cause for hope. For the first time, Congress is seriously looking into the need for safeguards to govern the Federal criminal history system.

In Massachusetts we have recognized that the computerization of records is essential.

Our old system was inefficient, incomplete, and potentially dangerous to the individual's rights. For example, 20 percent of the files included arrests not followed by dispositions.

Controls on access were nonexistent. Hospitals, schools, credit bureaus, employment agencies, charitable organizations, and numerous government agencies not connected with law enforcement—all could see and use supposedly confidential material.

In truth, the only defense against abuse lay in the very inefficiency of the recordkeeping and in the good sense of overworked clerks.

To deal with the inefficiencies and to protect the individual Massachusetts turned to the computer.

We fully realized that with the benefits of increased efficiency might also come the technological nightmare of 1984.

So, from the beginning, we made some basic decisions.

First, our data system would be regulated by law, not by Executive order.

Second, access would be restricted to law enforcement agencies. Any other agencies would have to have special legislation to gain access to these files.

Third, under law, data files would be limited to criminal convictions. Criminal intelligence records and investigation reports would be banned.

Fourth, the individual would have the absolute right to see his file and to correct it if it is wrong.

These are the specific controls we established through law. Beyond them, we established stringent administrative regulations.

Arrests not followed by convictions would not be maintained in the system, except for statistical purposes. Records are sealed automatically with the passage of time—5 years for misdemeanors, 10 for felonies. Any agency which abuses its privileges may be kicked out of the system and would be subject to stiff criminal sanctions. In addition, any individual who violates a regulation can be fired.

These are our safeguards.

They are enforced by an independent body, the Criminal History System Board. The board is composed of the users of the system: representatives from the Departments of Public Safety, Corrections, Parole and Probation, from the courts, local police, and others.

To insure the protection of citizen rights, we established a watchdog board—The Security and Privacy Council.

These boards have only one mandate: to safeguard the integrity of the system and the rights of the individual.

They, along with our other controls, give Massachusetts, I believe, the strongest privacy protection system in the Nation.

But even as we were completing our system, the Federal Government threatened to undo all our controls.

As you know, Mr. Chairman, the FBI has been constructing its own computerized criminal history program within the National Crime Information Center.

Last year, Massachusetts was faced with the decision whether to link up with the FBI criminal history system. At that time, it became clear that the Federal Government had not formally established any safeguards.

Once we let our data pass to the NCIC and through it to thousands of local systems, our laws and our safeguard would be useless.

For example, the FBI uses its information for non-law-enforcement purposes. By Executive order they must provide information to all Government agencies to permit the checking of Federal employees.

Well, Mr. Chairman, Massachusetts' records are criminal history records, nothing more. Yet if we give our files to the FBI, they will certainly be used for noncriminal-justice purposes.

Our choice, therefore, was clear. Link up and watch our strict controls evaporate. Or refuse to join and attempt to change the Federal system.

Mr. Chairman, we chose the second course. And for that choice, we felt the lash of Federal displeasure.

The Small Business Administration threatened to withhold $30 million in disaster aid and loans. The Defense Department froze 2,400 jobs. The Justice Department brought suit against us.

We did not yield.

Last September, Massachusetts won a temporary victory: Attorney General Richardson dropped the Federal suit against us. Unfortunately, what he began, he could not finish, as he was forced to leave the Department soon after.

Since that time the Justice Department has taken a few steps forward. But more is required.

Massachusetts will not link up with the Federal system until adequate safeguards are established in law.

Today, Mr. Chairman, you are opening consideration of two bills that will establish such safeguards.

Both S. 2963 and S. 2964 have many outstanding features. Both require the updating of records and the restricting of arrest records. Both establish an audit system so that it can be known who has seen the records and for what purposes.

But, of course, each bill also has its weaknesses. The administration bill leaves too much discretion to the Attorney General. Moreover, the escape clause of national defense leaves far too much room for abuse.

I do not know what this phrase means, and I do not think this administration does either.

Mr. Chairman, from what we have learned in Massachusetts, I believe Senate bill 2963 would best serve the rights of the individual to privacy.

To begin with, this legislation recognizes that the administration of criminal justice is essentially a local responsibility.

Criminal law itself is primarily local in nature and varies dramatically from State to State. Police departments, courts, and correctional institutions are all primarily local.

In fact, we have found in Massachusetts that 99.5 percent of those who pass through our criminal system have committed only a local offense. Less than one-half of 1 percent have committed Federal crimes.

Consequently, a proper criminal justice information system must be designed to meet local needs. The power to collect criminal offender files and to distribute them must be local.

That is what we have attempted to do in Massachusetts. And that is what the Federal system has tried to undo.

This legislation, Mr. Chairman, will insure local control. It recognizes the need to establish a strong national minimum standard so that no individual State's system is compromised by participating in the national exchange of necessary information.

Moreover, this legislation recognizes that these information systems should be used for criminal justice purposes only, not for employment screening. It recognizes that these systems should be run by independent boards.

Mr. Chairman, I cannot overstate the need for this legislation.

Last year a young man came before me for a gubernatorial pardon. He had committed an offense, a felony. For it, he had served time in a State prison.

But he had reformed. He had been able to stay out of trouble for a number of years. I gave him his pardon.

In order to start fresh, begin a new life away from his past, away from those who knew of his record, he left the Commonwealth. He went to a State over a thousand miles away from Massachusetts.

He applied and was accepted by a junior college. However, before the term began, the school ran a police check on its students and discovered that he had a felony conviction.

He was expelled. Even after my office, learning of the incident, called and informed the school that the man had been given a full pardon, he was not readmitted.

This man was effectively denied a second chance. And who was served? Was this in the public interest? Did it aid in law enforcement? No.

Mr. Chairman, this is what happens when we elevate a system over the individual, a machine over man. This is the pain we cause when we allow our technology to run ahead of us, uncontrolled.

[Governor Sargent's statement in full follows:]

PREPARED STATEMENT OF HON. FRANCIS W. SARGENT, GOVERNOR OF THE STATE OF MASSACHUSETTS

Mr. Chairman, Senate Committee, I am very happy to be here today to testify on these measures to regulate the operation of criminal data banks.

I am very happy because I believe that this issue is of exceeding importance if we are to protect that most important right of a democratic society, the right of personal privacy.

Watergate, and the unfolding horror and revelations of illegal bugging, surveillance and other invasions of privacy have made millions of Americans realize the threat to personal privacy. But I believe, in the long run, the persistent threat will come from less dramatic adventures than Watergate. It will come from federal monopolization of state responsibilities and the consequential further centralization of federal control over all facets of individual life.

Massive, unregulated abusive federal data banks containing personal information on individual citizens are a big step in that direction. Of these, criminal data banks pose the greatest threat because they contain, by definition, the most sensitive of material.

The problem is no longer academic. As you know, in the area of law enforcement alone, there are literally hundreds of different computerized data banks which have sprung up over the last few years. I understand that the federal Law Enforcement Assistance Administration has trouble just keeping track of them.

In addition, as you know, the federal government, particularly but not exclusively the Federal Bureau of Investigation, has begun ambitious projects to build national computerized files linked to similar local files. Millions of state and federal tax dollars have been spent towards this end, yet practically nothing has been done to build a firm legislative foundation for these programs. Practically nothing has been done to specifically protect the privacy and individual rights of the many citizens affected by these programs. Without strict controls and proper utilization they pose a tremendous threat to millions of Americans, and, ironically, as we have found in Massachusetts, to effective law enforcement itself.

Massachusetts also has begun to utilize computer technology for law enforcement purposes.

But we have specifically tried to construct a system that serves law enforcement without compromising personal privacy or individual rights.

For our efforts we have had to bear the full brunt of federal harassment. We have learned the hard way that our efforts, the efforts of any state, are of no avail if we do not successfully challenge the uncontrolled power of the federal government to ride roughshod over the legitimate interests of the states.

Let me explain.

Law enforcement, the administration of criminal justice is primarily a local responsibility, Criminal law iteslf is primarily local in nature varying dramatically from state to state. Police departments, courts and correctional institutions are primarily local. And we have found, in Massachusetts, that 99.5% of all offenders who pass through our criminal system have committed local offenses. Less than ½ of 1% have been involved in any federal offense.

The conclusion I draw from this is simple. The power to collect criminal offender files and determine their use must be determined locally. A proper criminal justice information system must be designed to meet local needs.

That is what we have attempted to do in Massachusetts. Our system was designed by representatives of our criminal justice community to meet their needs. Our police use our system to obtain information to help them determine probable cause in making arrests. Courts use it for bail and sentencing determinations. (Obviously second offenders are treated differently than first offenders.) And correctional institutions use it to help select the proper rehabilitation program for an individual offender.

Our system is not a police system. It is a criminal justice system for criminal justice administration.

It is not a central employment file for the Commonwealth, private industry or the federal government.

In fact, one of the reasons we set about three years ago to computerize criminal history files was to prevent random access by these agencies.

Before we embarked on our system, we investigated our manual records. Frankly we found them to be a mess.

1. 20% of the files included arrests not followed by disposition. (Parenthetically, I might note that the experience in other states is similar. One Governor wrote me his state's files ran about 70% without dispositions.)

2. We found our records to be duplicative, incomplete, conflicting and loosely secure. We found most records were being freely used by hospitals, schools, credit bureaus, employment agencies, charitable organizations, and general government agencies of all levels as well as the criminal justice system.

3. We found the files to be so poorly managed that they were of little systematic use for law enforcement.

4. Except for the very inefficiency of these records systems and the good sense of overworked clerks, we found there were no adequate safeguards to protect the personal privacy and individual rights of persons affected by these files.

We concluded that computerization would help us make our record keeping operations more efficient as well as to help restrict access and protect privacy.

But we realized that computerization, through its increased capacity to maintain files and its increased efficiency could make things worse if not strictly controlled.

So we made some basic determinations. We decided that access should be rightfully restricted to criminal justice agencies for law enforcement purposes and to the individual data subjects themselves.

The benefits accrued to the public at large from granting access to non-criminal justice agencies, we concluded, was more than offset by the potential harm to thousands of individuals in terms of deprivation of personal privacy and individual rights.

Further, we concluded that access to non law enforcement agencies would actually undermine effective law enforcement.

The most important goal of law enforcement is to protect the public safety. The best way to do this is to prevent crime. One of the most proven ways to prevent crime is to rehabilitate criminal offenders. If we can cut down on recidivism, we can go a long way in cutting down on crime.

Ninety percent of the people in prison will someday be released. They must be able to find jobs and be able and allowed to fit back into our society. Otherwise our rehabilitative efforts are useless. Readily accessible criminal files undermine the chances for rehabilitation. Let me give you an illustration. Last year, a young man came before me for a gubernatorial pardon. He had committed an offense, a felony. For it, he had served time in a state prison.

But he had reformed. He had been able to stay out of trouble for a number of years. I gave him his pardon.

In order to start fresh, begin a new life away from his past, away from those who knew of his record, he then left the Commonwealth. He went to a state over 1,000 miles from Massachusetts.

He applied and was accepted to a junior college. However, before the term began, the school ran a police check on its students and discovered that he had a felony conviction.

He was expelled. Even after my office, learning of the incident, called and informed the school that the man had been given a full pardon, he was not readmitted.

The man was effectively denied his second chance. And who was served? Was this in the public interest? Did it aid in law enforcement? No. This is one example of improper access.

After making the decision to limit access we set about to find an agency to run the system, and we looked for proper law upon which to base it.

We found neither.

The fact is an undertaking as important as this, especially with its vast potential for abuse, required specific, competent legislative guidance. I did not believe that the Executive Branch of government had the authority to establish such a system without the approval of the legislature. Though many executive agencies had rather general record-keeping authorization in law, these laws were generally ten, twenty, years old. They dated back to times before we even had computers.

Also, the record system we were establishing had to include records from different executive agencies to be complete. Frankly no agency wanted to relinquish its records to be controlled by another agency. The non police agencies were very hesitant about establishing a police controlled project, feeling, with some legitimacy, that the primary mission of police conflicted with the needs of administering this system.

Using Project SEARCH recommendations as a model, legislation was submitted and passed into law. A copy is included for your information.

This legislation solved the problem of what agency would maintain our system by establishing an independent governing body called the Criminal History System Board. This board is composed of the users of the system, namely representatives from the courts, the departments of correction, parole and probation, the Commissioner of public safety, local police and others. In addition the legislation established a citizen watchdog board called the Security and Privacy Council.

The only function of these two boards is to safeguard the integrity of our system. They have no other mission, no other axes to grind.

In addition, our legislation established stringent operational standards, and safeguards. It is, in fact, the strongest privacy protecting statute of its kind in the country. Only the states of Alaska and Washington have similar legislation. Iowa passed legislation recently but I believe it was declared unconstitutional.

Let me briefly summarize some of the key provisions because many are similar to the legislation you have before you today.

1. The legislation limits file content to criminal offender record information only. Criminal intelligence is forbidden to be included as is investigative and analytical reports. "Soft" evaluative material like pretrial probation reports are also excluded.

2. The legislation forbids access to all noncriminal justice agencies except those agencies with specific statutory authority. This applies to state and federal agencies.

For your information, I have attached a list of the 104 agencies who applied but were denied access to our system and the 70 agencies granted access. You will notice that some of the agencies granted access will have notations next to them identifying the specific statute authorizing access. This is due to the fact that agencies granted access are granted for specific purposes only.

For example, the US Civil Service Commission is granted access only pursuant to USC 7313 which provides that an individual convicted within five years of a felony be ineligible for federal employment. This means that if the US Civil Service Commission is checking out John Jones, they can query our system and will be told only that John Jones has or has not been convicted of a felony within five years. If John Jones has been convicted of a misdemeanor, or for that matter, a number of misdemeanors, the Civil Service Commission will not be told.

Even I as the chief executive do not have unlimited access. I only have access to check the record of a person before me for a pardon. I can't check up on anyone else.

I bring up this example because I noted that Justice Department officials argued when the NCIC criminal history program was established that a federal data bank was preferable to state controlled data banks because, and I quote, "If a Governor controlled the system, he could control who gets elected." Obviously we can apply that argument to a nationally controlled system with a much more devestating result.

3. The legislation gives the individual the absolute right to see his complete file and challenge it if it is wrong. If the individual thinks he is being given the run-around, he can appeal directly to the Security and Privacy Council and have a full hearing on the matter.

In addition to these statutory regulations, the Criminal History System board and the Security and Privacy Council are in the process of establishing administrative regulations. These too are included for your information.

Briefly, these regulations prohibit inclusion of arrest records not followed by dispositions other than for statistical purposes. Arrests that have been followed with not guilty dispositions are not entered either.

Further misdemeanor records are sealed automatically after five years and felony records after ten years. Sealed records are considered "no record" for all practical purposes and are available only to a judge in specific circumstances.

Finally, these regulations authorize the Criminal History System Board not only to expell agencies which abuse the system but also to fire particular employees who have abused the system.

These then are the safeguards we built in to insure personal privacy and protect individual rights. However, in addition to these, I took one more action to safeguard our system.

On June 13, 1973, I wrote then Attorney General Elliot Richardson that Massachusetts would not join the NCIC/CCH until its safeguards were as strong as ours.

I took this action for the simple reason that once we allowed our data to pass to the NCIC or through it to any other local system, our safeguards and our laws would be rendered meaningless. Given the inadequacy of current NCIC legislative or administrative controls and the lack of controls on connecting local systems, joining this system would be like pouring water into a leaky vessel.

We knew one of the biggest abusers would be the FBI itself. Although we wanted and do cooperate with the FBI in its law enforcement activities, the FBI has other non-law enforcement tasks. Under Executive Order 10450 and others, it must provide access to its file to all government and related agencies for the purposes of checking federal employees. We did not want our records to be cent.ally available for this purpose. Our legislation forbids it.

Also, we took pains to establish built-in structural safeguards and anchored our system in law. The NCIC is not anchored in competent federal legislation. The only time Congress considered this system, it tacked on the so-called Bible Rider to an Appropriations Act in order to overturn the effects of the *Menard* v. *Mitchell* ruling. Due to this lack of legislation, the NCIC is subject to administrative change at any time. It is governed solely by the Director. Though there are representatives of non-police agencies on the NCIC Advisory Policy Board, this board is appointed by the Director and serves at his pleasure.

To date the only major source of discontent with our system has come from the federal government. Denied direct or indirect access, the Small Business Administration threatened to withold 30 million dollars in disaster aid and loans. The Defense Investigatory Services froze 2,400 jobs.

Finally the Justice Department filed a suit against Massachusetts in federal district court. It asked for an injunction to stop Massachusetts from denying them access to our files.

We maintained that under our law, federal agencies—like any other—had to meet our requirements before they could get into our files. The Small Business Administration, for example, is not a law enforcement agency, nor has Congress granted it authority to deny disaster aid to persons with criminal records.

Nor would we allow executive agencies to decide themselves if they did or did not need access. As Governor I issue many executive orders. They are meant to be taken seriously. However, I am mindful that executive orders cannot supersede law nor can they be used to infringe upon constitutionally guaranteed rights.

Fortunately, after Attorney General Elliot Richardson reviewed the case, the Department withdrew its suit last September.

Unfortunately, he left the department shortly thereafter before taking action to safeguard the federal program, the NCIC/CCH.

Since then, as you know, the Justice Department has taken a few steps forward. It must take more. It cannot be allowed to undermine our efforts and those of other states in establishing effective law enforcement tools that do not erode personal privacy and curtail individual rights. That is why I would like to conclude my testimony by urging the passage of legislation this year.

There are many outstanding features of both S. 2963 and S. 2964.

To provide equivalent safeguards and protections to personal privacy and individual rights as those provided by our own legislation in Massachusetts, I favor S. 2963.

It recognizes what I have tried to bring out today that criminal justice information systems are properly state systems, subject to state controls. It recognizes that these systems should be run by independent boards.

It recognizes that these systems are for the administration of criminal justice, not employment screening or any other purposes.

It recognizes the need to establish a strong national minimum standard so no individual state's system is compromised by participation in the national exchange of necessary data. This is important because no state can properly police systems or agencies outside its borders.

And finally, I think it recognizes that the utility of these files for law enforcement rest on their regard for personal privacy and individual rights.

Both bills recognize the need to update stale records and restrict arrest records. In Massachusetts, incidentally, the criminal justice representatives on the Criminal History System Board voted 10–2 not to disseminate raw arrest records even to police agencies.

Both bills set up an audit system so it can be known who has seen the records and for what purposes. We have already uncovered a violation of our law through an audit trail investigation.

I believe the major deficiency in the Administration bill is that it leaves too much discretion to one agency head, namely the Attorney General. I am not sure either what it means to allow access for purposes of "national defense." And I don't think this administration knows what that means either. Nor do I think an important question like access should be determined by executive order.

I think Massachusetts and many other states in the future would have trouble living by some of the decisions likely to result from this legislation.

I think the major inconsistency of the Ervin legislation is the provision allowing police departments to receive arrest records for the purpose of screening prospective police men. Persons applying for a police job ought to have the same rights as anyone else.

I am afraid also that the screening of arrest records will inhibit our efforts to get more minority members on our police forces.

However, I did not mean to end on a negative note. These two pieces of legislation are the most encouraging things that have happened in this area and bode well for the future.

I hope strong legislation comes from this committee. I hope it is but the first of many bills addressed to computerized data banks and record keeping practices.

I fear if legislation in this area is not passed soon we will find that the millions we have invested in building law enforcement tools to fight crime, will end up being used to deny millions of Americans their personal privacy and individual rights for little legitimate social good.

Thank you.

Governor SARGENT. And, Mr. Chairman, I would like to add one other point. I had an interesting discussion with you before this hearing started. I am interested in both the bills that are before your committee. And I would be very happy, if the subcommittee wanted to, to invite the committee to come to Boston and hold a hearing in Boston and to have our technical experts who are involved, to have our Commissioner of Public Safety and the members of our Criminal History System Board testify, if this would be useful. And I could arrange to have Dr. Miller of the Harvard Law School, who is Chairman of our Privacy and Security Council, testify if this would be useful to you and your committee.

I feel that this is very important legislation, Mr. Chairman.

Senator ERVIN. Thank you very much, Governor. You have made a most illuminating contribution to the work of this subcommittee. And I hope the committee can accept your invitation and conduct a hearing in Boston and get the benefit of the experience of Massachusetts, because, after all, experience is the most efficient teacher of all things.

As a Superior Court judge in North Carolina. I came to the conclusion that notwithstanding the many fine attributes of the FBI, that its zeal for law enforcement to some extent blinded it to the rights of the individual. And the reason I bring this up is that almost every time I tried a criminal case, the prosecuting attorney, after a plea, or after a verdict, would present for the court for consideration on the question of punishment data which had been furnished by the FBI. And all too often that data consisted of nothing except that on a certain date in a certain place that this person had been arrested on a certain charge. In all cases there was absolutely no record of the disposition of the case. And we know that during recent years, especially since we have had some demonstrations, that some people, especially young people, have been arrested, they have had arrest records made and in many of the instances, if not a majority, they have been released without any trial or any further action in connection with the matter. And these young people could be damned in the future by arrest records if they are circulated either to police or to employers. I am certainly impressed by your experience in Massachusetts, and also by the fact that you still recognize that this was supposed to be an indestructible union composed of indestructible States. And as you emphasize, the States have a greater stake in law enforcement than the national Government, because most of the law enforcement responsibilities and most of the law enforcement is in the hands of the States.

Senator Gurney?

Senator GURNEY. Thank you for that excellent statement, Governor Sargent.

Following up the chairman's mention of these arrest records, I wonder if you could explain a little more fully your comment here on pages 6 and 7 of your prepared transcript where you say the regulations prohibit the inclusion of arrest records not followed by dispositions other than for statistical purposes. And that is what I was curious about. What do you mean by statistical purposes?

Governor SARGENT. For example, my feeling is that the only thing that should be in the records, that could be punched out anywhere in this country, would be just arrest records, no backup, no investigations, just merely the conviction, not the arrest, I should say.

Now, as far as compiling statistics, I think it is most appropriate to have statistical information, some violations, some arrests, some convictions; part of the statistical information is entirely appropriate on either the national or the State level. But I think that the records at the State level and at the national level should only relate to actual convictions and not arrests, as the chairman has mentioned.

Senator GURNEY. Those that are included, then, in your records here for statistical purposes, who are they available to?

Governor SARGENT. The statistical information?

Senator GURNEY. Yes.

Governor SARGENT. The statistical information could be available to almost anyone, but as far as I am concerned, particularly anyone in the law enforcement field or in the courts or in parole or anywhere like that. What we are most concerned about, and where we have seen all sorts of violations of privacy, have been the credit agencies and the firms who want to try to find out and snoop around in the files. We don't do that. I can't snoop around in the files myself, and I am the governor. I don't think I should be able to.

Senator GURNEY. Then as I understand it, arrests that have not been followed by dispositions would be disseminated to those people who are interested in criminal information, that is law enforcement agencies, but not other people?

Governor SARGENT. It would be retained right in that police department, they would have all of the records, they would have all of the material and I wouldn't recommend in any way that they shouldn't keep those records. But they could not be put on the statewide computerized system so that they could be punched out by people.

Senator GURNEY. I see. Thank you.

Senator ERVIN. Senator Bayh?

Senator BAYH. Thank you, Mr. Chairman.

Governor, I want to add my compliments to the others that you have received.

In the light of your concern and the Massachusetts experience, do you share my concern that the other data that is compiled about many more of our citizens, the Civil Service data, the IRS data, the defense intelligence data, all of which are not covered in this bill, that we should also give attention and required safeguards to the dissemination in the way that data is compiled and kept?

Governor SARGENT. I would so recommend, Senator Bayh. We ran into a situation where records, ph[illegible]sical records of persons that might have been treated for mental illness, were being computerized and available to people. Now, I think these were of extreme privacy and should be so considered. And I think there should be safeguards. And we refused to submit certain information to the Federal Government that we thought related to the individual privacy of a person. But in that instance also, to go back to Senator Gurney's point, we are perfectly agreeable to have that information available for statistical purposes, but not to reveal the individual records of the treatment, for example, of a mental patient.

Now, I think all of these areas should be considered. But it seems to me the one above all else that should be considered are the criminal records that should be, I think safeguarded.

Senator BAYH. I think attention needs to be given to criminal records. But I want to suggest to you that there are millions of more Americans who are not criminals, but for various reasons have dossiers created for them and information put in there that may or may not be relevant, and to have this information made available to other people, made public, I think is even more offensive than the criminal aspect. I want both to be protected. And I certainly commend the chairman of the committee in his own inimitable way for continuing to pursue the protection of individual citizens in this area. And I hope that as we study this—there are millions of people out here who never committed any crime, and it was never alleged that they com-

mitted a crime, but data is compiled over which they have no control, and the information is erroneous, and if that information is made public it could be very damaging.

Governor SARGENT. I couldn't agree any more, Senator.

Senator BAYH. Thank you, Governor. I appreciate your testimony.

Senator ERVIN. Senator Hruska?

Senator HRUSKA. You have brought us a very interesting statement, Governor Sargent, and we are grateful to you for your appearance.

I do believe that, generally speaking, when you testify that "law enforcement, the administration of criminal justice, is primarily a local responsibility," you are speaking a fundamental proposition that is well understood throughout America. This proposition is the real foundation of the functioning, for example, of the Law Enforcement Assistance Administration. It is the recognition of the fact that the enforcement of law, the administration of justice, is primarily a local and State role. Now, it is true, isn't it, that we do have in this country such things as organized crime, a very complicated, sinister, and massive organization that doesn't have any regard for State boundaries? As a matter of fact, in your State you have some very enlightened and very effective legislation on the books to deal with that type of crime, have you not?

Governor SARGENT. We do.

Senator HRUSKA. When was it enacted? Not too long ago, was it, in its most recent amendments?

Governor SARGENT. Over the years there have been many statutes.

Senator HRUSKA. I remember Elliot Richardson telling of his time in the State government when the State government was very much concerned with organized crime and did quite a little legislative work.

Is it not true that there must be an interrelationship with other States and with other law enforcement agencies in dealing with problems?

Governor SARGENT. No question at all. And I certainly would not recommend that the Federal Government didn't have a role. I think they should have a role. I think the FBI should have a role. But I think that whatever system they have there should be safeguards so that just anyone can't walk into a central office in San Francisco and be able to punch a button and get the file of arrests on you or me or on anyone else unless there are convictions. Now, in the FBI, and in the police departments, I think they should retain complete records on persons that they have reason to suspect. But that material, in my view, should not go into the computer and be available to others. That is really my major concern.

Senator HRUSKA. And so you speak for some assurance of integrity of those records, and the devotion of those records to their intended purposes, and not for abuse?

Governor SARGENT. Exactly. I wouldn't want any member of this committee to feel that I was in any way impeding law enforcement or the protection of privacy, but helping law enforcement. And I personally feel that safeguards protect innocent people. And that is what it is all about.

Senator HRUSKA. At one part of your stenographic statement, I believe it is on page 9, you refer to the provision in one of the bills which would allow police departments to receive arrest records for the purpose of screening prospective policemen. Would there be some warrant for saying that an applicant for police employment should be subjected to just a little bit more searching inquiry than an ordinary employment record?

Governor SARGENT. I would think that that well might be the case. And I am not recommending that the records be expunged. What I am saying is that the State files, for example, or the national files, would say, "Yes, there is a record on this man in such and such a State, in such and such a city," and then that police agency would be able to go directly to that State, to that department, and find out what the conviction record might be. Within that department, within that city, there would be the complete record on that man. But it would not be part of the computerized arrangement.

Senator HRUSKA. Of course you probably have in mind a central depot, a central data bank, probably Federal in character, where there would be deposited all of these items, is that what you have in mind?

Governor SARGENT. Yes. As I understand, one of the differences between your bill and the chairman's bill would be that under the terms of the chairman's bill, if I understand it correctly, the bulk of the records would be retained at the State. However, the national office would have the information that so and so's name is, yes, on file, and it is in such and such a State, and a complete record would be made available from the State rather than from——

Senator HRUSKA. So in that case the common source would serve as an index?

Governor SARGENT. Right.

Senator HRUSKA. Rather than as a depository for the substantive facts about the case?

Governor SARGENT. I believe I understand you correctly, and I believe I agree.

Senator HRUSKA. How does your legislation on this subject, Governor, deal with the question of the press access or the public access to police records?

Governor SARGENT. The only people in Massachusetts that may get that information are persons directly connected with law enforcement, the local police department, the State police agency, the department of corrections, the department of parole, the attorney general's office, the courts, and so on. The press may not get that information in our State.

Senator HRUSKA. Not even the police blotter?

Governor SARGENT. The police blotter is retained in the police station, and that is up to the individual police department as to whether or not they want to show the blotter to the press. I think customarily they do. But what I am talking about is the computerized information.

Senator HRUSKA. The computerized record?

Governor SARGENT. Yes.

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Senator HRUSKA. Does the participation by the police department in compiling the data bank, the data information, disqualify that police department from displaying the blotter?

Governor SARGENT. I think I am correct in this, that the blotter traditionally is available to persons, it is an official record of what has happened in that police department on that particular day in question. I believe that that is available to the press, and so on, the way it always has been. But what is not available to the press is the record of that person, the numbers of arrests that there might have been, or convictions. That would only be available to law enforcement personnel, the courts, and otherwise.

Senator HRUSKA. Would that same access be true as to court records, for example, an information or an indictment file, a jury impaneled, and a trial held, is that also available for anyone who wants it?

Governor SARGENT. In our State it is held in the courts. And I believe it is up to the courts. And I would presume that—I am not sure just how much information would be available to the public, I am not certain. I would be glad to find out the answer.

Senator HRUSKA. A trial is a public event.

Governor SARGENT. I would presume it was public and was available to the public.

Senator HRUSKA. We are going to have witnesses here later on who are representatives of the press and they are going to want to know how much will be denied them and whether that is in the public interest or not. That is why I ask these questions.

Governor SARGENT. I would like to reinforce the invitation that I made before. I would be very pleased, point No. 1, to specifically answer those questions by means of a letter to the committee.

And, secondly, I would like to again invite the committee to come to Boston and talk with the people who are on a day-to-day basis handling this system. And I would point out that our police officers and the judges and our Department of Public Safety were involved in the making up of these rules and regulations to protect privacy.

Senator HRUSKA. That would be very welcome, and it would be very useful.

Governor SARGENT. Thank you very much, Senator.

Senator ERVIN. Are not the court records of trials in the courts and the records kept by the clerks of the court, public records that are open to the press and everybody else?

Governor SARGENT. I believe they are, yes.

Senator ERVIN. Now, as I understand it, these bills, and your Massachusetts law, are directed to the collection and dissemination and the availability of records which are collected primarily for law enforcement purposes, and there is nothing in this bill that would keep the press from doing its own investigating and getting access to the blotters of the local police station, unless the local police station had some reason in a particular case to withhold information. Pending further investigation, there is nothing to keep the press from doing its own work and digging whatever the public record in the courthouse shows?

Governor SARGENT. Certainly not. In my view the blotter traditionally has been available, I believe. The records in the courts are available, they are public documents. The only thing that we are

concerned about is the criminal history that is in the computer that might relate to other convictions. We want only convictions, and records of arrest without conviction would not be available. So that a person couldn't just go and punch a button and get all that information out.

Senator ERVIN. These are records which are collected for a specific purpose. And they would be similar to the records of investigation conducted by law enforcement officers or those that a prosecuting attorney acquires knowledge of, which are not now required to be divulged to the press. I am a great advocate of freedom of the press, but it would be a great injury to law enforcement if the press could go and make the district attorney, for example, or a criminal investigator, tell them everything he has learned in the process of his investigation. That is not now public knowledge, is it?

Governor SARGENT. In my view, no.

Senator ERVIN. But this would not interfere with a newsman gathering any other information through their own research from a record which is already open to the public.

Senator Kennedy?

Senator KENNEDY. Thank you, Mr. Chairman.

What have you found have been some of your principal difficulties with the system now, Governor? As I understand it, it worked pretty effectively, it worked pretty well. What are your principal problems now, in finances?

Governor SARGENT. We have spent somewhere around $3 million setting it up, and I think eventually it will run about $6 million. That hasn't been the problem. Frankly, our big problem has been the continuing row with the Federal Government. Over the past year or so we have been impeded by the Federal Government, they refused to do this, that and the other thing, they held back money, they held up jobs, and so on.

Senator KENNEDY. If the Federal Government would get off your back, you could do pretty well, you think?

Governor SARGENT. Yes.

And again I will say that we have our own Department of Public Safety that has been involved in the establishing of these rules and regulations so that it is not impeding law enforcement in any fashion. But I think that we do recognize, and our police agencies do recognize the need of privacy. And I think, as the chairman has pointed out, that because during the time of the student disorders when there were thousands of young people who were picked up just to get them off the streets and no action was later taken on them, I don't think years later they should be prevented from getting a job or they should be prevented from buying a sofa at a furniture store because some credit agency found that back a few years ago they were arrested along with thousands of other kids when they were making a lot of noise.

Senator KENNEDY. Let me ask you this. The State law has been strict in terms of making available this information to other agencies, and this has been one of the strong aspects, I think, of the Massachusetts legislation. Has that worked effectively? Have these other agencies that wanted this information been able to in any way circumvent the legislation in order to obtain it, or has that been fairly well guarded information? What has been your experience in Massachusetts as of today?

Governor SARGENT. In Massachusetts it has worked well. The police department is pleased with the way it has been working. I have heard virtually no complaint. However, there have been one or two instances of alleged violations by police officers who have been accused—and there is a court action on now—of having released certain information to credit agencies and others. And there is a court action——

Senator KENNEDY. Those have been individual abuses.

Governor SARGENT. Individual abuses; yes.

Senator KENNEDY. And would you say that those have been infrequent?

Governor SARGENT. Infrequent. I just happen to mention that because I think there are a couple of pending cases at the present time.

Senator KENNEDY. What is your assessment about the role of using this data bank for the collection of criminal intelligence data? Do you have some reservations just generally about broadening the scope of the data information that is put on to the data bank at the present time, even given the type of protection that you have under Massachusetts law?

Governor SARGENT. Well, it seems to me that the FBI, or in our instance the State police, or the local police, very well might have quite a complete history on a person who had never been actually convicted, that he might have been seen at various times with persons who have bad records, that they would be keeping an eye on him. And I think that should be retained in their files available for their day-to-day law enforcement work in the FBI, in the State police, or in the local police department, but not available to anyone else, and not available to any other departments. I think this is the difference, as I see it. Certainly if the police couldn't continue keeping records on persons that they had reason to be concerned about, this would be crazy. We don't propose that.

Senator KENNEDY. On the question of sealing, Massachusetts law is quite clear as you outlined it earlier in the course of your testimony. Have you found that from a law enforcement point of view that that has worked out satisfactorily?

Governor SARGENT. Yes. We have a 5-year and a 10-year limit on arraignments, misdemeanors, and felonies. I have heard no complaint about it. I think perhaps some police agency would prefer to retain the records for a longer period of time. I think that they are retained and there is just a notation in the file that the file has been sealed. They are not discarded; they are retained and sealed under such a notation in the files.

Senator KENNEDY. I want to thank you, Governor, for your appearance here.

Senator ERVIN. Senator Gurney?

Senator GURNEY. A couple of more questions, Governor.

What about the information in your computer, your criminal data records as far as individuals are concerned? Can they get the information out about themselves? And how do they go about doing this?

Governor SARGENT. This is something that we felt was very important, that if a person has reason to believe that their record is incorrect—we had an instance, for example, when a man was deprived of certain privileges because he had been AWOL from one of the services, from the Marine Corps. There is no way, as I understand it, in the Federal system for him to go in and be able to check his records and be able to say, "Hey, look, here is the record, I was honorably discharged and that thing is erroneous and it is outdated." There is no way of doing it in the Federal system. In our system there is. A person has the right to go in and see what is in his own record. I can go in and see my own record. But I can't go rummaging through the files and see yours or anyone else's.

Senator GURNEY. The file is actually handed to him physically and he can look at it?

Governor SARGENT. Yes.

Senator GURNEY. One other question. What about information that is developed from grand jury proceedings in Massachusetts? What happens to that information after the proceedings are concluded?

Governor SARGENT. I would presume that that goes to the appropriate police department and is retained there, retained in the courts, but would not go on any computers unless a conviction followed the investigation.

Senator GURNEY. That was going to be my followup question. That information is not put on your computer?

Governor SARGENT. No, unless there is a conviction.

Senator ERVIN. Thank you v ry much, Governor.

Governor, you have made a great contribution to the study of the committee. And I thank you very much.

Governor SARGENT. I appreciate the opportunity of being here. And I might say that spring is coming even in Boston, and we would welcome your subcommittee any time you wish to come.

Senator ERVIN. Thank you very much. We hope we can accept your invitation.

Counsel will call the next witness.

Mr. BASKIR. Mr. Chairman, our next witness is Mr. O. J. Hawkins, the chairman of SEARCH. Mr. Hawkins is also the assistant director of the California Department of Justice and a member of the NCIC Advisory Board.

Senator ERVIN. Mr. HAWKINS, we are delighted to welcome you. And you might identify the gentleman who accompanies you for the purposes of the record.

TESTIMONY OF O. J. HAWKINS, CHAIRMAN, PROJECT SEARCH ACCOMPANIED BY PAUL WORMELI, PROJECT COORDINATOR

Mr. HAWKINS. Thank you, Mr. Chairman.

On my right is Mr. Paul Wormeli, who is the project coordinator for Project SEARCH. I may call on him for assistance and requests regarding the SEARCH position.

Mr. Chairman, members of the subcommittee, I believe you have my printed testimony. And I would like to perhaps skip some parts of it. I feel and hope that most of the items in it are information of value to the committee. But I would like in the interest of time to skip some of it.

Senator ERVIN. That will be entirely satisfactory to the committee. Let the record show that the complete statement will be printed in full in the body of the record immediately after Mr. Hawkins' testimony.

Mr. HAWKINS. Thank you, Mr. Chairman and members of the subcommittee. I appreciate the privilege of appearing before you to testify on S. 2963 and S. 2964, bills to facilitate and regulate the exchange of criminal justice information. Both of these bills are comprehensive and both contain excellent provisions for dealing with the many serious problems of security and personal privacy raised by the increasing scope and efficiency of criminal justice information systems. I congratulate you, Mr. Chairman, on your bill and on your longstanding and widely recognized leadership in this field. I also commend Senator Hruska and the Department of Justice for the excellent bill developed by the Department and introduced by the Senator.

I appear today on behalf of the California Department of Justice, of which I am assistant director, and Project SEARCH, of which I am chairman. And as I mentioned, appearing with me is Mr. Paul Wormeli, who is the project coordinator for Project SEARCH and directs the staff that provides technical support for the project.

With those general observations, I would like to discuss the major provisions of the bills pending before the subcommittee. The views and recommendations I shall offer are those agreed upon by the SEARCH project group and represent the consensus of representatives from all of the States. With certain exceptions that I shall point out, they also represent the views of the California Department of Justice.

Under access and use, perhaps the most important parts of the bills are the provisions that limit access to and use of criminal histories and arrest records.

Both S. 2963 and S. 2964 limit direct access to criminal records to authorized officers or employees of criminal justice agencies. In addition, section 201(b) of S. 2963 provides that, beginning 2 years after enactment of the act, criminal justice information may be collected by and disseminated to only those law enforcement agencies that are "expressly authorized to receive such information by Federal or State statute." A strict interpretation of this provision would probably require most states to enact legislation authorizing specific law enforcement agencies to receive criminal justice information. We do not see the need for this requirement and we suggest that it be modified to permit law enforcement agencies to receive criminal justice information required for the purpose of their statutory responsibilities. This would permit dissemination to agencies that have a clear need for such information to carry out statutory responsibilities even though the statute might not expressly authorize such dissemination. This approach provides an adequate limitation without requiring additional legislation in most States.

Both bills limit the kind of criminal record information that may be made available for purposes other than criminal justice activities. S. 2964 permits criminal histories and offender processing information to be made available for noncriminal justice purposes if such purposes are "expressly authorized" by Federal or State statute, or by Federal Executive order in the case of criminal histories. The Attorney General is authorized to determine whether statutory authorizations are explicit enough to comply with the bill's intent. S. 2963 would permit only conviction records to be made available for non-criminal-justce purposes if "expressly authorized" by State or Federal statute.

Project SEARCH recommends that criminal history information be available for non-criminal-justice purposes only if "explicitly authorized" by State or Federal statute. This would not permit criminal histories to be made available pursuant to federal executive order. Information available under this authorization would not be limited to conviction records, but we recommend that no information would be available concerning any individual who has not been convicted of at least one serious offense and has no such offense actively pending against him. A serious offense is one punishable by more than 6 months' imprisonment. This limitation and other provisions of the bill concerning dissemination of arrest records, which I shall discuss in a moment, would have the effect of limiting criminal records available for non-criminal-justice purposes to conviction records relating to individuals who have at least one conviction for a serious offense.

I might add that my superior, the attorney general of California, will probably write to the subcommittee to express his views on this subject.

S. 2964 delays the effective date of the bill for 1 year after enactment, thus affording the States a year in which to review the matter of noncriminal justice dissemination and to enact necessary statutory authorizations. We strongly endorse this delay and recommend that the period be extended to 2 years, since many State legislatures do not meet every year. Project SEARCH also would amend the provision of of S. 2964 that authorizes the Attorney General to determine whether statutory authorizations are explicit enough to meet the bill's intent. We would prefer that these determinations be left to the States through some appropriate State procedures.

One of the most critical and controversial subjects dealt with in the bills is the matter of dissemination of arrest records. And again, Mr. Chairman, I would like to read this whole thing into the record, but I think it would be inadvisable from this point on and just conclude and answer any questions you have by saying that I appreciate being here. I will go through it if you wish, Mr. Chairman.

Senator ERVIN. I have ordered it all printed in the record, and I am sure each member of the committee will read it. It will be printed in full in the hearings and made available to all Members of the Senate. So unless some member of the committee would like to have you read it, we will go on.

[Mr. Hawkins' statement in full and attachments follows:]

PREPARED STATEMENT OF O. J. HAWKINS, ASSISTANT DIRECTOR, CALIFORNIA DEPARTMENT OF JUSTICE; CHAIRMAN, PROJECT SEARCH

Mr. Chairman and members of the Subcommittee, I appreciate the privilege of appearing before you to testify on S. 2963 and S. 2964, bills to facilitate and regulate the exchange of criminal justice information. Both of these bills are comprehensive and both contain excellent provisions for dealing with the many serious problems of security and personal privacy raised by the increasing scope and efficiency of criminal justice information systems. I congratulate you, Mr. Chairman, on your bill and on your long-standing and widely-recognized leadership in this field. I also commend Senator Hruska and the Department of Justice for the excellent bill developed by the Department and introduced by the Senator.

I appear today on behalf of the California Department of Justice, of which I am Assistant Director, and Project SEARCH, of which I am Chairman. Appearing with me is Mr. Paul Wormeli, who is the Project Coordinator for Project SEARCH and directs the staff that provides technical support for the Project.

As I believe you know, Project SEARCH was established in 1969 under a grant from the Law Enforcement Assistance Administration and initially developed and demonstrated an interstate network of computerized systems to exchange criminal histories among seven cooperating states, served by a computerized national index. The prototype system developed by Project SEARCH was successfully demonstrated and led to a decision by the Attorney General in December of 1970 to establish a national operational system in the Department of Justice to be managed by the Federal Bureau of Investigation. This system is now the Computerized Criminal History component of the National Crime Information Center, usually referred to as NCIC–CCH.

I am pleased to say that Project SEARCH remains extensively active in research and development projects related to many aspects of criminal justice information systems. SEARCH has now expanded to include all 50 States and the Project Group—the policymaking body of SEARCH, which I represent today—now includes a representative from each of the states, the District of Columbia, the Virgin Islands and Puerto Rico. Every one of these representatives is actively involved in some aspect of criminal justice in his state and has been appointed by his Governor to represent the criminal justice system in the state. I believe it is accurate to say that the group includes some of the most experienced and knowledgeable people in this field in the Nation.

From the beginning, the States participating in Project SEARCH were sensitive to the problems of security and privacy that arose from the operation of the computerized criminal history exchange system. For that reason, SEARCH very early established a standing Committee on Security and Privacy to study the problems and to make recommendations for dealing with them. The Committee has published three documents on the subject of security and privacy of criminal information systems, with which I believe you are familiar. One of the documents, entitled "Security and Privacy Considerations in Criminal History Information Systems," I am pleased to note was mentioned by Chairman Ervin in his remarks upon introducing S. 2963. The other two documents are a model State act and model State regulations to implement the recommendations of the Security and Privacy Committee. These three documents have now been reprinted in one volume and I will be happy to supply the Subcommittee with copies if you wish. The Committee has recently published a fourth document entitled "Terminal Users Agreement for CCH and Other Criminal Justice Information." This example agreement between central computer agencies and terminal user agencies contains provisions designed to enforce security and privacy safeguards. I have a copy with me if you wish to receive it for the hearing record, Mr. Chairman, and I shall be glad to supply additional copies.

Before turning to a discussion of specific provisions of the bills, I would like to make a few general remarks about the subject of legislation to regulate criminal justice information exchange systems.

Some of the states have already adopted strong privacy and security legislation, notably Massachusetts, Alaska and my own State of California. California, for example, has actively sought to protect individual privacy in the criminal history area. In California, criminal history information can be released only to persons authorized by state statute. The subject of a criminal record has the right to review it and to have errors corrected. The California Department of Justice has been given the responsibility of establishing and enforcing statewide standards for criminal record security and privacy. Full and accurate disposition reporting is required by our statutes and the California Department of Justice has established realistic record purging and record retention policies. I might add that virtually all of these laws and policies have been developed and sponsored with the cooperation of California criminal justice officials.

Many other states presently are actively considering such legislation. The bills currently under consideration in the states take many forms and propose varying approaches to the problems. I believe there is a need for a federal law to assure some degree of uniformity in the laws of the states and to settle some of the uncertainty that now exists as to what will be required or permitted in the way of state action to implement security and privacy safeguards, and what standards new systems will have to meet.

Some of the states that now have or are working on legislation to protect personal privacy from potential abuses of automated systems are concerned when their information is disseminated to other states without proper safeguards. Hopefully, federal legislation will provide the catalyst that will spur all of the states to prompt action so that uniform safeguards will exist throughout the Nation.

With respect to the form that such federal legislation should take, there are several important points that I urge you to keep in mind. First is the overriding need of the criminal justice system for information—information that is timely, accurate and responsive to the needs of the various components of the criminal justice community. Numerous studies, beginning with the 1967 Report of the President's Commission on Law Enforcement and Administration of Justice and continuing through the Report of the National Advisory Commission on Criminal Justice Standards and Goals released last year by LEAA, have documented the heavy dependence of the criminal justice system on information about how the system works and about the people involved in the system. Before stopping a suspicious vehicle, a police officer should know whether it is stolen, who the owner is and whether he is wanted by the police or has a criminal record that might indicate that he is dangerous. Before admitting a defendant to bail, a magistrate should have information about his background and previous criminal record, if any. Before sentencing a convicted offender, a judge should have information about his criminal background. The same kind of information should be available to correctional officials considering whether or not to release an offender on parole.

Until relatively recently, criminal justice information systems were, in most cases, inadequate to meet these operational needs of criminal justice agencies. Moreover, as I am sure the officials at LEAA will agree, lack of sufficient information about the operation of the criminal justice system has been one of the chief obstacles to improving the system.

In the past few years, however, we have experienced a substantial increase in the number, size and efficiency of criminal justice information systems throughout the country. Great emphasis has been placed on the development of systems for compiling and exchanging individual criminal histories or "rap sheets" because of the utility of this kind of information at all stages of the criminal justice process. Most of these systems are still manual, but some of the larger ones are automated at least in part and some of them are becoming quite-sophisticated and efficient.

Of course, as you pointed out in your introductory statement, Mr. Chairman, this increased efficiency has compounded security and privacy problems. In a real sense, the inefficiency of the old manual systems was the greatest protection of individual privacy. Files were scattered and access and dissemination was limited and slow. The computer has changed all that. The modern automated systems are characterized by rapid access and rapid dissemination. Although this might increase the potential damage of an inaccurate or incomplete criminal record, it is important to note that automated systems have provided security and privacy safeguards that were not possible in manual systems.

It is also important to keep in mind that these new systems dramatically increase the effectiveness of law enforcement. Computerized criminal justice information systems are essential to the effective administration of criminal justice and their use should be encouraged and facilitated as well as regulated by law. These systems can be operated in such a way as to meet all of the legitimate information needs of criminal justice agencies while providing adequate system security and protection against unreasonable invasions of personal privacy. Laws on security and privacy need not be so strict as to stifle the effectiveness of the systems. To deny to these systems the great benefits that derive from the technological advances in the field of information systems that have occurred in recent years would be a setback for the equitable administration of justice in our society.

We further urge you to consider that most of the criminal history systems in use today are for the most part manual systems and this will be true for many years to come. In fact, since the computerized NCIC–CCH system is in limited operation in only a few states, the only existing national system for exchanging criminal histories is the manual fingerprint identification system operated by the F.B.I. Care should be taken that a law designed primarily to deal with security and privacy problems growing out of national computerized systems not impose restrictions and requirements with which manual systems cannot possibly comply. Such a law should not contain provisions of general application that would unduly restrict many other forms of day-to-day operational recordkeeping, such as police blotters, court records and corrections records that do not present serious privacy risks.

With those general observations, I would like to discuss the major provisions of the bills pending before the Subcommittee. The views and recommendations I shall offer are those agreed upon by the SEARCH Project Group and represent the consensus of representatives from all of the states. With certain exceptions that

I shall point out they also represent the views of the California Department of Justice.

ACCESS AND USE

Perhaps the most important parts of the bills are the provisions that limit access to and use of criminal histories and arrest records.

Both S. 2963 and S. 2964 limit direct access to criminal records to authorized officers or employees of criminal justice agencies. In addition, section 201(b) of S. 2963 provides that, beginning two years after enactment of the Act, criminal justice information may be collected by and disseminated to only those law enforcement agencies that are "expressly authorized to receive such information by Federal or State statute." A strict interpretation of this provision would probably require most states to enact legislation authorizing specific law enforcement agencies to receive criminal justice information. We do not see the need for this requirement and we suggest that it be modified to permit law enforcement agencies to receive criminal justice information required for the purpose of their statutory responsibilities. This would permit dissemination to agencies that have a clear need for such information to carry out statutory responsibilities even though the statute might not expressly authorize such dissemination. This approach provides an adequate limitation without requiring additional legislation in most states.

Both bills limit the kind of criminal record information that may be made available for purposes other than criminal justice activities. S. 2964 permits criminal histories and offender processing information to be made available for non-criminal justice purposes if such purposes are "expressly authorized" by federal or state statute, or by federal executive order in the case of criminal histories. The Attorney General is authorized to determine whether statutory authorizations are explicit enough to comply with the bill's intent. S. 2963 would permit only conviction records to be made available for non-criminal justice purposes if "expressly authorized" by state or federal statute.

Project SEARCH recommends that criminal history information be available for non-criminal justice purposes only if "explicitly authorized" by state or federal statute. This would not permit criminal histories to be made available pursuant to federal executive order. Information available under this authorization would not be limited to conviction records, but we recommend that no information would be available concerning any individual who has not been convicted of at least one serious offense and has no such offense actively pending against him. A serious offense is one punishable by more than six months' imprisonment. This limitation and other provisions of the bill concerning dissemination of arrest records, which I shall discuss in a moment, would have the effect of limiting criminal records available for non-criminal justice purposes to conviction records relating to individuals who have at least one conviction for a serious offense.

The Attorney General of California will write to the Subcommittee to express the views of the State on this subject, which may differ in some respects from those of Project SEARCH.

S. 2964 delays the effective date of the bill for one year after enactment, thus affording the states a year in which to review the matter of noncriminal justice dissemination and to enact necessary statutory authorizations. We strongly endorse this delay and recommend that the period be extended to two years, since many state legislatures do not meet every year. Project SEARCH also would amend the provision of S. 2964 that authorizes the Attorney General to determine whether statutory authorizations are explicit enough to meet the bill's intent. We would prefer that these determinations be left to the states through some appropriate state procedures.

ARREST RECORDS

One of the most critical and controversial subjects dealt with in the bills is the matter of dissemination of arrest records. Both of the bills impose strict limitations on the maintenance and dissemination of such records. S. 2964 provides that, with limited exceptions, arrest records may not be disseminated for non-criminal justice purposes if the individual is acquitted, the charge is dismissed, prosecution is abandoned or no conviction has resulted within a year and the case is not still under active prosecution. Arrest records without convictions may be disseminated for criminal justice purposes until sealed at the end of five years if the individual has not been rearrested on another charge during that time. Any such arrest record would have to include a notation of the disposition if one has been reported and recipients would have an obligation to make a new inquiry each time the record is used to assure that it is up-to-date.

S. 2963 is much more restrictive. It would prohibit non-criminal justice use of arrest records altogether and would permit criminal justice use only for the purposes of employment of the individual by a criminal justice agency, adjudication of the charge resulting from the arrest, and in connection with subsequent arrests if the prior arrest is no more than one year old and is still under active prosecution.

Project SEARCH agrees with S. 2964 to the extent that it prohibits non-criminal justice dissemination of arrest records that result in a disposition favorable to the defendant or that have not resulted in a conviction within a reasonable period and are not still under active prosecution. However, we favor somewhat stronger limitations on the use of such records for criminal justice purposes than those set out in S. 2964, but not as restrictive as those imposed by S. 2963. Our recommendation is that criminal justice use of arrest records be permitted until the records are sealed under other provisions of the bills, with two exceptions. The first exception would be cases where an early determination is made not to file a complaint or initiate prosecutive action on the charge for which the arrest was made. This is the *Menard* case situation and arrest records of that kind should be promptly expunged. The other exception would be in the case of a first offender whose arrest results in an acquittal or other favorable disposition or does not result in a conviction within two years. With these two exceptions designed to cover the most prejudicial cases and other provisions of the bill designed to assure that arrest records are kept accurate and up to date with notations of dispositions, we believe general criminal justice use of arrest records may safely be permitted. And we believe there are valid and necessary law enforcement uses for such records. There has been testimony during hearings held on arrest record bills before the House Judiciary Committee of instances where police officers have been killed or injured after stopping individuals who might have been approached more cautiously if the officers had been aware that the individuals had arrest records indicating that they were dangerous even though they had never been convicted. Arrest records also provide investigative leads in identifying suspects where there is no other information source available to the investigator to utilize.

These views on arrest records are those of Project SEARCH. The Attorney General of California will submit separate written views on this subject on behalf of the State.

REVIEW BY THE INDIVIDUAL

Both bills permit the individual to inspect his criminal history record for the purpose of challenge or correction, and both provide for correction in appropriate cases. This is an extremely important safeguard against inaccurate and incomplete records. We endorse the provision included in both bills that an individual who has obtained a copy of his record may not be required or requested to show or give it to anyone else. This is necessary to keep prospective employers or others from requiring individuals to obtain for them copies of criminal history records to which they are not entitled under the bill.

S. 2963 contains a requirement not included in S. 2964 that we believe is important. Subsection 207(b)5 provides that any criminal record disseminated after its accuracy or completeness has been challenged shall include a notation informing the recipient of the challenge. That subsection also requires that any corrective action taken as a result of a challenge shall be communicated as soon as practicable (which means "immediately" in automated systems) to every criminal justice information system or agency that has received the erroneous information. In view of the notice requirement in the first part of the subsection and other provisions of the bills requiring recipients to make frequent inquiries of systems to assure that information previously obtained is still accurate and current, we do not believe it is necessary to require that notice of corrections be given to each individual law enforcement agency that has received erroneous information. Compliance with such a requirement would probably be impossible for manual systems and unnecessary although technically feasible in automated systems. A better technical solution is to require that the most recent data be obtained and utilized in any decision made regarding the offender, perhaps with the proviso that records under challenge be so annotated.

INTELLIGENCE SYSTEMS

Section 208 of S. 2963 provides that criminal intelligence information shall not be maintained in criminal information systems that contain criminal histories, arrest records or other information on individuals resulting from arrest, detention or adjudication. Although it is not as clear, S. 2964 requires the same separation of intelligence files by excluding criminal record information from the definition

of intelligence information. We agree with this requirement although we think it should be made clear, either in the bill or at some appropriate place in the legislative history, that this does not preclude the maintenance in intelligence files of non-systematic references to arrests and convictions, so long as the two systems are kept separate and are not linked together in any way that would permit access to one system through the other.

Subsection (b) of section 208 of S. 2963 prohibits automated intelligence systems. There are no provisions in the bill concerning manual intelligence systems, except for the requirement that they be kept separate from criminal record systems. S. 2964 permits automated intelligence systems, but places some limits on dessemination and use of intelligence information obtained from either manual or automated systems. Section 5(c) provides that, with limited exceptions, intelligence information may be used only for a criminal justice purpose and only where a need for such use has been established. The exceptions permit national defense or foreign policy uses and permit a State or federal agency that has both criminal and non-criminal components to make intelligence information compiled by the criminal component available for statutory functions of the non-criminal component.

The SEARCH position is more restrictive than S. 2964 but not as restrictive as S. 2963. It permits automation of intelligence systems, but it imposes stricter limitations on such systems, both manual and automated, than are contained in either bill. Since it is not lengthy, Mr. Chairman, I would like to read the position adopted by Project SEARCH:

(a) Criminal intelligence information regarding an individual may be entered into a criminal justice information system only if grounds exist connecting such individual with known or suspected criminal activity. Such systems shall review individual criminal intelligence files at least every two years to determine whether such grounds continue to exist, and shall immediately destroy all copies of criminal intelligence information relating to any individual as to whom such grounds do not exist.

(b) Access to and use of criminal intelligence information, including access by means of terminals or other equipment in the case of automated systems, shall be limited to law enforcement agencies, and, within such agencies, to components and individual officers or employees thereof determined by the agencies to have a need and a right to criminal intelligence information.

(c) No automated interstate criminal intelligence information system shall provide for dissemination of full criminal intelligence information records by means of remote computer terminal access to computerized data bases containing such full records. Intelligence information disseminated by such means shall be limited to data sufficient to provide a register or index of the identities of individuals included in the systems and the names and locations of law enforcement agencies possessing criminal intelligence files relating to such individuals.

This position was agreed upon after a day-long debate by the Project Group. The Group also voted to instruct me to stress in my testimony the very strong consensus among SEARCH representatives that intelligence systems are vital to law enforcement and should not be denied the benefits deriving from technological advances. Automated systems should be permitted, even on an interstate basis, because of the usefulness of such systems in investigating organized crime and other forms of criminal activity that crosses state lines. The controls imposed on intelligence systems should be strict, particularly in limiting dissemination to criminal justice officials as we have proposed. Such protections are necessary both for the subject and for the data in the system. We strongly urge this Subcommittee to invite the testimony of knowledgeable police intelligence witnesses to explore this very difficult problem and devise a legislative solution that will facilitate the continuance of intelligence systems under appropriate safeguards.

ACCURACY AND COMPLETENESS

As we have pointed out before, one of the most important factors in the protection of the rights of individuals about whom criminal histories are maintained is the accuracy and completeness of the records. This is, of course, also an important factor in the usefulness of the records to criminal justice agencies. Both bills include generally similar provisions designed to insure that records are accurate, complete and up to date, both in criminal record systems and in the hands of recipients. S. 2964 places the initial burden of assuring that information is accurate, complete and kept up to date on the agency initially contributing the information to the system. It also requires all criminal justice agencies, including courts and

correctional authorities to cooperate by contributing data on court dispositions and other steps in the criminal justice process. This is an important provision, since in some states incomplete data for criminal histories has resulted from the failure of some courts and correctional agencies to contribute dispositional data. Both bills require recipients of records to check back frequently by means of new inquiries of the system to assure that information they have previously obtained is up to date. The effect is to encourage accuracy and updating from both ends of the system, contributor and recipient, and we think this combination will be most effective.

Both bills provide for periodic inside and outside audits to assure that criminal history information is accurate and complete, and both provide for either the purging or sealing of old conviction and arrest records if the individual has been free of contact with the criminal justice system for specified periods. S. 2964 includes a provision in the record-sealing section that we think is quite important, and is set out more explicitly than somewhat similar provisions in S. 2963. Subsection 9(c)(1) provides that manual systems may be exempt from full compliance if full compliance is not feasible. Automated systems can be programmed to review conviction records at frequent intervals to identify those that are seven or five years old and determine whether the individual subsequently has been arrested or convicted or is otherwise under the control of the criminal justice system. But this would be virtually impossible for most manual systems. Manual systems should, however, be required to purge or seal an outdated record if a request for sealing or dissemination of it is received, either from the individual or from a law enforcement agency, and it is then determined that the criteria for purging or sealing have been met. We suggest that similar exemptions for manual systems be added to the various provisions of the bill that require that complete records and lists be kept of the sources of information, of requests for information and dissemination. An automated system can be designed to keep these records; but most manual systems cannot comply.

PRECEDENCE OF STATE LAWS

I will comment on only one other aspect of the bills, an aspect I consider to be the most important raised by the legislation—the relationship between state and federal laws.

Like most State officials, I am extremely sensitive about federal laws that overrule state laws, or Federal laws that condition federal funding of state and local activities. For that reason, I strongly favor the provisions in both S. 2963 and S. 2964 concerning the precedence of state laws over the federal law, although I think they do not go far enough.

Both bills provide that State laws that afford greater protections than the federal law shall not be affected by the federal law so far as intrastate system operations are concerned, but use of records that are obtained through interstate systems shall be governed in every case by the federal law and implementing regulations. I would go further and permit a state law on this subject to be fully effective within the state, both as to records originating in the state and those received from other states through interstate systems, so long as the law contains adequate security and privacy protections.

It is true that many states do not have adequate laws on this subject and perhaps some of them will not act any time soon. However, many states do have excellent laws and others have laws on this subject under consideration. I have described the laws and policies in California. You are already familiar with the Massachusetts law, which, incidentally, is essentially the model act developed by Project SEARCH. Alaska also has enacted the model act, and other States are considering that or similar laws.

In my view, Mr. Chairman, neither the interstate nature of some of these information systems nor the federal funding that has gone into them justifies the enactment of a federal law and the promulgation of federal regulations that will in effect nullify adequate state laws on the subject of security and privacy of criminal history records. I also ask that you consider the possible impact of the administrative and procedural problems imposed by federal laws. I urge you to limit the application of any bill you report to those States that do not now have adequate laws to protect the privacy of individuals and do not enact such laws within a reasonable period. Perhaps if you delay the effective date of the federal law for two years that will spur most States to act. After that time the federal law would be effective in those states that have not enacted their own laws.

For the same reasons, I do not favor the provision of S. 2963 that would prohibit participation in interstate systems by states that do not establish information systems boards within two years after enactment of the legislation. I believe maximum latitude should be given to each state to decide what mechanism it wishes to establish to implement the safeguards required by the legislation.

Mr. Chairman, that concludes my prepared testimony. Mr. Wormeli and I will now be pleased to respond to any questions you or members of the Subcommittee may have.

CALIFORNIA CRIMINAL RECORDS LAW

Existing California law does the following:

1. Expressly states who is entitled to receive criminal history information (Penal Code Section 11105).
2. Requires detailed disposition reporting (Penal Code Sections 11115–11117; 13100–13202).
3. Authorizes subject of criminal history record to review record and to correct errors (Penal Code Sections 11120–11127).
4. Requires California Department of Justice to establish statewide standards for criminal history record security and privacy (Penal Code Sections 11075–11081).
5. Authorizes sealing of records pertaining to arrests or convictions of minors for misdemeanors or to juvenile court matters (Penal Code Sections 1203.45; Penal Code Section 851.7; Welfare and Institutions Code Section 781).
6. Makes it a crime to maliciously communicate the fact that a person is on parole or is a discharged prisoner with intent to deprive him of employment (Penal Code Sections 2947; 3058).

Proposed California Law:

To make unauthorized dissemination of criminal history information a crime (Assembly Bill 1687; passage expected, to be effective January 1, 1975).

California Department of Justice Policy:

The California Department of Justice has implemented a record retention schedule which will purge from state central files information which is of little use to the criminal justice system. After appropriate experience at the state level, it is anticipated that this criteria will be applied to all criminal justice agencies in the state (see Record Retention Criteria, enclosed).

EXISTING CALIFORNIA LAW

Article 3

CRIMINAL IDENTIFICATION AND STATISTICS

Sec.
11100. Modus operandi cards.
11101. Photographs, descriptions, measurements, etc.
11102. Identification systems.
11103. Duplicate record of all convicts.
11104. Duty to file and index information received.
11105. Information furnished; application; purpose.
11105.5 Notice to officers and agents that record of minor has been sealed.
11106. Records of fingerprints, weapons transactions, pawned property, etc.; copies of records.
11107. Reports of sex crimes and of all felonies.
11108. Reports of lost, stolen, found, pledged, or pawned property.
11109. Repealed.
11110. Record of reports of suspected infliction of physical injury upon minor and arrests for and convictions of violation of section 273a.
11111. Repealed.
11112. Fingerprints and descriptions of persons arrested for certain offenses; daily reports.
11113. Fingerprints and description of decedents furnished by coroner.
11114. Repealed.

§ 11100. Modus operandi cards

The Attorney General shall provide for the installation of a proper system and file in the office of the bureau, cards containing an outline of the method of operation employed by criminals in the commission of crime.

(Added by Stats.1953, c. 1385, p. 2966, § 1.)

§ 11101. Photographs, descriptions, measurements, etc.

The Attorney General shall procure from any available source, and file for record and report in the office of the bureau, all plates, photos, outline pictures, descriptions, information and measurements of all persons convicted of a felony, or imprisoned for violating any of the military, naval, or criminal laws of the United States of America, and of all well-known and habitual criminals.

(Added by Stats.1953, c. 1385, p. 2966, § 1.)

§ 11102. Identification systems

The bureau may use the following systems of identification: the Bertillon, the fingerprint system and any system of measurement that may be adopted by law in the various penal institutions of the State.

(Added by Stats.1953, c. 1385, p. 2966, § 1.)

§ 11103. Duplicate record of all convicts

The Attorney General shall keep on file in the office of the bureau a record consisting of duplicates of all measurements, processes, operations, signaletic cards, plates, photographs, outline pictures, measurements and descriptions of all persons confined in penal institutions of the State as far as possible, in accordance with whatever system or systems may be commonly used in the State.

(Added by Stats.1953, c. 1385, p. 2966, § 1.)

Cross References

Fingerprints, photographs, and additional information from director of corrections, see § 2082.
Notice of release of person convicted of arson, see § 11150.
Registration of sex offenders, see § 290.
Report of pardon, see § 4852.17.

§ 11104. Duty to file and index information received

The Attorney General shall file all plates, photographs, outline pictures, measurements, information and descriptions received and shall make a complete and systematic record and index, providing a method of convenience, consultation and comparison.

(Added by Stats.1953, c. 1385, p. 2966, § 1.)

§ 11105. Information furnished; application; purpose

(a) The Attorney General shall furnish, upon application in accordance with the provisions of subdivision (b) of this section, copies of all information pertaining to the identification of any person, such as a plate, photograph, outline picture, description, measurement, or any data about such person of which there is a record in the office of the bureau.

(b) Such information shall be furnished to all peace officers, district attorneys, probation officers, and courts of the state, to United States officers or officers of other states, territories, or possessions of the United States, or peace officers of other countries duly authorized by the Attorney General to receive the same, and to any public defender or attorney representing such person in proceedings upon a petition for certificate of rehabilitation and pardon pursuant to Section 4852.08, upon application in writing accompanied by a certificate signed by the peace officer, public defender, or attorney, stating that the information applied for is necessary for the due administration

of the laws, and not for the purpose of assisting a private citizen in carrying on his personal interests or in maliciously or uselessly harassing, degrading or humiliating any person.

(c) Such information shall not be furnished to any persons other than those listed in subdivision (b) of this section or as provided by law; provided, that such information may be furnished to any state agency, officer, or official when needed for the performance of such agency's, officer's, or official's functions.

(d) Whenever a request for information pertains to a person whose fingerprints are on file with the department and whose record contains no reference to criminal activity, and the information requested is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying such request for information, if any, may be stamped "No criminal record" and returned to the submitting agency.

(e) Whenever information furnished pursuant to this section is to be used for employment, licensing, or certification purposes, the Department of Justice shall charge the requesting agency a fee which it determines to be sufficient to reimburse the department for the cost of furnishing the information, provided that no fee shall be charged a public law enforcement agency for records furnished to assist it in employing, licensing, or certifying a person who is applying for employment with the agency as a peace officer or criminal investigator. Any state agency required to pay a fee to the Department of Justice for information received under this section may charge its applicants a fee sufficient to reimburse the agency for such expense. All moneys received by the department pursuant to this section, Section 12054 of the Penal Code, and Section 13588 of the Education Code are hereby appropriated, without regard to fiscal years, for the support of the Department of Justice in addition to such other funds as may be appropriated therefor by the Legislature.

(f) Whenever there is a conflict, the processing of criminal fingerprints shall take priority over the processing of applicant's fingerprints.

(Added by Stats.1953, c. 1385, p. 2966, § 1. Amended by Stats.1957, c. 2263, p. 3966, § 1; Stats.1967, c. 1519, p. 3614, § 1; Stats.1971, c. 1309, p. ——, § 2, urgency, eff. Nov. 1, 1971.)

Cross References

Mental health information to bureau of criminal identification and investigation, see Welfare and Institutions Code § 5328.2.

§ 11105.5 Notice to officers and agents that record of minor has been sealed

When the Bureau of Criminal Identification and Investigation receives a report that the record of a minor has been sealed under Section 851.7 or Section 1203.45 of the Penal Code, it shall send notice

of that fact to all officers and agencies that it had previously notified of the arrest or other proceedings against the minor.

(Added by Stats.1965, c. 1910, p. 4422, § 2. Amended by Stats.1967, c. 1373, p. 3224, § 3.)

§ 11106. Records of fingerprints, weapons transactions, pawned property, etc.; copies of records

In order to assist in the investigation of crime, the arrest and prosecution of criminals and the recovery of lost, stolen, or found property, the Attorney General shall keep and properly file a complete record of all copies of fingerprints, duplicate carbon copies of applications for licenses to carry concealed weapons and dealers' records of sales of deadly weapons, and reports of stolen, lost, found, pledged, or pawned property in any city or county of this State and shall furnish copies of any of such records to the officers mentioned in Section 11105 upon proper application therefor.

(Added by Stats.1953, c. 1385, p. 2966, § 1.)

Cross References

Fingerprints, photographs, and additional information from director of corrections, see § 2082.
Fingerprints of applicants for licenses to carry concealed weapons, see § 12052.
Register of sale of concealed weapon to be forwarded to state bureau of criminal identification and investigation, see § 12076.

§ 11107. Reports of sex crimes and of all felonies

Each sheriff, chief of police and city marshal shall furnish to the bureau daily reports on standard forms to be prepared by the bureau listing all violations of Sections 314, 647a, subdivision (a) or (d) of Section 647, and any offense involving lewd and lascivious conduct under Section 272, and all felonies committed in his jurisdiction, describing the nature and character and noting all peculiar circumstances of each such crime together with any additional or supplemental data or information including all statements and conversations of persons arrested, and listing any crime theretofore reported which may be of aid in the investigation of such crime and the apprehension and conviction of the perpetrators thereof.

(Added by Stats.1953, c. 1385, p. 2965, § 1. Amended by Stats.1969, c. 43, p. 155, § 4.)

§ 11108. Reports of lost, stolen, found, pledged, or pawned property

Each sheriff, chief of police or city marshal shall furnish the bureau daily reports of lost, stolen, found, pledged or pawned property received in his office, and all information received from the reports submitted pursuant to Section 21208 of the Financial Code.

(Added by Stats.1953, c. 1385, p. 2967, § 1. Amended by Stats.1959, c. 638, p. 2616, § 6.)

§ 11109. Repealed by Stats.1955, c. 1128, p. 2121, § 1

§ 11110. Record of reports of suspected infliction of physical injury upon minor and arrests for and convictions of violation of section 273a

The State Bureau of Criminal Identification and Investigation shall maintain records of all reports of suspected infliction of physical injury upon a minor by other than accidental means and reports of arrests for, and convictions of, violation of Section 273a. On receipt from a city police department, sheriff or district attorney of a copy of a report of suspected infliction of physical injury upon a minor by other than accidental means received from a physician and surgeon, dentist, resident, intern, chiropractor, religious practitioner, registered nurse employed by a public health agency, school, or school district, director of a county welfare department, or any superintendent of schools of any public or private school system or any principal of any public or private school, the bureau shall transmit to the city police department, sheriff or district attorney, information detailing all previous reports of suspected infliction of physical injury upon the same minor or another minor in the same family by other than accidental means and reports of arrests for, and convictions of violation of Section 273a, concerning the same minor or another minor in the same family.

The bureau may adopt rules governing recordkeeping and reporting under Section 11161.5.

(Added by Stats.1965, c. 1171, p. 2971, § 1. Amended by Stats.1966, 1st Ex.Sess., c. 31, p. 325, § 1; Stats.1968, c. 587, p. 1258, § 1.)

§ 11111. Repealed by Stats.1955, c. 1128, p. 2121, § 1

§ 11112. Fingerprints and descriptions of persons arrested for certain offenses; daily reports

The first agency to receive a person for booking after his arrest shall furnish the bureau daily copies of fingerprints on standardized eight- by eight-inch cards, and descriptions of: (a) all persons who have been arrested for the commission of any offense defined in Section 266, 267, 268, 285, 286, 288, 288a, 314, 647a, subdivision (a) or (d) of Section 647, subdivision 3 or 4 of Section 261, or of any offense involving lewd and lascivious conduct under Section 272; (b) all persons arrested who in the best judgment of any such officer are wanted for serious crimes, or are fugitives from justice; (c) all persons in whose possession at the time of arrest are found goods or property reasonably believed by any such officers to have been stolen by them; (d) all persons in whose possession are found burglar outfits or burglar keys or who have in their possession high-power explosives reasonably believed to be used or intended to be used for unlawful

purposes; (e) all persons who are in possession of infernal machines, bombs or other contrivances in whole or in part and reasonably believed by any said officer to be used or intended to be used for unlawful purposes; (f) all persons who carry concealed firearms or other deadly weapons which are reasonably believed to be carried for unlawful purposes; (g) all persons who have in their possession inks, dye, paper or other articles necessary in the making of counterfeit banknotes, or in the alteration of banknotes, checks, drafts or other instruments of credit; or dies, molds or other articles necessary in the making of counterfeit money, and reasonably believed to be used or intended to be used by them for such unlawful purposes.

(Added by Stats.1953, c. 1385, p. 2967, § 1. Amended by Stats.1968, c. 377, p. 789, § 1; Stats.1969, c. 43, p. 155, § 5.)

Cross References

Fingerprints from director of corrections, see § 2082.

§ 11113. Fingerprints and description of decedents furnished by coroner

Each coroner shall furnish the bureau promptly with copies of fingerprints on standardized 8-inch by 8-inch cards, and descriptions and other identifying data, including date and place of death, of all deceased persons whose deaths are in classifications requiring inquiry by the coroner. When it is not physically possible to furnish prints of the 10 fingers, prints or partial prints of any fingers, with other identifying data, shall be forwarded by the coroner to the bureau.

In all cases where there is a criminal record on file in the bureau for the decedent, the bureau shall notify the Federal Bureau of Investigation and each California sheriff and chief of police, in whose jurisdiction the decedent has been arrested, of the date and place of death of decedent.

(Added by Stats.1963, c. 1665, p. 3256, § 1.)

§ 11114. Repealed by Stats.1955, c. 1128, p. 2121, § 1

Article 4

CRIMINAL RECORDS

Sec.
11115. Report on transfer, release, or disposition of case to bureau of criminal identification and investigation or F.B.I.
11116. Report on disposition of case; disposition labels.
11116.5 Use of disposition label by defendant.
11116.6 Entry of disposition labels on records.
11117. Procedures and forms; record of disposition; time for forwarding reports; inadmissible in civil cases.

§ 11115. Report on transfer, release, or disposition of case to bureau of criminal identification and investigation or F.B.I.

In any case in which a sheriff, police department or other law enforcement agency makes an arrest and transmits a report of the arrest to the Bureau of Criminal Identification and Investigation or to the Federal Bureau of Investigation, it shall be the duty of such law enforcement agency to furnish a disposition report to such bureaus whenever the arrested person is transferred to the custody of another agency or is released without having a complaint or accusation filed with a court.

If either of the following dispositions is made, the disposition report shall so state:

(a) "Arrested for intoxication and released," when the arrested party is released pursuant to paragraph (2) of subdivision (b) of Section 849.

(b) "Detention only," when the detained party is released pursuant to paragraph (1) of subdivision (b) of Section 849. In such cases the report shall state the specific reason for such release, indicating that there was no ground for making a criminal complaint because (1) further investigation exonerated the arrested party, (2) the complainant withdrew the complaint, (3) further investigation appeared necessary before prosecution could be initiated, (4) the ascertainable evidence was insufficient to proceed further, (5) the admissible or adducible evidence was insufficient to proceed further, or (6) other appropriate explanation for release.

When a complaint or accusation has been filed with a court against such an arrested person, the law enforcement agency having primary jurisdiction to investigate the offense alleged therein shall receive a disposition report of that case from the appropriate court and shall transmit a copy of the disposition report to all the bureaus to which arrest data has been furnished.

(Added by Stats.1961, c. 1025, p. 2709, § 1. Amended by Stats.1967, c. 1519, p. 3614, § 2.)

§ 11116. Report on disposition of case; disposition labels

Whenever a criminal complaint or accusation is filed in any superior, municipal or justice court, the clerk, or, if there be no clerk, the judge of that court shall furnish a disposition report of such case to the sheriff, police department or other law enforcement agency primarily responsible for the investigation of the crime alleged in a form prescribed or approved by the Bureau of Criminal Identification and Investigation.

The disposition report shall state one or more of the following, as appropriate:

(a) "Dismissal in furtherance of justice, pursuant to Section 1385 of the Penal Code." In addition to this disposition label, the court

shall set forth the particular reasons for the dismissal as stated in its order entered upon the minutes.

(b) "Case compromised; defendant discharged because restitution or other satisfaction was made to the injured person, pursuant to Sections 1377 and 1378 of the Penal Code."

(c) "Court found insufficient cause to believe defendant guilty of a public offense; defendant discharged without trial pursuant to Section 871 of the Penal Code."

(d) "Dismissal due to delay; action against defendant dismissed because the information was not filed or the action was not brought to trial within the time allowed by Section 1381, 1381.5, or 1382 of the Penal Code.

(e) "Accusation set aside pursuant to Section 995 of the Penal Code." In addition to this disposition label, the court shall set forth the particular reasons for the disposition.

(f) "Defective accusation; defendant discharged pursuant to Section 1008 of the Penal Code," when the action is dismissed pursuant to that section after demurrer is sustained, because no amendment of the accusatory pleading is permitted or amendment is not made or filed within the time allowed.

(g) "Defendant became a witness for the people and was discharged pursuant to Section 1099 of the Penal Code."

(h) "Defendant discharged at trial because of insufficient evidence, in order to become a witness for his codefendant pursuant to Section 1100 of the Penal Code."

(i) "Proceedings suspended; defendant found presently insane and committed to state hospital pursuant to Sections 1367 to 1372 of the Penal Code." If defendant later becomes sane and is legally discharged pursuant to Section 1372, his disposition report shall so state.

(j) "Convicted of (state offense)." The disposition report shall state whether defendant was convicted on plea of guilty, on plea of nolo contendere, by jury verdict, or by court finding and shall specify the sentence imposed, including probation granted, suspension of sentence, imposition of sentence withheld, or fine imposed, and if fine was paid.

(k) "Acquitted of (state offense)," when a general "not guilty" verdict or finding is rendered.

(*l*) "Not guilty by reason of insanity," when verdict or finding is that defendant was insane at the time the offense was committed.

(m) "Acquitted; proof at trial did not match accusation," when defendant is acquitted by reason of variance between charge and proof pursuant to Section 1151.

(n) "Acquitted; previously in jeopardy," when defendant is acquitted on a plea of former conviction or acquittal or once in jeopardy pursuant to Section 1151.

(*o*) "Judgment arrested; defendant discharged," when the court finds defects in the accusatory pleading pursuant to Sections 1185 to 1187, and defendant is released pursuant to Section 1188.

(p) "Judgment arrested; defendant recommitted," when the court finds defects in the accusatory pleading pursuant to Sections 1185 to 1187, and defendant is recommitted to answer a new indictment or information pursuant to Section 1188.

(q) "Mistrial; defendant discharged." In addition to this disposition label, the court shall set forth the particular reasons for its declaration of a mistrial.

(r) "Mistrial; defendant recommitted." In addition to this disposition label, the court shall set forth the particular reasons for its declaration of a mistrial.

(s) Any other disposition by which the case was terminated. In addition to the disposition label, the court shall set forth the particular reasons for the disposition.

Whenever a court shall dismiss the accusation or information against a defendant under the provisions of Section 1203.4 of this code, and whenever a court shall order the record of a minor sealed under the provisions of Section 851.7 or Section 1203.45 of this code, the clerk, or, if there be no clerk, the judge of that court shall furnish a report of such proceedings to the Bureau of Criminal Identification and Investigation and shall include therein such information as may be required by said bureau.

(Added by Stats.1961, c. 1025, p. 2709, § 1. Amended by Stats.1965, c. 1910, p. 4422, § 3; Stats.1967, c. 1373, p. 3225, § 4; Stats.1967, c. 1519, p. 3617, § 3.5.)

§ 11116.5 Use of disposition label by defendant

Any disposition label provided by Section 11115 or 11116 may be used by the person subject to the disposition as an answer to any question regarding his arrest or detention history or any question regarding the outcome of a criminal proceeding against him.

(Added by Stats.1967, c. 1519, p. 3619, § 4.)

§ 11116.6 Entry of disposition labels on records

The disposition labels provided by Sections 11115 and 11116 must be entered on all appropriate records of the party arrested, detained, or against whom criminal proceedings are brought.

(Added by Stats.1967, c. 1519, p. 3619, § 5.)

§ 11117. Procedures and forms; record of disposition; time for forwarding reports; inadmissible in civil cases

The Bureau of Criminal Identification and Investigation shall prescribe and furnish the procedures and forms to be used for the disposi-

tion reports required in this article. The bureau shall add the disposition reports received to all appropriate criminal records.

The disposition reports required in this article shall be forwarded to the Bureau of Criminal Identification and Investigation and the Federal Bureau of Investigation within 30 days after the release of the arrested or detained person or the termination of court proceedings.

Neither the disposition reports nor the disposition labels required in this article shall be admissible in evidence in any civil action.

(Added by Stats.1961, c. 1025, p. 2710, § 1. Amended by Stats.1967, c. 1519, p. 3619, § 6.)

Article 5

EXAMINATION OF RECORDS

Sec.
11120. Record defined.
11121. Purpose.
11122. Application; contents; fee.
11123. Submission of application; fee.
11124. Notice of existence of record; time of inspection; examination; authority to take notes.
11125. Application of prisoner; place of examination of record.
11126. Correction of record; written request for clarification; notice to applicant of determination; administrative adjudication; judicial review.
11127. Regulations.

§ 11120. Record defined

As used in this article, "record" with respect to any person means the master record sheet maintained under such person's name by the Bureau of Criminal Identification and Investigation and which is commonly known as "arrest record," "criminal record sheet," or "rap sheet." "Record" does not include any other records of the bureau.

(Added by Stats.1971, c. 1439, p. —, § 1.)

§ 11121. Purpose

It is the function and intent of this article to afford persons concerning whom a record is maintained in the files of the bureau such reasonable opportunity to examine the record compiled from such files, and to refute any erroneous or inaccurate information contained therein as is consistent with the requirements and functions of the bureau.

(Added by Stats.1971, c. 1439, p. —, § 1.)

§ 11122. Application; contents; fee

Any person desiring to examine a record relating to himself shall obtain from the chief of police of the city of his residence, or, if not

a resident of a city, from the sheriff of his county of residence, or from the office of the bureau, an application form furnished by the bureau which shall require his fingerprints in addition to such other information as the bureau shall specify. The city or county, as applicable, may fix a reasonable fee for affixing the applicant's fingerprints to the form, and shall retain such fee for deposit in its treasury.

(Added by Stats.1971, c. 1439, p. —, § 1.)

§ 11123. Submission of application; fee

The applicant shall submit the completed application directly to the bureau. The application shall be accompanied by a fee of five dollars ($5) or such higher amount, not to exceed ten dollars ($10) that the bureau determines equals the costs of processing the application and making a record available for examination. All fees received by the bureau under this section are hereby appropriated without regard to fiscal years for the support of the Department of Justice in addition to such other funds as may be appropriated therefor by the Legislature.

(Added by Stats.1971, c. 1439, p. —, § 1.)

§ 11124. Notice of existence of record; time of inspection; examination; authority to take notes

When an application is received by the bureau, the bureau shall determine whether a record pertaining to the applicant is maintained. If such record is maintained, the bureau shall inform the applicant by mail of the existence of the record and shall specify a time when the record may be examined at a suitable facility of the bureau. Upon verification of his identity, the applicant shall be allowed to examine the record pertaining to him, or a true copy thereof, for a period not to exceed one hour. The applicant may not retain or reproduce the record, but he may make a written summary or notes in his own handwriting.

(Added by Stats.1971, c. 1439, p. —, § 1.)

§ 11125. Application of prisoner; place of examination of record

If the applicant is imprisoned in the state prison or confined in the county jail, his application shall be through the office in charge of records of the prison or jail. Such offices shall follow the provisions of this article applicable to cities and counties with respect to applications and fees. When an application is transmitted to the bureau pursuant to this section, the bureau shall make arrangements for the applicant to examine the record at his place of confinement. In all other respects, the provisions of Section 11124 shall govern the examination of the record.

(Added by Stats.1971, c. 1439, p. —, § 1.)

§ 11126. Correction of record; written request for clarification; notice to applicant of determination; administrative adjudication; judicial review

(a) If the applicant desires to question the accuracy or completeness of any matter contained in the record, he may submit a written request, to the bureau in a form established by it. The request shall include a statement of the alleged inaccuracy or incompleteness in the record, and specify any proof or corroboration available. Upon receipt of such request, the bureau shall forward it to the person or agency which furnished the questioned information. Such person or agency shall, within 30 days of receipt of such written request for clarification, review its information and forward to the bureau the results of such review.

(b) If such agency concurs in the allegations of inaccurateness or incompleteness in the record, it shall correct its record and shall so inform the bureau, which shall correct the record accordingly. The bureau shall inform the applicant of its correction of the record under this subdivision within 30 days.

(c) If such agency denies the allegations of inaccurateness or incompleteness in the record, the matter shall be referred for administrative adjudication in accordance with Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2 of the Government Code for a determination of whether inaccuracy or incompleteness exists in the record. The agency from which the questioned information originated shall be the respondent in the hearing. If an inaccuracy or incompleteness is found in any record, the agency in charge of that record shall be directed to correct it accordingly. Judicial review of the decision shall be governed by Section 11523 of the Government Code. The applicant shall be informed of the decision within 30 days of its issuance in accordance with Section 11518 of the Government Code.

(Added by Stats.1971, c. 1439, p. —, § 1.)

§ 11127. Regulations

The bureau shall adopt all regulations necessary to carry out the provisions of this article.

(Added by Stats.1971, c. 1439, p. —, § 1.)

ARTICLE 2.5. CRIMINAL RECORD DISSEMINATION [NEW]

Sec.
11075. Criminal offender record information.
11076. Dissemination to authorized agencies.
11077. Attorney general; duties.
11078. Listing of agencies to whom information released or communicated.
11079. Investigations; cooperation by agencies.
11080. Right of access to information authorized by other provisions of law not affected.
11081. No access to information unless otherwise authorized by law.

Article 2.5 was added by Stats.1972, c. 1437, p. —, § 1.

§ 11075. Criminal offender record information

(a) As used in this article, "criminal offender record information" means records and data compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, rehabilitation, and release.

(b) Such information shall be restricted to that which is recorded as the result of an arrest, detention, or other initiation of criminal proceedings or of any consequent proceedings related thereto.

(Added by Stats.1972, c. 1437, p. —, § 1.)

§ 11076. Dissemination to authorized agencies

Criminal offender record information shall be disseminated, whether directly or through any intermediary, only to such agencies as are, or may subsequently be, authorized access to such records by statute.

(Added by Stats.1972, c. 1437, p. —, § 1.)

§ 11077. Attorney general; duties

The Attorney General is responsible for the security of criminal offender record information. To this end, he shall:

(a) Establish regulations to assure the security of criminal offender record information from unauthorized disclosures at all levels of operation in this state.

(b) Establish regulations to assure that such information shall be disseminated only in situations in which it is demonstrably required for the performance of an agency's or official's functions.

(c) Coordinate such activities with those of any interstate systems for the exchange of criminal offender record information.

(d) Cause to be initiated for employees of all agencies that maintain, receive, or are eligible to maintain or receive, criminal offender record information a continuing educational program in the proper use and control of criminal offender record information.

(e) Establish such regulations as he finds appropriate to carry out his functions under this article.

(Added by Stats.1972, c. 1437, p. —, § 1.)

§ 11078. Listing of agencies to whom information released or communicated

Each agency holding or receiving criminal offender record information in a computerized system shall maintain, for such period as is found by the Attorney General to be appropriate, a listing of the agencies to which it has released or communicated such information.

(Added by Stats.1972, c. 1437, p. —, § 1.)

§ 11079. Investigations; cooperation by agencies

The Attorney General may conduct such inquiries and investigations as he finds appropriate to carry out functions under this article. He may for this purpose direct any agency that maintains, or has received, or that is eligible to maintain or receive criminal offender records to produce for inspection statistical data, reports, and other information concerning the storage and dissemination of criminal offender record information. Each such agency is authorized and directed to provide such data, reports, and other information.

(Added by Stats.1972. c. 1437, p. —, § 1.)

§ 11080. Right of access to information authorized by other provisions of law not affected

Nothing in this article shall be construed to affect the right of access of any person or public agency to individual criminal offender record information that is authorized by any other provision of law.

(Added by Stats.1972, c. 1437, p. —, § 1.)

§ 11081. No access to information unless otherwise authorized by law

Nothing in this article shall be construed to authorize access of any person or public agency to individual criminal offender record information unless such access is otherwise authorized by law.

(Added by Stats.1972, c. 1437, p. —, § 1.)

ARTICLE 3. CRIMINAL IDENTIFICATION AND STATISTICS

Sec.
11111. Bicycles; stolen and lost; records; accessibility to law enforcement agencies; fees [New].

§ 11102. Identification systems

The department may use the following systems of identification: the Bertillon, the fingerprint system, and any system of measurement that may be adopted by law in the various penal institutions of the state.

(Amended by Stats.1972, c. 1377, p. —, § 82.1.)

§ 11105. Information furnished; application; purpose

(a) The Attorney General shall furnish, upon application in accordance with the provisions of subdivision (b) of this section, copies of all summary criminal history information pertaining to the identification of any person, such as a plate, photograph, outline picture, description, measurement, or any data about such person of which there is a record in the office of the department.

(b) Such information shall be furnished to all peace officers, district attorneys, probation officers, and courts of the state, to United States officers or officers of other states, territories, or possessions of the United States, or peace officers of other countries duly authorized by the Attorney General to receive the same, and to any public defender or attorney representing such person in proceedings upon a petition for certificate of rehabilitation and pardon pursuant to Section 4852.08, upon application in writing accompanied by a certificate signed by the peace officer, public defender, or attorney, stating that the information applied for is necessary for the due administration of the laws, and not for the purpose of assisting a private citizen in carrying on his personal interests or in maliciously or uselessly harassing, degrading or humiliating any person.

(c) Such information shall not be furnished to any persons other than those listed in subdivision (b) of this section or as provided by law; provided, that such information may be furnished to any state agency, officer, or official when needed for the performance of such agency's, officer's, or official's functions.

(d) Whenever a request for information pertains to a person whose fingerprints are on file with the department and whose record contains no reference to criminal activity, and the information requested is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying such request for information, if any, may be stamped "No criminal record" and returned to the submitting agency.

(e) Whenever information furnished pursuant to this section is to be used for employment, licensing, or certification purposes, the Department of Justice shal charge the requesting agency a fee which it determines to be sufficient to reimburse the department for the cost of furnishing the information, provided that no fee shall be charged a public law enforcement agency for records furnished to assist it in employing, licensing, or certifying a person who is applying for employment with the agency as a peace officer or criminal investigator. Any state agency required to pay a fee to the Department of Justice for information received under this section may charge its applicants a fee sufficient to reimburse the agency for such expense. All moneys received by the department pursuant to this section, Section 12054 of the Penal Code, and Section 13588 of the Education Code are hereby appropriated, without regard to fiscal years, for the support of the Department of Justice in addition to such other funds as may be appropriated therefor by the Legislature.

(f) Whenever there is a conflict, the processing of criminal fingerprints shall take priority over the processing of applicant's fingerprints.

(Amended by Stats.1972, c. 1377, p. —, § 82.2.)

§ 11107. Reports of sex crimes and of all felonies

Each sheriff, chief of police and city marshal shall furnish to the department daily reports on standard forms to be prepared by the department listing all violations of Sections 314, 647a, subdivision (a) or (d) of Section 647, and any offense involving lewd and lascivious conduct under Section 272, and all felonies committed in his jurisdiction, describing the nature and character and noting all peculiar circumstances of each such crime together with any additional or supplemental data or information including all statements and conversations of persons arrested, and listing any crime theretofore reported which may be of aid in the investigation of such crime and the apprehension and conviction of the perpetrators thereof.

(Amended by Stats.1972, c. 1377, p. —, § 82.3.)

§ 11110. Record on reports of suspected infliction of physical injury upon minor and arrests for and convictions of violation of section 273a

The Department of Justice shall maintain records of all reports of suspected infliction of physical injury upon a minor by other than accidental means and reports of arrest for, and convictions of, violation of Section 273a. On receipt from a city police department, sheriff or district attorney of a copy of a report of suspected infliction of physical injury upon a minor by other than accidental means received from a physician and surgeon, dentist, resident, intern, chiropractor, religious practitioner, registered nurse employed by a public health agency, school, or school district, director of a county welfare department, or any superintendent of schools of any public or private school system or any principal of any public or private school, the department shall transmit to the city police department, sheriff or district attorney, information detailing all previous reports of suspected infliction of physical injury upon the same minor or another minor in the same family by other than accidental means and reports of arrests for, and convictions of violation of Section 273a, concerning the same minor or another minor in the same family.

The department may adopt rules governing recordkeeping and reporting under Section 11161.5.

(Amended by Stats.1972, c. 1377, p. —, § 83.)

§ 11111. Bicycles; stolen and lost; records; accessibility to law enforcement agencies; fees

The Department of Justice shall maintain records relative to stolen and lost bicycles in the Criminal Justice Information System. Such records shall be accessible to authorized law enforcement agencies through the California Law Enforcement Telecommunications System.

The department shall impose annual fees on cities and counties which have adopted bicycle licensing ordinances or resolutions in such amount as are necessary to finance the operation and maintenance of that portion of the Criminal Justice Information System devoted to the records relative to stolen and lost bicycles. The annual fee imposed by the department on a city or a county shall be paid by the city or county from the fees collected

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under its adopted bicycle licensing ordinance or resolution, and shall not exceed 20 cents ($0.20) per bicycle licensed under the ordinance or resolution.

(Added by Stats.1972, c. 885, p. —, § 2, urgency, eff. Aug. 15, 1972.)

Sections 3 and 3.5 of Stats.1972, c. 885, p. —, provide:

"Sec. 3. The Department of Justice shall conduct a comparative study to evaluate the following:

"(a) The records of stolen and lost bicycles specified in Section 11112 of the Penal Code.

"(b) The need to establish mandatory statewide registration and licensing with the related activities performed by: (1) the state; (2) local governments; (3) dealers; or (4) others.

"(c) The need for a statewide automated registration file or alternatives thereto.

In carrying out the study, the Department of Justice shall seek the advice and assistance of local authorities, bicycle manufacturers and retailers, and bicyclists' organizations.

A progress study report shall be submitted to the Legislature by February 1, 1974.

"Sec. 3.5. The Department of Justice is directed to make all necessary efforts to obtain federal and private funds for the purposes of carrying out its responsibilities under this act and is authorized, with the approval of the Department of Finance, to receive any grants or gifts for such purposes."

§ 11113. Fingerprints and description of decedents furnished by coroner

Each coroner shall furnish the Department of Justice promptly with copies of fingerprints on standardized eight-inch by eight-inch cards, and descriptions and other identifying data, including date and place of death, of all deceased persons whose deaths are in classifications requiring inquiry by the coroner. When it is not physically possible to furnish prints of the 10 fingers, prints or partial prints of any fingers, with other identifying data, shall be forwarded by the coroner to the department.

In all cases where there is a criminal record on file in the department for the decedent, the department shall notify the Federal Bureau of Investigation and each California sheriff and chief of police, in whose jurisdiction the decedent has been arrested, of the date and place of death of decedent.

(Amended by Stats.1972, c. 1377, p. —, § 83.5.)

ARTICLE 4. CRIMINAL RECORDS

Sec.

11116.7 Certificate of disposition; request by defendant; changes [New].

11116.8 Description of charge or charges in original and amended pleadings; disposition labels [New].

11116.9 Additional copies of disposition; fees [New].

§ 11115. Report on disposition of case

In any case in which a sheriff, police department or other law enforcement agency makes an arrest and transmits a report of the arrest to the Department of Justice or to the Federal Bureau of Investigation, it shall be the duty of such law enforcement agency to furnish a disposition report to such agencies whenever the arrested person is transferred to the custody of another agency or is released without having a complaint or accusation filed with a court.

If either of the following dispositions is made, the disposition report shall so state:

(a) "Arrested for intoxication and released," when the arrested party is released pursuant to paragraph (2) of subdivision (b) of Section 849.

(b) "Detention only," when the detained party is released pursuant to paragraph (1) of subdivision (b) of Section 849. In such cases the report shall state the specific reason for such release, indicating that there was no ground for making a criminal complaint because (1) further investigation exonerated the arrested party, (2) the complainant withdrew the complaint, (3) further investigation appeared necessary before prosecution could be initiated, (4) the ascertainable evidence as insufficient to proceed further, (5) the admissible or adducible evidence was insufficient to proceed further, or (6) other appropriate explanation for release.

When a complaint or accusation has been filed with a court against such an arrested person, the law enforcement agency having primary jurisdiction to investigate the offense alleged therein shall receive a disposition report of that case from the appropriate court and shall transmit a copy of the disposition report to all the bureaus to which arrest data has been furnished.

(Amended by Stats.1972, c. 1377, p. —, § 84.)

§ 11116. Report on disposition of case; disposition labels

Whenever a criminal complaint or accusation is filed in any superior, municipal or justice court, the clerk, or, if there be no clerk, the judge of that court shall furnish a disposition report of such case to the sheriff, police department or other law enforcement agency primarily responsible for the investigation of the crime alleged in a form prescribed or approved by the Department of Justice.

The disposition report shall state one or more of the following, as appropriate:

(a) "Dismissal in furtherance of justice, pursuant to Section 1385 of the Penal Code." In addition to this disposition label, the court shall set forth the particular reasons for the dismissal as stated in its order entered upon the minutes.

(b) "Case compromised; defendant discharged because restitution or other satisfaction was made to the injured person, pursuant to Sections 1377 and 1378 of the Penal Code."

(c) "Court found insufficient cause to believe defendant guilty of a public offense; defendant discharged without trial pursuant to Section 871 of the Penal Code."

(d) "Dismissal due to delay; action against defendant dismissed because the information was not filed or the action was not brought to trial within the time allowed by Section 1381, 1381.5, or 1382 of the Penal Code."

(e) "Accusation set aside pursuant to Section 995 of the Penal Code." In addition to this disposition label, the court shall set forth the particular reasons for the disposition.

(f) "Defective accusation; defendant discharged pursuant to Section 1008 of the Penal Code," when the action is dismissed pursuant to that section after demurrer is sustained, because no amendment of the accusatory pleading is permitted or amendment is not made or filed within the time allowed.

(g) "Defendant became a witness for the people and was discharged pursuant to Section 1099 of the Penal Code."

(h) "Defendant discharged at trial because of insufficient evidence, in order to become a witness for his codefendant pursuant to Section 1100 of the Penal Code."

(i) "Proceedings suspended; defendant found presently insane and committed to state hospital pursuant to Sections 1367 to 1372 of the Penal Code." If defendant later becomes sane and is legally discharged pursuant to Section 1372, his disposition report shall so state.

(j) "Convicted of (state offense)." The disposition report shall state whether defendant was convicted on plea of guilty, on plea of nolo contendere, by jury verdict, or by court finding and shall specify the sentence imposed, including probation granted, suspension of sentence, imposition of sentence withheld, or fine imposed, and if fine was paid.

(k) "Acquitted of (state offense)," when a general "not guilty" verdict or finding is rendered.

(*l*) "Not guilty by reason of insanity," when verdict or finding is that defendant was insane at the time the offense was committed.

(m) "Acquitted; proof at trial did not match accusation," when defendant is acquitted by reason of variance between charge and proof pursuant to Section 1151.

(n) "Acquitted; previously in jeopardy," when defendant is acquitted on a plea of former conviction or acquittal or once in jeopardy pursuant to Section 1151.

(o) "Judgment arrested; defendant discharged," when the court finds defects in the accusatory pleading pursuant to Sections 1185 to 1187, and defendant is released pursuant to Section 1188.

(p) "Judgment arrested; defendant recommitted," when the court finds defects in the accusatory pleading pursuant to Sections 1185 to 1187, and defendant is recommitted to answer a new indictment or information pursuant to Section 1188.

(q) "Mistrial; defendant discharged." In addition to this disposition label, the court shall set forth the particular reasons for its declaration of a mistrial.

(r) "Mistrial; defendant recommitted." In addition to this disposition label, the court shall set forth the particular reasons for its declaration of a mistrial.

(s) Any other disposition by which the case was terminated. In addition to the disposition label, the court shall set forth the particular reasons for the disposition.

Whenever a court shall dismiss the accusation or information against a defendant under the provisions of Section 1203.4 of this code, and whenever a court shall order the record of a minor sealed under the provisions of Section 851.7 or Section 1203.45 of this code, the clerk, or, if there be no clerk, the judge of that court shall furnish a report of such proceedings to

the Department of Justice and shall include therein such information as may be required by said department.

(Amended by Stats.1972, c. 1377, p. —, § 85.)

§ 11116.7 Certificate of disposition; request by defendant; changes

Whenever an accusatory pleading is filed in any court of this state alleging a public offense for which a defendant may be punished by incarceration, for a period in excess of 90 days, the court shall furnish upon request of the defendant named therein a certificate of disposition which describes the disposition of the accusatory pleading in that court when such disposition is one described in Section 11116. The certificate of disposition shall be signed by the judge, shall substantially conform with the requirements of Section 11116.8, and the seal of the court shall be affixed thereto.

In the event that the initial disposition of the accusatory pleading is changed, a new disposition certificate showing the changed disposition shall be issued by the court changing the same upon request of the defendant or his counsel of record.

(Added by Stats.1972, c. 1279, p. —, § 1.)

§ 11116.8 Description of charge or charges in original and amended pleadings; disposition labels

The certificate of disposition provided by Section 11116.7 shall describe the charge or charges set forth in the original and any amended accusatory pleading, together with the disposition of each charge in the original and any amended accusatory pleading by stating one or more of the disposition labels, as appropriate, set forth in Section 11116.

(Added by Stats.1972, c. 1279, p. —, § 2.)

§ 11116.9 Additional copies of disposition; fees

The clerk of the court in which the disposition is made shall provide the defendant or his counsel of record with additional certified copies of the disposition certificate upon the payment of the fees provided by law for certified copies of court records.

(Added by Stats.1972, c. 1279, p. —, § 3.)

§ 11117. Procedures and forms; record of disposition; time for forwarding reports; inadmissible in civil cases

The Department of Justice shall prescribe and furnish the procedures and forms to be used for the disposition reports required in this article. The department shall add the disposition reports received to all appropriate criminal records.

The disposition reports required in this article shall be forwarded to the department and the Federal Bureau of Investigation within 30 days after the release of the arrested or detained person or the termination of court proceedings.

Neither the disposition reports nor the disposition labels required in this article shall be admissible in evidence in any civil action.

(Amended by Stats.1972, c. 1377, p. —, § 86.)

ARTICLE 5. EXAMINATION OF RECORDS

§ 11120. Record defined

As used in this article, "record" with respect to any person means the master record sheet maintained under such person's name by the Department of Justice, and which is commonly known as "arrest record," "criminal record sheet," or "rap sheet." "Record" does not include any other records of the department.

(Amended by Stats.1972, c. 1377, p. —, § 86.1.)

§ 11122. Submission of application; fee

Any person desiring to examine a record relating to himself shall obtain from the chief of police of the city of his residence, or, if not a resident of a city, from the sheriff of his county of residence, or from the office of the department, an application form furnished by the department which shall require his fingerprints in addition to such other information as the department shall specify. The city or county, as applicable, may fix a reasonable fee for affixing the applicant's fingerprints to the form, and shall retain such fee for deposit in its treasury.

(Amended by Stats.1972, c. 1377, p. —, § 86.2.)

§ 11123. Submission of application; fee

The applicant shall submit the completed application directly to the department. The application shall be accompanied by a fee of five dollars ($5) or such higher amount, not to exceed ten dollars ($10) that the department determines equals the costs of processing the application and making a record available for examination. All fees received by the department under this section are hereby appropriated without regard to fiscal years for the support of the Department of Justice in addition to such other funds as may be appropriated therefor by the Legislature.

(Amended by Stats.1972, c. 1377, p. —, § 86.3.)

§ 11124. Notice of existence of record; time of inspection; examination; authority to take notes

When an application is received by the department, the department shall determine whether a record pertaining to the applicant is maintained. If such record is maintained, the department shall inform the applicant by mail of the existence of the record and shall specify a time when the record may be examined at a suitable facility of the department. Upon verification of his identity, the applicant shall be allowed to examine the record pertaining to him, or a true copy thereof, for a period not to exceed one hour. The applicant may not retain or reproduce the record, but he may make a written summary or notes in his own handwriting.

(Amended by Stats.1972, c. 1377, p. —, § 86.4.)

§ 11125. Application of prisoner; place of examination of record

If the applicant is imprisoned in the state prison or confined in the county jail, his application shall be through the office in charge of records of the prison or jail. Such offices shall follow the provisions of this article

applicable to cities and counties with respect to applications and fees. When an application is transmitted to the department pursuant to this section, the department shall make arrangements for the applicant to examine the record at his place of confinement. In all other respects, the provisions of Section 11124 shall govern the examination of the record.

(Amended by Stats.1972, c. 1377, p. —, § 86.5.)

§ 11126. Correction of record; written request for clarification; notice to applicant of determination; administrative adjudication; judicial review

(a) If the applicant desires to question the accuracy or completeness of any matter contained in the record, he may submit a written request, to the department in a form established by it. The request shall include a statement of the alleged inaccuracy or incompleteness in the record, and specify any proof or corroboration available. Upon receipt of such request, the department shall forward it to the person or agency which furnished the questioned information. Such person or agency shall, within 30 days of receipt of such written request for clarification, review its information and forward to the department the results of such review.

(b) If such agency concurs in the allegations of inaccurateness or incompleteness in the record, it shall correct its record and shall so inform the department, which shall correct the record accordingly. The department shall inform the applicant of its correction of the record under this subdivision within 30 days.

(c) If such agency denies the allegations of inaccurateness or incompleteness in the record, the matter shall be referred for administrative adjudication in accordance with Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2 of the Government Code for a determination of whether inaccuracy or incompleteness exists in the record. The agency from which the questioned information originated shall be the respondent in the hearing. If an inaccuracy or incompleteness is found in any record, the agency in charge of that record shall be directed to correct it accordingly. Judicial review of the decision shall be governed by Section 11523 of the Government Code. The applicant shall be informed of the decision within 30 days of its issuance in accordance with Section 11518 of the Government Code.

(Amended by Stats.1972, c. 1377, p. —, § 86.6.)

§ 11127. Regulations

The department shall adopt all regulations necessary to carry out the provisions of this article.

(Amended by Stats.1972, c. 1377, p. —, § 86.7.)

CHAPTER 2. CONTROL OF CRIMES AND CRIMINALS

§ 11150. Release from penal institution, notice

Prior to the release of a person convicted of arson from an institution under the jurisdiction of the Department of Corrections, the Director of Corrections shall notify the State Fire Marshal and the Department of

Operative July 1, 1978.

Provides that neither appropriation is made nor obligation created for the reimbursement of any local agency for any costs incurred by it pursuant to the act.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no state funding.

The people of the State of California do enact as follows:

SECTION 1. Chapter 2 (commencing with Section 13100) is added to Title 3 of Part 4 of the Penal Code, to read:

CHAPTER 2. CRIMINAL OFFENDER RECORD INFORMATION

Article 1. Legislative Findings and Definitions

13100. The Legislature finds and declares as follows:

(a) That the criminal justice agencies in this state require, for the performance of their official duties, accurate and reasonably complete criminal offender record information.

(b) That the Legislature and other governmental policymaking or policy-researching bodies, and criminal justice agency management units require greatly improved aggregate information for the performance of their duties.

(c) That policing agencies and courts require speedy access to information concerning all felony and selected misdemeanor arrests and final dispositions of such cases.

(d) That criminal justice agencies may require regular access to detailed criminal histories relating to any felony arrest that is followed by the filing of a complaint.

(e) That, in order to achieve the above improvements, the recording, reporting, storage, analysis, and dissemination of criminal offender record information in this state must be made more uniform and efficient, and better controlled and coordinated.

13101. As used in this chapter, "criminal justice

1 agencies" are those agencies at all levels of government
2 which perform as their principal functions, activities
3 which either:
4 (a) Relate to the apprehension, prosecution,
5 adjudication, incarceration, or correction of criminal
6 offenders; or
7 (b) Relate to the collection, storage, dissemination or
8 usage of criminal offender record information.
9 13102. As used in this chapter, "criminal offender
10 record information" means records and data compiled by
11 criminal justice agencies for purposes of identifying
12 criminal offenders and of maintaining as to each such
13 offender a summary of arrests, pretrial proceedings, the
14 nature and disposition of criminal charges, sentencing,
15 incarceration, rehabilitation, and release.
16 Such information shall be restricted to that which is
17 recorded as the result of an arrest, detention, or other
18 initiation of criminal proceedings or of any consequent
19 proceedings related thereto. It shall be understood to
20 include, where appropriate, such items for each person
21 arrested as the following:
22 (a) Personal identification.
23 (b) The fact, date, and arrest charge; whether the
24 individual was subsequently released and, if so, by what
25 authority and upon what terms.
26 (c) The fact, date, and results of any pretrial
27 proceedings.
28 (d) The fact, date, and results of any trial or
29 proceeding, including any sentence or penalty.
30 (e) The fact, date, and results of any direct or
31 collateral review of that trial or proceeding; the period
32 and place of any confinement, including admission,
33 release; and, where appropriate, readmission and
34 rerelease dates.
35 (f) The fact, date, and results of any release
36 proceedings.
37 (g) The fact, date, and authority of any act of pardon
38 or clemency.
39 (h) The fact and date of any formal termination to the
40 criminal justice process as to that charge or conviction.

1 (i) The fact, date, and results of any proceeding
2 revoking probation or parole.
3 It shall not include intelligence, analytical, and
4 investigative reports and files, nor statistical records and
5 reports in which individuals are not identified and from
6 which their identities are not ascertainable.
7
8 Article 2. Recording Information
9
10 13125. All basic information stored in state or local
11 criminal offender record information systems shall be
12 recorded, when applicable and available, in the form of
13 standard data elements. Such standard data elements
14 shall include, but not be limited to:
15
16 The following personal identification data:
17 Name—(full name)
18 Aliases
19 Monikers
20 Race
21 Sex
22 Date of birth
23 Place of birth (state or country)
24 Height
25 Weight
26 Hair color
27 Eye color
28 CII number
29 FBI number
30 Social security number
31 California operators license number
32 Fingerprint classification number
33 Henry
34 NCIC
35 Address
36 The following arrest data:
37 Arresting agency
38 Booking number
39 Date of arrest
40 Offenses charged

1 Statute citations
2 Literal descriptions
3 Police disposition
4 Released
5 Turned over to
6 Complaint filed
7 The following lower court data:
8 County and court name
9 Date complaint filed
10 Original offenses charged in complaint to superior
11 court
12 Held to answer
13 Certified plea
14 Disposition—lower court
15 Not convicted
16 Dismissed
17 Acquitted
18 Court trial
19 Jury trial
20 Convicted
21 Plea
22 Court trial
23 Jury trial
24 Date of disposition
25 Convicted offenses
26 Sentence
27 Proceedings suspended
28 Reason suspended
29 The following superior court data:
30 County
31 Date complaint filed
32 Type of proceeding
33 Indictment
34 Information
35 Certification
36 Original offenses charged in indictment or information
37 Disposition
38 Not convicted
39 Dismissed
40 Acquitted

1 Court trial
2 Jury trial
3 On transcript
4 Convicted—felony, misdemeanor
5 Plea
6 Court trial
7 Jury trial
8 On transcript
9 Date of disposition
10 Convicted offenses
11 Sentence
12 Proceedings suspended
13 Reason suspended
14 Source of reopened cases
15 The following corrections data:
16 Adult probation
17 County
18 Type of court
19 Court number
20 Offense
21 Date on probation
22 Date removed
23 Reason for removal
24 County jail (sentenced prisoners only)
25 Name of jail, camp, or other
26 Convicted offense
27 Sentence
28 Date received
29 Date released
30 Reason for release
31 Committing agency
32 Youth Authority
33 County
34 Type of court
35 Court number
36 Youth Authority number
37 Date received
38 Convicted offense
39 Type of receipt
40 Original commitment

Parole violator
Date released
Type of release
Custody
Supervision
Date terminated
Department of Corrections
County
Type of court
Court number
Department of Corrections number
Date received
Convicted offense
Type of receipt
Original commitment
Parole violator
Date released
Type of release
Custody
Supervision
Date terminated
Mentally disordered sex offenders
County
Hospital number
Date received
Date discharged
Recommendation

13126. The Department of Justice shall, when necessary, modify the list of data elements enumerated in Section 13125, in accord with changes in criminal justice procedures or the organization of criminal justice agencies.

13127. Each recording agency shall insure that each portion of a criminal offender record that it originates shall include, for all felonies and reportable misdemeanors, the state or local unique and permanent fingerprint identification number, within 72 hours of origination of such records, excluding Saturday, Sunday, and holidays.

Article 3. Reporting Information

13150. For each arrest made, the reporting agency shall report to the Department of Justice, concerning each arrest, the applicable identification and arrest data described in Section 13125, including any modification under Section 13126, and fingerprints, except as otherwise provided by law.

13151. The court dispositions of such cases shall be reported by the appropriate agency within 10 days of such disposition. Admissions or releases from detention facilities shall be reported within 10 days of such actions.

13152. Each criminal justice agency filing a complaint subsequent to an arrest where a felony charge is recorded at the time of arrest or booking, and every criminal justice agency taking action towards an offender subsequent to such complaint, shall report, in a form to be determined by the Department of Justice, such information as the Department of Justice requires. The minimum required shall include, but not be limited to, the appropriate data elements enumerated in Section 13125, including any modification under Section 13126, describing those actions initiated or carried out by the agency.

13153. Criminal justice agencies shall report such additional criminal offender record information as the Department of Justice requires, provided that data relating to arrests for being found in any public place under the influence of intoxicating liquor under subdivision (f) of Section 647 shall not be reported or maintained by the Department of Justice without special individual justification.

Article 4. Information Service

13175. When a criminal justice agency supplies fingerprints, or a fingerprint identification number, or such other personal identifiers as the Department of Justice deems appropriate, to the Department of Justice, such agency shall, upon request, be provided with

identification, arrest, and, where applicable, final disposition data relating to such person within 72 hours of receipt by the Department of Justice.

13176. When a criminal justice agency entitled to such information supplies fingerprints, or a fingerprint identification number, or such other personal identifiers as the Department of Justice deems appropriate, to the Department of Justice, such agency shall, upon request, be provided with the criminal history of such person, or the needed portion thereof, within 72 hours of receipt by the Department of Justice.

13177. Nothing in this chapter shall be construed so as to prevent the Attorney General from requiring criminal justice agencies to report more information, *if such information is a public record,* than this chapter requires or to record or report it more quickly, or to establish any other regulations *authorized by this chapter or any other provision of law* that would improve ~~the administration of justice.~~ *criminal justice information systems.*

Article 5. Access to Information

13200. Nothing in this chapter shall be construed to affect the right of access of any person or public agency to individual criminal offender record information that is authorized by any other provision of law.

13201. Nothing in this chapter shall be construed to authorize access of any person or public agency to individual criminal offender record information unless such access is otherwise authorized by law.

13202. Every public agency or research body immediately concerned with the prevention or control of crime, the quality of criminal justice, or the custody or correction of offenders shall be provided with such aggregated criminal offender record information as is required for the performance of its duties, or the execution of research projects relating to the activities of criminal justice agencies or changes in legislative or executive policies, insofar as the technical or financial resources of statistical agencies permit, provided that all

material identifying individuals has been removed, and provided that such agency or body pays the cost of the processing of such data when necessary.

SEC. 2. This act shall become operative July 1, 1978.

SEC. 3. No appropriation is made by this act, nor is any obligation created thereby under Section 2164.3 of the Revenue and Taxation Code, for the reimbursement of any local agency for any costs that may be incurred by it in carrying on any program or performing any service required to be carried on or performed by it by this act. This legislation consists of technical changes to statutes enacted prior to January 1, 1973, and therefore does not mandate a local governmental program under Section 2164.3 of the Revenue and Taxation Code.

§ 781. Petition for sealing of records in custody of juvenile court and probation officer, etc.: Effect of order to seal records

In any case in which a petition has been filed with a juvenile court to commence proceedings to adjudge such person a dependent child or ward of the court or in any case in which a person is cited to appear before a probation officer or is taken before a probation officer pursuant to Section 626, or in any case in which a minor is taken before any officer of a law enforcement agency, such person or county probation officer, may, five years or more after the jurisdiction of the juvenile court has terminated as to such person or, in a case in which no petition is filed, five years or more after such person was cited to appear before a probation officer or was taken before a probation officer pursuant to Section 626, or was taken before any officer of a law enforcement agency, or, in any case, at any time after such person has reached the age of 21 years, petition the court for sealing of the records, including records of arrest, relating to such person's case, in the custody of the juvenile court and probation officer and such other agencies, including law enforcement agencies, and public officials, as petitioner alleges, in his petition, to have custody of such records. The court shall notify the district attorney of the county and the county probation officer, if he is not the petitioner of the petition, and such district attorney or probation officer or any of their deputies or any other person having relevant evidence may testify at the hearing on the petition. If, after hearing, the court finds that since such termination of jurisdiction or action pursuant to Section 626, as the case may be, he has not been convicted of a felony or of any misdemeanor involving moral turpitude and that rehabilitation has been attained to the satisfaction of the court, it shall order sealed all records, papers, and exhibits in such person's case in the custody of the juvenile court, including the juvenile court record, minute book entries, and entries on dockets, and other records relating to the case in the custody of such other agencies and officials as are named in the order. Thereafter the proceedings in such case shall be deemed never to have occurred, and such person may properly reply accordingly to any inquiry about the events, records of which are ordered sealed. The court shall send a copy of the order to each agency and official named therein, and each such agency and official shall seal records in its custody as directed by the order, shall advise the court of its compliance, and thereupon shall seal the copy of the court's order for sealing of records that it or he received. The person who is the subject of records sealed pursuant to this section may petition the superior court to permit inspection of the records by persons named in the petition, and the superior court may so order. Otherwise such records shall not be open to inspection.

Note—See Recommendation and Study by California Law Revision Commission, dated October 1960, relating to the right to counsel and the separation of the delinquent from the nondelinquent minor in juvenile court proceedings.

Legislative History:

1. Added by Stats 1961 ch 1616 § 2 p 3493. Based on former § 752, as added by Stats 1959 ch 1723 § 1 p 4132.

2. Amended by Stats 1961 ch 1673 § 2 p 3640, (1) substituting "became" for "has been adjudged" after "in which a person"; (2) adding "for the reasons described in Section 601 or Section 602," after "juvenile court"; (3) substituting "sealing" for "expungement" after "petition the court for"; (4) substituting "sealed" for "expunged" after "it shall order"; (5) adding ", and such former ward may properly reply accordingly to any inquiry about the events, records of which are ordered sealed" after "have occurred"; (6) substituting "seal" for "expunged" after "official shall"; and (7) adding "shall advise the court of its compliance, and thereupon shall seal the copy of the court's order for sealing of records that it or he received. The persons who is the subject of records sealed pursuant to this section may petition, the superior court to permit inspection of the records by person named in the petition, and the superior court may so order. Otherwise such records shall not be open to inspection" after "directed by the order."

3. Amended by Stats 1963 ch 1761 § 8 p 3515, substituting "petition has been filed with a juvenile court to commence proceedings to adjudge such person a dependent child or ward of the court" for "person became a ward of the juvenile court for the reasons described in Section 601 or Section 602" after "In any case in which a" at the beginning of the section.

4. Amended by Stats 1965 ch 1413 § 1 p 3330, (1) adding "or in any case in which a person is cited to appear before a probation officer or is taken before a probation officer pursuant to Section 626" after "ward of the court"; (2) adding "or, in a case in which no petition is filed, five years or more after such person was cited to appear before a probation officer, or was taken before a probation officer pursuant to Section 626," after "to such person"; (3) adding "or action pursuant to Section 626, as the case may be," after "jurisdiction"; and (4) substituting "person" for "former ward" after "and such."

5. Amended by Stats 1967 ch 1649 § 1 p 3951.

6. Amended by Stats 1967 ch 1650 § 1 p 3952, adding (1) "or in any case in which a minor is taken before any officer of a law enforcement agency" after "Section 626,"; and (2) "or was taken before any officer of a law enforcement agency, or, in any case, at any time after such person has reached the age of 21 years" after "Section 626."

Former § 781, similar to CC § 236, was enacted 1937 and repealed by Stats 1961 ch 1616 § 1 p 3459.

PRACTICE REMINDERS

When a minor has been proceeded against in juvenile court for criminal offenses under provisions of this section and not referred to the Youth Authority, he should answer in the affirmative when questioned concerning his arrest when applying for employment, unless his records had been expunged. Since he may reply in the negative if the records have been expunged, counsel may find it desirable to petition for expungement of records under this section.

A petition filed under this section may be submitted over a verification in the form of a certification or declaration made under penalty of perjury in lieu of a sworn statement made under oath.

Collateral References:

Cal Jur 2d Delinquent, Dependent, and Neglected Children §§ 10, 13 et seq.
McKinney's Cal Dig Delinquent, Dependent and Neglected Children § 12.
Am Jur Juvenile Courts and Delinquent, Dependent, and Neglected Children (rev ed §§ 31 et seq., 79).

Trial Techniques:
14 Am Jur Trials p 701 (expungement of records in juvenile court proceedings).

Law Review Articles:
Measures to curtail postadjudication stigma in juvenile court proceedings. 51 CLR 435.
Sealing of juvenile records. 3 Santa Clara Law 119.
Re-evaluation of California juvenile justice as to sealing of records. 19 Hast LJ 99.
Expungement myth. 38 LA Bar B 161.
Wiping out criminal or juvenile record. 40 St BJ 816.

Attorney General's Opinions:
40 Ops Atty Gen 50 (filing, etc. of sealed records of juveniles).
43 Ops Atty Gen 288 (proper answer by applicant for employment to question of whether applicant has ever been arrested where he is or was minor proceeded against in Juvenile Court).

Annotations:
Constitutionality, construction, and application of statutory provision against use in evidence in any other case of records or evidence in juvenile court proceedings. 147 ALR 443.

TITLE 8. OF JUDGMENT AND EXECUTION

CHAPTER 1. THE JUDGMENT

§ 1203.45 Petition for order sealing records; exceptions

(a) In any case in which a person was under the age of 18 years at the time of commission of a misdemeanor and is eligible for, or has previously received, the relief provided by Section 1203.4 or 1203.4a, such person, in a proceeding under Section 1203.4 or 1203.4a, or a separate proceeding, may petition the court for an order sealing the record of conviction and other official records in the case, including records of arrests resulting in the criminal proceeding and records relating to other offenses charged in the accusatory pleading, whether defendant was acquitted or charges were dismissed. If the court finds that such person was under the age of 18 at the time of the commission of the misdemeanor, and is eligible for relief under Section 1203.4 or 1203.4a or has previously received such relief, it may issue its order granting the relief prayed for. Thereafter such conviction, arrest, or other proceeding shall be deemed not to have occurred, and the petitioner may answer accordingly any question relating to their occurrence.

(b) This section applies to convictions which occurred before, as well as those which occur after, the effective date of this section.

(c) This section shall not apply to offenses for which registration is required under Section 290, to violations of Division 10 (commencing with Section 11000) of the Health and Safety Code, or to misdemeanor violations of the Vehicle Code relating to operation of a vehicle or of any local ordinance relating to operation, standing, stopping, or parking of a motor vehicle.

(d) This section does not apply to a person convicted of more than one offense, whether the second or additional convictions occurred in the same action in which the conviction as to which relief is sought occurred or in another action, except in the following cases:

(1) One of the offenses includes the other or others.

(2) The other conviction or convictions were for the following:

(i) Misdemeanor violations of Chapters 1 (commencing with Section 21000) to 9 (commencing with Section 22500), inclusive, or Chapters 12 (commencing with Section 23100) to 14 (commencing with Section 23340), inclusive, of Division 11 of the Vehicle Code, other than Sections 23101 to 23108, inclusive, or Section 23121.

(ii) Violation of any local ordinance relating to the operation, stopping, standing, or parking of a motor vehicle.

(3) The other conviction or convictions consisted of any combination of paragraphs (1) and (2).

(e) In any action or proceeding based upon defamation, a court, upon a showing of good cause, may order any records sealed under this section to be opened and admitted into evidence. The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties, and any other person who is authorized by the court to inspect them. Upon the judgment in the action or proceeding becoming final, the court shall order the records sealed.

(Amended by Stats.1972, c. 579, p. —, § 38.)

§ 851.7 Petition to seal court records by person arrested for misdemeanor while a minor; grounds; exceptions

(a) Any person who has been arrested for a misdemeanor, with or without a warrant, while a minor, may, during or after minority, petition the court in which the proceedings occurred or, if there were no court proceedings, the court in whose jurisdiction the arrest occurred, for an order sealing the records in the case, including any records of arrest and detention, if any of the following occurred:

(1) He was released pursuant to paragraph (1) of subdivision (b) of Section 849.

(2) Proceedings against him were dismissed, or he was discharged, without a conviction.

(3) He was acquitted.

(b) If the court finds that the petitioner is eligible for relief under subdivision (a), it shall issue its order granting the relief prayed for. Thereafter, the arrest, detention, and any further proceedings in the case shall be deemed not to have occurred, and the petitioner may answer accordingly any question relating to their occurrence.

(c) This section applies to arrests and any further proceedings that occurred before, as well as those that occur after, the effective date of this section.

(d) This section does not apply to any person taken into custody pursuant to Section 625 of the Welfare and Institutions Code, or to any case within the scope of Section 781 of the Welfare and Institutions Code, unless, after a finding of unfitness for the juvenile court or otherwise, there were criminal proceedings in the case, not culminating in conviction. If there were criminal proceedings not culminating in conviction, this section shall be applicable to such criminal proceedings if such proceedings are otherwise within the scope of this section.

(e) This section does not apply to arrests for, and any further proceedings relating to, any of the following:

(1) Offenses for which registration is required under Section 290.

(2) Offenses under Division 10 (commencing with Section 11000) of the Health and Safety Code.

(3) Offenses under the Vehicle Code or any local ordinance relating to the operation, stopping, standing, or parking of a vehicle.

(f) In any action or proceeding based upon defamation, a court, upon a showing of good cause, may order any records sealed under this section to be opened and admitted in evidence. The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties, and any other person who is authorized by the court to inspect them. Upon the judgment in the action or proceeding become final, the court shall order the records sealed.

(Added by Stats.1967, c. 1373, p. 3223, § 1. Amended by Stats.1970, c. 497, p. 978, § 1.)

Cross References

Petition for order sealing records, see § 1203.45.

§ 2947. Communications intended to deprive discharged prisoner from employment or to extort; threats; offense

Any person who knowingly and wilfully communicates to another, either orally or in writing, any statement concerning any person then or theretofore convicted of a felony, and then finally discharged, and which communication is made with the purpose and intent to deprive said person so convicted of employment, or to prevent him from procuring the same, or with the purpose and intent to extort from him any money or article of value; and any person who threatens to make any said communication with the purpose and intent to extort money or any article of value from said person so convicted of a felony is guilty of a misdemeanor.

(Added by Stats.1941, c. 106, p. 1108, § 15.)

Cross References

Communications intended to deprive parolees from employment or to extort funds, prohibition of, see § 3058.
Definitions,
 Felony, see § 17.
 Misdemeanor, see § 17.
Punishment for misdemeanor, see §§ 19, 19a.
Threats inducing fear to expose commission of a crime, see § 519.
Use of photograph or fingerprints to detriment of employee or applicant for employment, see Labor Code § 1051.

§ 3058. Communications intended to deprive parolee from employment or to extort; threats; offense

Any person who knowingly and wilfully communicates to another, either orally or in writing, any statement concerning any person then or theretofore convicted of a felony, and then on parole, and which communication is made with the purpose and intent to deprive said person so convicted of employment, or to prevent him from procuring the same, or with the purpose and intent to extort from him any money or article of value; and any person who threatens to make any said communication with the purpose and intent to extort money or any article of value from said person so convicted of a felony, is guilty of a misdemeanor.

(Added by Stats.1941, c. 106, p. 1113, § 15.)

Cross References

Discharged prisoners, similar provision protecting, see § 2947.
Extortion defined, see § 518.
Felony defined, see § 17.
Misdemeanor,
 Defined, see § 17.
 Punishment, see §§ 19, 19a.

The people of the State of California do enact as follows:

SECTION 1. Article 6 (commencing with Section 11140) is added to Chapter 1 of Title 1 of Part 4 of the Penal Code, to read:

Article 6. Unlawful Furnishing of Master Record Sheet

11140. As used in this article:

(a) "Record" means the master record sheet, or a copy thereof, maintained under a person's name by the Department of Justice, and which is commonly known as "arrest record," "criminal record sheet," or "rap sheet." "Record" does not include any other records or files of the Department of Justice.

(b) "A person authorized by law to receive a record" means any person or public agency authorized by *a court order or by* a specific statute of the State of California to receive a ~~record as defined in subdivision (a), or any public agency which, or public officer or official who, needs the information contained in such a record for the performance of an official function.~~ *record.*

11141. Any employee of the Department of Justice who knowingly furnishes a record, or information ~~obtained from a record, to a person whom he knows is not authorized pursuant to law to receive such record or information is guilty of a misdemeanor.~~ *obtained from a record, to a person who is not authorized by law to receive a record or information is guilty of a misdemeanor.*

11142. Any person authorized *by law* to receive a record *, or information obtained from a record,* ~~pursuant to law who knowingly furnishes the record, or~~ *who knowingly furnishes the record, or* information obtained from ~~such~~ *a* record, to a person ~~whom he knows~~ ~~is~~ not authorized by law to receive ~~such~~ *a* record or information is guilty of a misdemeanor.

11143. ~~Every~~ *Any* person who, knowing he is not ~~authorized pursuant to law to receive a record or~~

authorized by law to receive a record or information obtained from ~~such~~ *a* record, ~~buys or receives~~ *knowingly buys, receives, or possesses* ~~such~~ *a* record or information is guilty of a misdemeanor.

11144. (a) It is not a violation of ~~Section 11141 or 11142 to disseminate for statistical or research purposes~~ *this article to disseminate statistical or research* information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(b) It is not a violation of ~~Section 11141 or 11142 for a law enforcement agency~~ *this article* to disseminate information obtained from a record for the purpose of assisting in the apprehension of a person wanted ~~by that agency~~ in connection with the commission of a crime.

SEC. 2. The sum of ________ dollars ($________) is hereby appropriated from the General Fund to the State Controller for allocation and disbursement to local agencies pursuant to Section 2164.3 of the Revenue and Taxation Code to reimburse such agencies for costs incurred by them pursuant to this act.

California

Department of Justice Policy

Record Retention Criteria

The Record Purging Subcommittee of the Interdivision Committee on Criminal Records recommends that the following record retention criteria be implemented by the Department of Justice.

I. *The Bureau of Identification discontinue creating records for certain specified and limited subjects.* These include:

a. Subjects arrested for drunk, 647(f) PC, unless the local reporting agency indicates that the arrest was for being under the influence of drugs.

b. Subjects arrested for violation of local ordinance, except for those ordinances falling within classifications of statewise interest which will be developed by a special committee of CPOA by January 10.

c. Subjects arrested for minor traffic offenses. A minor traffic offense is defined as any traffic offense which is not listed in Attachment 1.

d. Subjects arrested for such minor or nonspecific offenses as "investigation," "suspicion," "lodger," "inquiry," or "disorderly," except where specific reference to an offense which is otherwise recordable is provided by the reporting agency. (See attachment 2)

e. Subjects of an applicant clearance request unless submitted by a state agency with whom the department has a contract to provide notification service in the event of a subsequent arrest.

II. *The Bureau of Identification discontinue adding to existing records those types of dispositions and reports listed in recommendation I.*

III. *The Bureau of Identification establish realistic retention periods and develop a purge program.* The retention periods are as follows:

a. Zero retention period for arrests and applicant clearances which are referred to in recommendations I and II.

b. A 5-year retention period for misdemeanor arrests not resulting in a conviction, or arrests which are later termed a "detention only" under PC 849(b). The retention period is to begin running on the date of arrest or detention.

c. A 7-year retention period for misdemeanor arrests resulting in a conviction with the retention period commencing at the date of arrest.

d. A 7-year retention period for arrests not resulting in a conviction for an offense where a prior constitutes a felony, for an offense which would be a felony depending upon disposition, and for felonies. The retention period is to begin running on the date of arrest.

e. A modified lifetime retention period for a conviction of an offense where a prior constitutes a felony, of an offense which would be a felony depending upon disposition, and of a felony. If the subject lives to age 70,and has had no contacts with the criminal justice system since age 60, the record will be purged from Department of Justice files. If the individual has had contact with the criminal justice system after age 60, his record will be maintained for the applicable retention period, or in the case of a felony or similar offense, for a 10-year period commencing with the date of release from supervision.

f. Applicant prints maintained pursuant to a contract with a state agency shall be retained until the contracting agency indicates it is no longer interested in the subject or until the contract is terminated.

Excluded from retention periods will be convictions requiring registration under Penal Code § 290 so long as registration is required.

IV. *The Bureau of Identification will arrange with the Department of Health to receive copies of death certificates for the purpose of purging from its files deceased persons. Records on individuals known to be deceased will be maintained for a 3-year period after the individual's date of death.*

ATTACHMENT 1

RECORDABLE TRAFFIC OFFENSES

Section number	Code	Description
20	VC	False statements.
31	VC	Giving false information to peace officer.
480	VC	Hit and run/death or injury.
481	VC	Hit and run/property damage.
501	VC	Felony drunk/narcotic driving.
502	VC	Misdemeanor drunk/narcotic driving.
503	VC	Take auto without owner's consent.
504	VC	Tamper with auto.
506(a)	VC	DUI narcotic drug.
506(b)	VC	DUI nonnarcotic drug.
506.1	VC	DUI dangerous drugs.
2261	VC	Impersonating CHP officer.
4463	VC	Forge/alter auto registration, etc.
Division 4	VC	Pertaining to theft, including altering/changing vehicle identification number, etc.
10850	VC	Taking auto without owner's consent.
10851	VC	Do.
10852	VC	Tampering with auto.
10853	VC	Malicious mischief to auto.
10854	VC	Felony tampering with auto.
10855	VC	Embezzlement of rented auto.
11500	VC	Dismantling without a permit.
11520	VC	Dismantling vehicle without notifying DMV.
11700	VC	Dealer, manufacturer, or transporter without license.
11711	VC	Fraud.
11713	VC	Unlawful acts.
11800	VC	Vehicle sales without license.
11806	VC	Proscribed activities.
14601	VC	Driving with suspended or revoked license.
20001	VC	Hit and run/death or injury.
20002(a)	VC	Property damage.
23101	VC	Felony drunk/narcotic driving.
23101.5	VC	DUI Toluene/poison, felony.
23102	VC	Misdemeanor drunk driving.
23102(a)	VC	Do.
23102(b)	VC	Do.
23102.5	VC	DUI Toluene/poison, misdemeanor.
23102.5(a)	VC	Do.
23102.5(b)	VC	Do.
23103	VC	Reckless driving.
23104	VC	Reckless driving with injury.
23105	VC	DUI narcotic drug.
23105.5(a)	VC	DUI Toluene/poison, misdemeanor.
23106	VC	Nonnarcotic drugs, misdemeanor.
23108	VC	Nonnarcotic drugs, felony.
23109	VC	Speed contests.
23110(a)	VC	Throwing at vehicles, misdemeanor.

Attachment 2.—Minor and Nonspecific Offenses

1. Investigation.
2. Suspicion.
3. Lodger or sleeper.
4. General principles.
5. Inquiry.
6. Attachment contempt of court (no charge).
7. Attempt (no charge given).
8. Bench warrant (no charge given).
9. Bond jumping (no charge given).
10. Disorderly.
11. Disorderly conduct, DOC, disorderly conduct drunk, etc.
12. Drunk in/about vehicle.
13. Fail to identify.
14. Juvenile (no charge given).
15. No driver's license.
16. No driver's license in possession.
17. Order to show cause (no charge given).
18. Possession of alcohol by minor (25662 B&P Code).
19. Trespass.

Senator ERVIN. You have made many helpful suggestions. I know that my State for the first time is trying to have annual meetings of the legislature—and it is sort of unofficial—the constitution provides for 2 years. And that is true in some States. And certainly your suggestion that the delay in the effective date of any bill that might be passed for 2 years certainly has much wisdom in it for that reason. And we thank you for that and other suggestions for the bill, for which the committee is most grateful.

Mr. HAWKINS. I had five copies of a summary and the statutes of the California criminal records laws that I have given to the staff. And I hope that they will provide this for you.

Senator ERVIN. They will be printed in the record immediately after your written testimony.

Mr. HAWKINS. Thank you, sir.

Senator ERVIN. Senator Gurney?

Senator GURNEY. Do you want to comment on what sort of intelligence information should be disseminated by such a system? It covers such a broad variety of information.

Mr. HAWKINS. Yes, Senator. And here I would like to read, starting at page 14 of my prepared statement, what is the position of SEARCH. And I think that would give the best definition.

(a) Criminal intelligence information regarding an individual may be entered into a criminal justice information system only if grounds exist connecting such individual with known or suspected criminal activity. Such systems shall review individual criminal intelligence files at least every 2 years to determine whether such grounds continue to exist, and shall immediately destroy all copies of criminal intelligence information relating to any individual as to whom such grounds do not exist.

(b) Access to and use of criminal intelligence information, including access by means of terminals or other equipment in the case of automated systems, shall be limited to law enforcement agencies, and, within such agencies, to components and individual officers or employees thereof determined by the agencies to have a need and a right to criminal intelligence information.

(c) No automated interstate criminal intelligence information system shall provide for dissemination of full criminal intelligence information records by means of remote computer terminal access to computerized data bases containing such full records. Intelligence information disseminated by such means shall be limited to data sufficient to provide a register or index of the identities of individuals included in the systems and the names and locations of law enforcement agencies possessing criminal intelligence files relating to such individuals.

This was a provision agreed upon after considerable debate by Project SEARCH itself, Senator.

Senator GURNEY. When you speak of law enforcement agencies that would have access to criminal intelligence, what do you mean by that term? That is pretty broad, too. I notice in Massachusetts here this information is disseminated to a great many agencies even though they have a pretty strict law. Can you give a better definition of what you call a law enforcement agency?

Mr. HAWKINS. A law enforcement agency would be a police department, a sheriff's department, a State police, if they were authorized as general police, such as in our State where the department of justice has broad State police powers. For any police department that had an intelligence unit, then that information would be only available to those people in that intelligence unit. It would not be available to immediate access by other members of that law enforcement agency.

Senator GURNEY. In other words, the kind of an agency that has official sanction in order to investigate and then prosecute, something like that?

Mr. HAWKINS. I am not an intelligence officer, I have not been assigned as such. But I believe that in most of them, their purpose is to build the information to the point of prosecution, and then make the arrest, and then have the ordinary function of the agency take over, such as the detective division.

Senator GURNEY. You mention here that the dissemination of the intelligence is limited to certain data, you say sufficient to provide a register or index to the identities of individuals included in the system. Could you explain that a little better?

Mr. HAWKINS. Yes, sir. We envision that there would be an index, and the index would only contain the necessary information to identify the individual, so that a person authorized to inquire to that index would merely get back an index statement that for John Doe the information was in a particular intelligence file of a particular law enforcement agency. And from that point on, the individual would be dealing person to person with that agency and would not be randomly accessing and obtaining that kind of information.

Senator GURNEY. That is the point I wanted to pin down. This wouldn't go out, but you would have to have access to it.

Mr. HAWKINS. That is correct, sir.

Senator GURNEY. I don't think I have any further questions.

Senator ERVIN. Senator Hruska.

Senator HRUSKA. Mr. Hawkins, in December of 1970 the Attorney General decided to establish a national operational system, you say, in the Department of Justice, to be managed by the FBI. And that was based upon the prototype system that was developed by Project SEARCH; is that what you have testified?

Mr. HAWKINS. That is correct.

Senator HRUSKA. What was the thinking of Project SEARCH with reference to the FBI assuming charge of that particular type of activity which is now known as the computerized criminal history component of the NCIC? What judgment did you make of that step on that decision?

Mr. HAWKINS. Well, I think we made no decision, or had no decisional role in deciding actually where to go. That was made by the Attorney General of the United States. However, SEARCH's concept in the prototype system differed from the present FBI system in the sense that the SEARCH prototype system was mainly an index or pointer system, so that a State would ask a question, for example, do you have on John Doe a criminal history, with some identification first, and a pointer or index would respond, see California, Arizona, or whatever State had the detailed record. Now, when the NCIC

took it over—NCIC's Advisory Policy Board, which I am also chairman of, is elected by the users of the system from the States. And all of the States, as I believe you realize, do not have personal criminal records at this time. And there is also a consideration which I think must be taken into account; namely, insuring that the Identification Division of the FBI and their master fingerprint card system are available to assist the State in determining this. But what basis the Attorney General made the decision on, Senator, I cannot say.

Senator HRUSKA. Now, there is a fundamental difference between S. 2963 and S. 2964 in that 2963 provides for a different type of policymaking arrangement and decision than the one in S. 2964, which uses the Department of Justice, and notably the Attorney General, to be the sort of the policymaking body

Mr. HAWKINS. Yes, sir.

Senator HRUSKA. What can you tell us of your thoughts in that regard as to the relative merits of one or the other of these approaches?

Mr. HAWKINS. I would recommend, Senator—and this is my opinion—I would recommend that if Congress, this committee, determined that there was a need for a Federal board and a Federal advisory committee, that that Federal board and Federal advisory committee would direct its attention to the criminal justice information at the Federal level agencies, that is, of the Federal Government, and that the States, in an interstate system, have the control vested in a policy board composed of the States and the users of the system at the interstate level. For intrastate systems, I think each State should be allowed to choose the method that they best feel will accomplish what their purposes are. I cite, for example, the State of California where the legislature determined that this function would be vested in the Attorney General with the requirement to provide rules and regulations for security and privacy. I think the State of Massachusetts, as the Governor has just cited, has chosen to use a board. But I think that the intrastate systems should be left to the State to determine.

Senator Ervin. Just to clarify the record, when you use the term "attorney general" you are referring——

Mr. HAWKINS. To the U.S. attorney.

Senator ERVIN. The attorney general of California?

Mr. HAWKINS. The California attorney general. I have one too many attorneys general to deal with.

Senator HRUSKA. It has been pointed out that there are other activities besides law enforcement involved in this data bank.

Mr. HAWKINS. Yes, sir.

Senator HRUSKA. And of course the FBI is oriented toward only one aspect of law enforcement. Would that be a factor in your thinking and the conclusion that you have reached?

Mr. HAWKINS. Well, I believe it is, Senator. I might state that the NCIC Advisory Board has been expanded recently by the appointment of two judges, two prosecutors, and two correctional people. In our State system we have all of the elements of criminal justice represented in an advisory group, including the prosecutor, the courts, the correctional, the probation and parole people, in addition to the law enforcement. And we feel this representation very necessary.

Senator HRUSKA. In the Federal Government we have other agencies that are interested in the system, have we not? Customs, for example?

Mr. HAWKINS. Yes, sir.

Senator HRUSKA. And the Treasury Department, Internal Revenue Service, and so on?

Mr. HAWKINS. Correct.

Senator HRUSKA. Are they represented?

Mr. HAWKINS. Not on the NCIC Advisory Board, no, sir.

Senator HRUSKA. They are not. Do you think they should be?

Mr. HAWKINS. Yes; I believe probably it would be advisable. It finally reaches a point where we have to stop, for no other reason than pursuing the administrative function of conducting the business of the board. But I would believe that my recommendation dealing with a Federal board for Federal agencies would cover this problem, Senator.

Senator HRUSKA. When was the California law to which you referred enacted?

Mr. HAWKINS. 1972.

Senator HRUSKA. Do you envision any difficulty or have you experienced any with the press regarding the access of the public to records, criminal records, criminal histories, dispositions, and trials?

Mr. HAWKINS. Well, under our law the press or news media are not one of the specific organizations or persons authorized to receive the criminal history record. They do receive and have access to the police blotter or the arrest blotter at the police stations at the time of arrest. All of our court records of course are public records, and are open to the press as well as to the public. And I think that that basically covers the situation.

Senator HRUSKA. Describe for us, Mr. Hawkins, the exchange of messages among police departments, and what part of the operation SEARCH plays in administrative messages?

Mr. HAWKINS. Yes; administrative traffic, as we call it, consists of point-to-point messages. In other words, if the city of Omah, Nebr., wishes to send a message to the city of Long Beach, Calif., this would be an administrative message. A second type of administrative message would be a bulletin message, where a police agency may send a bulletin to be on the lookout for a vehicle or a series of vehicles involved in some crime or conspiracy act.

The third type of function that a message switching system could perform—and this is the one that we are dealing with here today, Senator—would be the capability of going into data bases, such as the criminal history record, or the stolen vehicle file, or the stolen property file. The message switching system is the method used to move this kind of data up and down and back and forth between States and within States.

Senator HRUSKA. And what are the present mechanics for that? Is that through Operation SEARCH?

Mr. HAWKINS. No, sir, SEARCH has no operational function. It is a research and development type of organization. The two existing systems on the national level are NCIC, the National Crime Information Center, which provides access to data bases, such as stolen vehicles, wanted persons, stolen property, stolen securities, stolen boats,

and criminal history records. The other system is the National Law Enforcement Telecommunications System, or NLETS, which primarily is a system doing administrative message switching and all point bulletin message switching. It is housed in Phoenix, Ariz.

Senator HRUSKA. Who administers NLETS?

Mr. HAWKINS. It is a nonprofit corporation governed by a board of directors elected from the users of the States that use the system.

Senator HRUSKA. There is of course a discussion now as to who should operate that switching function, as you are aware.

Mr. Chairman, I do not know if we want to get into that at this time or not.

Senator ERVIN. I think it would be appropriate.

Senator HRUSKA. I will defer to your judgment on this.

Senator ERVIN. I think it would be all right to go into it, because that is one of the questions that arises.

Senator HRUSKA. There was an application made, was there not, that the FBI assume the duties of that NLETS message switching function? Could you give us the chronology of that?

Mr. HAWKINS. I have heard that they did. The users of NCIC, that is, the States and the local users, had asked the NCIC to provide message switching for several years. And I assume NCIC felt at that time they could not. Since that time NLETS was upgraded by LEAA funding, and also the NCIC–FBI have requested the Attorney General to rule on the fact of whether they legally can assume this function. This is my understanding of it, Senator.

Senator HRUSKA. Had your advisory group been consulted about this?

Mr. HAWKINS. Yes. The NCIC advisory body had, the SEARCH group had not.

Senator HRUSKA. SEARCH had not?

Mr. HAWKINS. Had not.

Senator HRUSKA. Had NLETS been asked about it?

Mr. HAWKINS. I am not certain. I think that there has been some communication, but I have not seen that communication, Senator. And I assume that there may have been some communications between NCIC and NLETS, but if there has been, I have not seen it.

Senator HRUSKA. There are some who think and believe that it would be premature at this time to make a decision in regard to any such step until further information is gathered. Perhaps it might be considered a legislative decision rather than an administrative decision that should be made in that regard. There are many shades and grades of opinion on this subject. Would you care to discuss some of the alternatives in that regard?

Mr. HAWKINS. Well, the one statement I could make, if there is legislation, or if there is an administrative decision made, that the users—and I am a States' righter on this, it appears—that the States have a controlling voice in determining the operation, the policies and the procedures. I think that this committee is looking at this very vital legislation dealing with this. And I do not believe there is a consensus among the SEARCH people at this time. We have not polled them, Senator, to really ask which agency should do it. The NCIC Advisory Board has gone on record as advocating that NCIC handle message switching.

Senator HRUSKA. That they do the switching?

Mr. HAWKINS. Yes.

Senator HRUSKA. Of course it is a legislative decision, is it not, inasmuch as even the request for a budget item to defray the costs of the FBI, assuming that function would find its way into the House Appropriations Committee, and later to the Senate Appropriations Committee, and the respective chambers of each of those bodies, would it not?

Mr. HAWKINS. I am certain that it would, Senator, yes.

Senator HRUSKA. Do not be afraid.

Mr. HAWKINS. If there are dollars involved, I am sure it is going to be before both the houses, and I am sure it would be a legislative determination.

Senator HRUSKA. It might appear that perhaps before any final decision is made administratively on that, that some of these factors be taken into consideration, and perhaps await the result of some of the legislation which is in contemplation now and which we are processing now at this moment.

Mr. HAWKINS. Correct.

Senator HRUSKA. I am sure that there is more to that subject, Mr. Chairman. And I note with interest the report of the General Accounting Office in this regard. But I shall not go into it at this time on my own.

That is all the questions I have at this point.

Senator ERVIN. To get the gist of your position, you think that a Federal board should have charge of promulgating regulations to operate the Federal collection and dissemination of information, and that the State authority should retain the power to collect and regulate the dissemination of State information, and that there should be close cooperation between the Federal Government and the States?

Mr. HAWKINS. I do, Mr. Chairman. I would say this, that if the States do not act within reasonable time to provide statutory protection of these records and the collection and dissemination, that then Congress must look at it to insure that these issues are covered. But I believe that most of the States are addressing themselves to this. And I believe it is very vital that there be very little restriction on the use within law enforcement or criminal justice of these records. And I think where the big issue arises on this is the dissemination of this information outside of criminal justice for noncriminal justice use.

Senator ERVIN. And you think that some provisions that would impose Federal standards upon the State which fails to adopt standards of its own would be permissible to jog the States into doing something?

Mr. HAWKINS. I think it would be reasonable, after a period of time, if they did not take this action, that the Government, the Federal Congress, would look at this.

Senator ERVIN. Thank you.

Counsel?

Mr. BASKIR. Mr. Wormeli, I wonder if you would comment on this question of the Federal-State regulations that Mr. Hawkins has been dealing with, especially with respect to the differences between the administration's bill which vests full authority in the Attorney General, and Senator Ervin's bill which shares it between the Federal Government and the States, and the Project SEARCH original idea which I gather Mr. Hawkins tends to support, which essentially means it is almost totally a State cooperative venture?

Mr. WORMELI. I think there are several issues there. The States I feel generally are opposed to simply putting the Attorney General in the position of making the decisions. And I think the States would prefer some kind of charter to establish their own boards to make those judgments and to provide the cooperation that the Senator referred to. The original SEARCH bill was designed to implement the security and privacy regulations within a State in the absence of some Federal authority.

Did I understand your question?

Mr. BASKIR. Yes. Thank you.

Mr. Hawkins, did Project SEARCH know during the 1970 period, the second half of 1970, about the OMB recommendations with respect to the nature of the system and the composition of the advisory board? Were you aware of that?

Mr. HAWKINS. To my recollection we did not receive a copy of a direct communication from—OMB, you said?

Mr. BASKIR. OMB, the recommendations that OMB had made to the Attorney General.

Mr. HAWKINS. No, sir; I don't think we were officially advised of that.

Mr. BASKIR. You answered, I think, Senator Gurney about the question of intelligence and the control of intelligence. And you made a similar statement in the SEARCH committee report on pages 14 to 15. Do you personally agree with that, or do you take other positions personally in view of the very many positions you have? Can you give us a comment from each of those positions, perhaps?

Mr. HAWKINS. No. As I stated, I am not in the intelligence business, and haven't been an officer as such. But I believe it is the position of most of those people who are involved in it that they should have an interstate capability computerized of merely an index, merely a pointer system, and that from that point on there would be human interface in order to insure that the inquirer is a person that properly has the need for the information;

Second, the giver of the information should take every precaution to provide this type of information to only those that really have a need and are qualified to have it.

Mr. BASKIR. Mr. Wormeli, do you care to comment on the question of intelligence?

Mr. WORMELI. Yes, I would.

I think Mr. Hawkins is being a bit modest about his experience in intelligence. The issue of intelligence was discussed at great length by Project SEARCH based on the input from a large number of intelligence agencies. Project SEARCH participated with the law enforcement intelligence unit in the development of its prototype system, and this project was responsible for the preparation of a security and privacy manual. I think one of the problems that hasn't been well addressed yet is handling the notion of public record data or information that comes from public information such as congressional hearings, such as newspaper accounts, and other verified public information. When the first organized crime intelligence prototype system was discussed, after a great deal of deliberations and consultation with all branches of Government, it seemed reasonable to propose an index that would contain only public record information, information that was in the view of the public, whether that involved corporation holdings or registrations existing in the States pertinent to the subjects that might be contained in an organized crime file. It also seemed reasonable that that information could be shared by those individuals who had responsibilities dealing with the prosecution of organized crime subjects, whereas the information that is more sensitive, that we normally think of when we use the word "intelligence," namely, the reports of informants or allegations about people, perhaps should best be preserved intact within the agency that collected it. And if you make that distinction between public record information and the more sensitive informant type of information, then I think they can be treated differently in the legislation.

Mr HAWKINS. There is one point that I would like to add, Mr Chairman, if I may do that. And that is that I firmly would oppose any thought of combining or having part of the criminal history record in criminal intelligence data. The two must be absolutely separated.

Senator ERVIN. Criminal intelligence, as distinguished from the criminal records, is full of unverified data, is it not?

Mr. HAWKINS. Yes, sir.

Senator ERVIN. And it would therefore be vey dangerous to the privacy of individuals to have the two comingled.

Mr. HAWKINS. Very much so, Senator.

Senator ERVIN. And going to the question of news access, there is nothing in the California bill, I take it, that would prevent any newsman from getting any information he can on his own by his own endeavors from the public records in the police headquarters or from the records of the courts about cases actually tried?

Mr. HAWKINS. No, sir, there is nothing.

Senator ERVIN. And you don't conceive that it is the function of Government to collect information which can be rather disastrous to the privacy rights of individuals, and that there is any obligation to the public agencies to make such information as that available to the news media?

Mr. HAWKINS. No, sir, I would not.

Senator ERVIN. And it has been well settled that this information should be corrected primarily for law enforcement purposes, and that it is a well established rule in this country that information of that kind, until it is produced in the courts, is information which it is the duty of the government to maintain confidential?

Mr. HAWKINS. Yes, sir.

Mr. BASKIR. Mr. Hawkins, presently there are only six States, plus the District of Columbia and the Federal Bureau of Investigation, I believe, that are actively participating in the CCH system of NCIC, although as I understand it, it became operational early in 1971, and that the original plans were that most if not all States would become operational and would be participating by 1975. In addition, there are two significant omissions in this group of six, Arizona and Michigan, who were in the original SEARCH group, and fairly well advanced and sophisticated in this problem. I wonder if you could comment first on why it seems there is some difficulty in moving towards the 1975 goals, and why these two States, for example, are not participating.

Mr. HAWKINS. Mr. Baskir, I think, if I may correct you, Arizona is one of the States. Michigan is not.

Mr. BASKIR. I am sorry.

Mr. HAWKINS. I think that it would be well to cite that the purpose of SEARCH when it started was to look at the feasibility of automating the manual criminal history record. It was also intended that SEARCH assist the States that did not have some of the necessary statutory provisions for central collection at the State level of the criminal history data, and did not have the facilities such as a central identification bureau. So some of the States have had to go through a very early and beginning process of passing their law and creating a State bureau of identification, and in turn under their State law requiring that this arrest data be furnished to the State bureau. And from that point on of course this is what I believe are some of the safeguards or better information protections in an automated system, that when you go to put it in that computer, you have to remember the old saying of "garbage in, garbage out." A computer requires a great deal of personal attention and verification to comply with the formats that are necessary to put this data into a computer. And some of the States are just having these kinds of problems, I believe, in getting geared up to put their data in.

Mr. BASKIR. Mr. Wormeli, do you want to comment on that?

Mr. WORMELI. I would just like to make one point. The original SEARCH States were chosen because they were felt to be the most advanced in this field. And I think the record of having operational five out of the original six proved the validity of the original judgment. And I might point out that Michigan is moving rapidly toward participation in the system, as are another half a dozen States which were funded in the second round of funding to participate in the SEARCH prototype effort. I think the key point here, though—and really a key justification for this legislation—was that the degree of progress in this Nation varies dramatically as you go from State to State.

Only last year was the final decision made in the State of Washington to create an identification bureau at the State level. So beginning from ground zero 1 year ago the State of Washington must now begin to build the entire network of information and capability to participate in this system. And it won't be done in a year. We anticipated a 5-year effort generally for any State that is even halfway familiar with the problem to be able to get to the point of having an operational system.

Mr. GITENSTEIN. Following up on the comments you just made on the conversion or the adaptability of the States to the CCH system and participation in NCIC, is not another factor the cost in terms of the State system? For example, isn't it true that a State which has not already got a State bureau of investigation has to take even greater steps in order to participate in CCH?

And in that regard, Mr. Hawkins, what has been the approximate cost in California of converting fingerprints to CCH in terms of additional manpower and increased budget?

Mr. HAWKINS. I would say approximately $4 million and $4.5 million.

Mr. GITENSTEIN. And you are talking about a State which already had a State bureau of investigation at the time it began this effort?

Mr. HAWKINS. We did have that benefit, yes.

Mr. GITENSTEIN. So that a State like Washington or some of the other States which do not have a State bureau of investigation are going to have an even larger expense proportionately?

Mr. HAWKINS. Correct.

Mr. GITENSTEIN. The revenue of $4 million, where did most of those revenues come from, State funds or Federal funds?

Mr. HAWKINS. For 2 or 3 years, we received some moneys from the Law Enforcement Assistance Administration. And then in the last fiscal year, and this fiscal year, it is entirely State funds.

Mr. GITENSTEIN. In terms of manpower did you have to increase the manpower of the department in order to accomplish the conversion?

Mr. HAWKINS. Yes, we had to hire additional people as coders and programers and systems analysts.

Mr. GITENSTEIN. So that the General Accounting Office's estimate of a year ago that it might cost in excess of $100 million in Federal, State and local revenues to create the nationwide CCH system was a reasonable guess?

Mr. HAWKINS. I would say yes. It is a reasonable guess on my part, too.

Mr. GITENSTEIN. Mr. Wormeli, following up on the intelligence question, the prototype that you talked about that Project SEARCH was involved in was the organized crime index? Mr. Hawkins might also want to respond to this.

Mr. WORMELI. Yes.

Mr. GITENSTEIN. Did not Project SEARCH conduct an investigation and develop the prototype computerized organized crime index?

Mr. WORMELI. Project SEARCH developed the prototype in conjunction with the law enforcement intelligence unit, which is an affiliation of intelligence units throughout the country; it was a joint effort.

Mr. GITENSTEIN. Essentially that prototype contained an index of about 4,000 to 5,000 names of people who, according to the law enforcement intelligence unit were members of organized crime and their associates, did it not?

Mr. WORMELI. I believe that is essentially correct.

Mr. GITENSTEIN. And the only information contained in the index is public record information?

Mr. WORMELI. That is correct.

Mr. GITENSTEIN. In the light of that limitation, was it the judgment of the Project SEARCH that this was a cost effective type of system, that it was of great value to law enforcement intelligence people to have an index like this, in the light of that limitation?

Mr. WORMELI. The judgment of Project SEARCH after the prototype was done was that some suggested changes ought to be made before the system was turned into an operational system. I think I have to preface my response by pointing out that SEARCH is in the business, so to speak, of developing prototypes and testing them, and we are prepared to fail. The prototype that we built in association with the law enforcement intelligence unit was a pretty simple system. We recommended after the evaluation that additional data, specific data, be collected still within the context of the public records data, that the many possible analytical procedures should be developed for

incorporation in the system to assist in the investigation and prosecution of organized crime. Once having the computer, or once agreeing to the potential for having the data base, it is possible to use it for a number of analytical purposes that would assist the investigators. We recommended further that the LEIU, or whoever was going to operate such a system, should consider enlarging the number of users and perhaps the number of subjects.

With those changes, we did recommend that the system move forward. We did not recommend implementation of the prototype itself, since it was a fairly simple system. And the usage in our test phase was not sufficient in our view to justify, on a cost effectiveness basis, having that system. But with the changes it was deemed to be a useful system.

Mr. GITENSTEIN. One last question. Has project SEARCH in the development of its prototype CCH systems done any studies to determine exactly how CCH information is used by various components in the criminal justice system? In other words, on a normal day, at a terminal, say, in Los Angeles, what proportion of the inquiries come from local police and what proportion from courts, prosecutors? Who would be the major benefactors of the CCH system once it was operational? Did SEARCH ever look at that question, or has anyone ever looked at it?

Mr. WORMELI. Yes, we looked at that at great length. And you will find in the early pages of SEARCH's technical report No. 2 some description of the possible applications.

The problem we are faced with here is that we are developing a whole new capability that affects every part of the criminal justice system, and it is not possible until the system is fully developed to know exactly what that distribution is, what those statistics are. I have some data which we have obtained since the prototype period in some of those States that are building their own systems. I have been told in Utah, for example, that 70 percent of the inquiries to their CCH file, which is not yet linked to NCIC, are being made by police officers asking for a summary criminal history in the course of investigations or in the course of dealing with individuals whom they suspect may be involved in criminal activity.

Mr. GITENSTEIN. And those requests are made prior to arrests?

Mr. WORMELI. Yes.

Mr. GITENSTEIN. Is it not possible that in making such a request you do not have the right man?

Mr. WORMELI. Yes, there is. We felt that there was a benefit in having such a record, but we felt that controls needed to be implemented on that use of the system in that way. But one of the uses that we now see emerging from the system, and which we speculated would be of use initially, is to assist the officer in determining whether or not the person who he is about to deal with may be a threat to him. Some of the summary data that is presented—and we have recommended this several years ago—shows the instances of conviction for crimes of violence, particularly those involving a police officer, so that the police officer can determine, if he knows who he is dealing with, whether to approach him with more caution than just a formal traffic stop.

Mr. GITENSTEIN. And you think that wanted person information would not suffice in that regard although that does indicate dangerousness? Furthermore doesn't stolen vehicles information also indicate the dangerousness of the occupants of the car?

Mr. WORMELI. To some extent. But the wanted persons file is a very small file, and naturally it is a very current file. And there are many individuals convicted of violent criminal behavior not wanted at that point in time.

Mr. GITENSTEIN. You emphasized convictions of violent crimes. Would police on the street be satisfied if they had conviction record information rather than simple arrest information on violent crimes in order to protect themselves?

Mr. WORMELI. SEARCH recommended in the early consideration of this system that that is all that should be given to the patrolmen on the street.

Mr. GITENSTEIN. That would be consistent with Senator Ervin's bill, would it not?

Mr. WORMELI. Except that SEARCH also recommended that arrest information be available for investigative purposes by the detective or the investigators who were attempting to determine the suspect in a particular crime.

Mr. GITENSTEIN. But it would not be necessary—at least SEARCH recognizes that it would not be necessary for the protection of the officers, but it would be necessary for investigative purposes; that is the distinction.

Mr. WORMELI. That was a compromise position worked out in SEARCH; yes.

Mr. GITENSTEIN. That is all.

Senator ERVIN. Thanks to both of you gentlemen for your very material assistance to the studies and work of this subcommittee.

Mr. HAWKINS. Thank you, Mr. Chairman and Senator.

Mr. BASKIR. Mr. Chairman, our next witness this morning is the Honorable Clarence Meyer, attorney general of the State of Nebraska.

Senator ERVIN. I am going to ask my distinguished colleague, the senior Senator from Nebraska, to introduce him.

Senator HRUSKA. It is a great pleasure to do so, Mr. Chairman.

Mr. Meyer is the dean of the State attorneys general of the United States. I forget the exact date of his election.

Could you supply it first, as attorney general?

Mr. MEYER. 1960, but I have been in the office since 1949.

Senator HRUSKA. Correct. I recall well that it was about 25 years ago when Mr. Meyer was deputy attorney general, and we worked together on one specific project, which I will never forget, the incorporating of State and municipal employees into the social security system pursuant to the amendments of 1950. It was a most difficult task, because of the State and National laws involved.

Mr. Meyer has been president of the National Association of State Attorneys General, and he is one of their elder statesmen because of his long tenure in office.

He has also been regarded highly for his experience, judgment, and perspective, and he has been an extremely constructive force in State legislation as well as on occasion for national issues.

And today's appearance before this committee, Mr. Chairman, is another demonstration of Attorney General Meyer's dedication and his willingness to help in a field where he has gathered a great deal of expertise, and a great deal of intelligence.

Senator ERVIN. The committee is delighted to welcome you and to express its appreciation for your willingness to be of assistance to us.

TESTIMONY OF HON. CLARENCE A. H. MEYER, ATTORNEY GENERAL OF THE STATE OF NEBRASKA

Mr. MEYER. Thank you, Mr. Chairman.

Thank you, gentlemen.

Senator HRUSKA. I might observe that Mr. Meyer has decided to retire from the office he now holds, a fact which most of his constituents greatly regret. And yet we do not want to deny him that right to live a little less demanding life than he has lived for many years.

Mr. MEYER. Mr. Chairman, I must emphasize that I am appearing as an individual attorney general at the invitation of your chairman. I am chairman of the Criminal Law Committee of the National Association of Attorneys General, but neither that committee nor the association itself has had an opportunity to take a position on legislation of this nature. It happened rather quickly.

At this point, for the benefit of the subcommittee and the staff, if there is some way I can be of help to you in giving out information to the attorneys general of the various States, or getting information from them, you can look to me for such help as I hope I will be able to provide.

Senator ERVIN. We would be delighted to have that assistance, because they are men that have a practical acquaintance with this problem.

Mr. MEYER. And some strong views.

I will skip part of this in the interest of time. But there is some of it that I do want to read, because it is important. And this first part: Criminal history——

Senator ERVIN. Let the record show that the entire statement will be printed in full immediately after your oral remarks.

Mr. MEYER. Thank you, Mr. Chairman.

Criminal histories were a creation of law enforcement to aid it in ferreting out crime and in preserving the peace.

Senator Gurney asked what we meant when we used the term "law enforcement." And when I use that term, I am referring to the first two stages, the police and the prosecutor, before it reaches the courts. This is what I speak of when I speak of "law enforcement."

The entries in a true criminal history consist solely of matters which are, or should be, matters of public record, starting with the fact, date, and nature of an arrest. They are an extremely valuable tool in the investigation of new crimes and criminal activity.

The only mistake which law enforcement made with respect to criminal histories was when they showed someone outside the law enforcement family the first criminal history. Others immediately recognized how valuable those histories would be to them in selecting their employees, in determining whether commercial credit should be extended, and for other business purposes.

And the point I make there is that we would not be here today and this legislation would not be necessary, if these criminal histories never went outside the law enforcement family. And law enforcement needs criminal histories, and legislation of the type now before you should be designed to reserve it for them. I believe it can be said that law enforcement does not care if no one outside the family has access.

And I know that law enforcement would welcome help in limiting access. The pressures are so great from some who have been receiving criminal history information that law enforcement standing alone cannot resist those pressures and will welcome your help.

I next speak about a bill before the Nebraska Legislature dealing with this very subject, and some amendments which I have submitted to the committee which is considering the bill, and to the introducer. Now, those amendments would limit law enforcement to releasing criminal histories just to two places. Law enforcement could release criminal histories only to other law enforcement agencies, and, second, it could release it to the committee created by the bill which is a great deal similar, Senator, to the committee that you have created in your bill.

In my view, law enforcement should not be called upon to make the decision as to which agencies outside law enforcement should receive criminal history information. It should not be a police function. A broadly based committee or board is better equipped to make that decision. In addition, if this approach is not used, you would have a thousand or more agencies in each State making the release decision. The same problem would exist on the Federal level.

I would strongly urge that this approach be used by the Congress; that law enforcement be left free to perform law enforcement work; and that the decision to release information outside the law enforcement family be made by an independent board under such restrictions and standards as the Congress and the State legislatures may see fit to impose.

Now we get into this other matter of criminal intelligence information. And, incidentally, this is a term which has not been adequately described or defined. It is such a broad term. I note that there was conversation about access to the police blotter. How far do they mean on the police blotter? To me the police blotter is the fact and the date and the nature of the arrest. Now, sometimes when some people speak of the blotter they are talking about the officer's field report, which may include the names of neighbors who gave some information to the police, and neighbors who are entirely innocently involved in a criminal situation. That information that those neighbors, those people, happened to give some information to a law enforcement officer I do not believe is part of the police blotter, and I do not believe that it should go outside the law enforcement family, except in those instances where that information might be needed for the protection of the public in certain types of crime.

And I say here, criminal intelligence information is in a different category than criminal history information. Many times it includes information which is not a matter of public record. Its security and privacy is closely guarded by law enforcement and should continue to be. In most circumstances it will be released to another law enforcement agency only on a need-to-know basis. As a matter of practice it is only released to another law enforcement agency in which the holder of the information has confidence that it will only be used for a legitimate law enforcement purpose. At least until recently, one of the greatest and most frequent complaints against the FBI was that they freely accepted such information from State law enforcement officers, but did not reciprocate.

And one of the State officers who read my statement in advance said, "You didn't need to say just recently. It has continued."

And I see nothing wrong with this. Before, when you give a man some of this information, you have got to trust him and know he wants it for a law enforcement purpose, because in these days when everyone gets sued—even without the penalties you have in this bill, law enforcement gets sued so often, and you are just mighty careful about who you give any police intelligence information to. This is a very touchy subject, this matter of getting sued any more.

Senator ERVIN. You know, that is one way that they try to intimidate people. I am on the Permanent Subcommittee on Investigations of the Government Operations Committee, and we voted in our official capacity to issue some subpena duces tecum in connection with the matter we were authorized by the Senate to investigate. And when the parties came on the return day of the subpena, their counselor, Mr. Kunstler, got up and advised us that that morning they had instituted a suit in the U.S. District Court of the District of Columbia against every member of the committee on account of voting to institute the subpenas.

Mr. MEYER. Mr. Chairman, I do not worry too much about the judgment in dollars, but if we had to pay those court costs, that gets us down. At one time the total of suits against me was $123 million. I have gotten that down and have not had to pay any court costs yet or any judgments. And I hope by the time I leave office I have that down to zero.

Senator ERVIN. I stated on that occasion that I was flattered by the amount of the suit.

Mr. MEYER. One of the defects in the legislation pending before you is a requirement that a record be kept on all criminal intelligence information given to another law enforcement agency. This requirement should not apply where the information is given orally and no record is made. In certain types of joint operations between agencies on different levels of government it is imperative that intelligence information be rapidly exchanged.

And in that same connection you should keep in mind that a lot of this information goes out over police radios. Are we to cut that out altogether? If you read some of this information literally, we might have to shut down all our police radios. It is something to keep sort of in the back of your mind in drafting this.

I see in the bills no provision for releasing police intelligence information to defense counsel. Where there is a trusting relationship between a prosecutor and defense counsel, the prosecutor will frequently show defense counsel everything he has in his file. Defense counsel can obtain some of this, at least in Nebraska, by the use of discovery procedures, but not everything. I think the practice of giving defense counsel everything should be encouraged, not terminated.

Senator ERVIN. When a defense counsel is apprised of the information which the prosecuting attorney has, does it not have a tendency to get pleas submitted where they would not otherwise be?

Mr. MEYER. It has that, Senator. And it has one other pleasant effect. You can then go back to your client when you are a defense lawyer and say, "Why didn't you tell me all this?" This frequently happens. You get an altogether different story. The first story the defense lawyer gets needs a little bit of review. That is one of the first things you learned in your criminal practice.

Senator ERVIN. Although the average attorney who defends criminal cases tries to emphasize most strongly to his client at the time he first engages him that it is absolutely essential for him to tell his counsel the truth if his counsel is going to be able to render the best service to him in that capacity, I have noticed in my own practice that often the accused will not tell his own counsel the truth.

Mr. MEYER. It is real embarrassing to find it out in court for the first time, Senator.

Senator ERVIN. It certainly is.

Mr. MEYER. There are times, such as in kidnaping situations, where the family of the victim is entitled to intelligence information. There are times, such as when an unidentified killer is at large in a community, that the public is entitled to intelligence information.

Both bills contain requirements relative to the updating of criminal records. For certain purposes an updated arrest record is imperative. When such a record goes to a court for the purpose of fixing bail, determining probation conditions, or for use in a presentence investigation, we all agree that it should be accurate and complete, either through verification of the entries or by voluntary acknowledgment of accuracy by the defendant in open court.

Criminal records were not updated in the past for a variety of reasons, the main one being that such records were created and designed by law enforcement agencies for their own use in investigating crime, and for that purpose all that is needed is the fact of an arrest on a certain charge, and the fact and place of any confinement imposed. If investigating officers did need disposition information, they checked directly with the agency which made the arrest entry.

The point I make here is that any central filing agency in a State which forwards an arrest record to another law enforcement agency is running a substantial risk. The burden should be on the receiving agency to determine accuracy and completeness before it releases that record to any court or to any other agency outside the immediate law enforcement family which may be entitled to receive it. I take this position because for actual law enforcement investigation purposes, arrest records are needed in a hurry and law enforcement should be encouraged in furnishing a record with speed. When the record is to be used in fixing bail, probation, sentencing, parole, and confinement there is plenty of time to check for accuracy and completeness.

I submit that the requirement of absolute accuracy and completeness should be imposed at the point where the record is to leave the hands of law enforcement and go to other criminal justice agencies.

In listening to the testimony of the Governor of Massachusetts, I was in accord with almost everything he said, with one exception. He feels that only conviction records should go forward. But to me, for a law enforcement use only, the arrest record to me is very important.

Take your sex offenders. Take a man that has been arrested three or four times for sex offenses in the last 2 years, and all of them have been dismissed. Well, that should not be stricken from his record as far as law enforcement is concerned. That could be highly important in the case of the next sex crime that occurs. And why were those first two or three dismissed? They were dismissed in many cases because the family of the victim did not want to become involved in

this kind of a dirty trial. And so it is just simply a case where they dismissed it. The man might have been most guilty. And certainly this should not be forgotten, that he had such a proclivity, and it should not be stricken from the record, although it does not show a conviction.

As I pointed out earlier, I greatly favor the provisions of S. 2963 for creating a board and a committee to handle administration and the issuance of regulations. S. 2964 provides that most of the regulations would be put out by the U.S. Attorney General. Under that procedure, the States would have very little input on the regulations as they are being drafted, whereas under S. 2963 the States would have a voice in the initial wording of proposed regulations. It has been my experience on the State level, and I would guess that the same is at least partially true on the Federal level, that the man who gets to draw up the proposed regulation is in a powerful position. His first words seem to get cast in bronze, and it almost takes proof of error beyond a reasonable doubt to get a word changed here and there.

I object to the provisions in both bills relative to the bringing of civil actions for alleged violations of the act in Federal court. It seems to me that it is an unwarranted and unnecessary extension of the jurisdiction of Federal courts. If the action is to be brought against a State officer or employee, I see no reason why the action cannot be brought in State court unless it can be shown that the claimant cannot receive adequate redress in State court.

Nor is it clear what effect these bills would have on the established civil immunities of judges and other officers involved in the criminal justice process.

There are other provisions of the bills with which I am not in agreement, such as some of the provisions for the sealing of records. I see no need for sealing an arrest record in a case where a State has dismissed its charge because he can best be prosecuted in Federal court, or in the courts of another State. Nor where we dismiss because we are able to revoke a previously granted probation, and feel that to be adequate punishment.

Senator Hruska will recall that within the last 3 weeks, in a rather serious crime in Omaha, instead of charging him with a new crime, they simply revoked his probation, feeling that this would be an adequate punishment. And there was probation for a previous crime of which he had been convicted and found guilty. Instead of charging him under the new offense, they just revoked his probation. Your bill lists a great number of reasons for dismissal of complaints, and so forth. But as you undoubtedly found when you started going into it, there are even more reasons for dismissing matters before they actually get into court.

I see no way of updating a criminal record in situations where a Federal court in some distant place has held one of our State court convictions to be void, without our knowledge and without our participation in that determination.

And in that same connection, the updating of records, something to keep in mind is how are we at the State level or State patrol going to have the Federal judges, the Federal court in our own State update the reports? You realize that, of course. [illegible]ybody that is convicted and gets 3 years or more any more in State court, it is pretty likely to wind up as habeas corpus and be reviewed by a Federal court. And this, of course, is part of updating the records. Now, can our patrol call the Federal judge and say, "Judge, your January report is 30 days late"? This is one of the practical problems that we face in connection with this matter of updating of records. And that is why I hope we keep the arrest records for law enforcement. And these other things, when they get outside of the law enforcement family, sure they should be updated. But this is a substantial problem. In fact, I do not know what we are going to do in Nebraska to bring our reporting requirements in accordance with the regulations just put out by LEAA and the FBI. We have got a very serious problem there.

I want to close just by saying I feel that the proposed legislation should be designed to encourage the free flow of criminal justice information between true law enforcement agencies, and that individual privacy should be assured by stringent regulation of the release of such information, with the release decision to be made by an independent board in accordance with such standards as the Congress may see fit to require.

[Mr. Meyer's statement in full follows:]

PREPARED STATEMENT OF HON. CLARENCE A. H. MEYER, ATTORNEY GENERAL OF NEBRASKA

I am appearing as an individual Attorney General at the invitation of your Chairman. I am Chairman of the Criminal Law Committee of the National Association of Attorneys General, but neither that Committee nor the Association itself has had an opportunity to take a position on legislation of this nature. At our meeting last December we did have a presentation on the subject by the FBI, LEAA, and the Commonwealth of Massachusetts, but we did not have sufficient time for proper discussion of the issues.

I

For reasons which appear hereafter, I would favor the approach used in Title III of S. 2963 relative to the creation of a Federal Information Systems Board and its Advisory Committee, but favor the definitions and their application as set forth in S. 2964.

II

Criminal histories were a creation of law enforcement to aid it in ferreting out crime and in preserving the peace. The entries in a true criminal history consist solely of matters which are, or should be, matters of public record, starting with the fact, date and nature of an arrest. They are an extremely valuable tool in the investigation of new crimes and criminal activity.

The only mistake which law enforcement made with respect to criminal histories was when they showed someone outside the law enforcement family the first criminal history. Others immediately recognized how valuable those histories would be to them in selecting their employees, in determining whether commercial credit should be extended, and for other business purposes.

Law enforcement needs criminal histories, and legislation of the type now before you should be designed to preserve it for them. I believe it can be said that law enforcement does not care if no one outside the family has access. And I know that law enforcement would welcome help in limiting access. The pressures are so great from some who have been receiving criminal history information that law enforcement standing alone cannot resist those pressures, and will welcome your help.

III

A bill has been introduced in the Nebraska Legislature by Senator Cavanaugh of Omaha dealing with the subject of security and privacy of criminal history information. Last week I proposed amendments to the introducer and to the Judiciary Committee which has the bill under consideration. The primary purpose of those amendments was to make it possible for Nebraska to comply with the rather stringent regulations proposed by the U.S. Department of Justice on February 14 with respect to criminal justice information systems. More impor-

tantly, those amendments would limit law enforcement to releasing criminal histories to (1) other law enforcement agencies, and (2) the Committee created by the bill, this Committee being similar to the Board created by S. 2963.

In my view, law enforcement should not be called upon to make the decision as to which agencies outside law enforcement should receive criminal history information. It should not be a police function. A broadly based Committee or Board is better equipped to make that decision. In addition, if this approach is not used, you would have a thousand or more agencies in each state making the release decision. The same problem would exist on the federal level.

I would strongly urge that this approach be used by the Congress; that law enforcement be left free to perform law enforcement work; and that the decision to release information outside the law enforcement family be made by an independent board under such restrictions and standards as the Congress and the state legislatures may see fit to impose.

IV

Criminal intelligence information is in a different category than criminal history information. Many times it includes information which is not a matter of public record. Its security and privacy is closely guarded by law enforcement and should continue to be. In most circumstances, it will be released to another law enforcement agency only on a need-to-know basis. As a matter of practice it is only released to another law enforcement agency in which the holder of the information has confidence that it will only be used for a legitimate law enforcement purpose. At least until recently, one of the greatest and most frequent complaints against the FBI was that they freely accepted such information from state law enforcement officers, but did not reciprocate.

One of the defects in the legislation pending before you is a requirement that a record be kept on all criminal intelligence information given to another law enforcement agency. This requirement should not apply where the information is given orally and no record is made. In certain types of joint operations between agencies on different levels of government, it is imperative that intelligence information be rapidly exchanged.

I see in the bills no provision for releasing police intelligence information to defense counsel. Where there is a trusting relationship between a prosecutor and defense counsel, the prosecutor will frequently show defense counsel everything he has in his file. Defense counsel can obtain some of this, at least in Nebraska, by the use of discovery procedures, but not everything. I think the practice of giving defense counsel everything should be encouraged, not terminated.

There are times, such as in kidnapping situations, where the family of the victim is entitled to intelligence information. There are times, such as when an unidentified killer is at large in a community, that the public is entitled to intelligence information.

I believe that law enforcement should be able to release such information upon approval of a court of record, without waiting for a ruling by the Attorney General or by a Board or Committee.

V

Both bills contain requirements relative to the updating of criminal records. For certain purposes an updated arrest record is imperative. When such a record goes to a court for the purpose of fixing bail, determining probation conditions, or for use in a pre-sentence investigation, we all agree that it should be accurate and complete, either through verification of the entries or by voluntary acknowledgment of accuracy by the defendant in open court.

Criminal records were not up-dated in the past for a variety of reasons, the main one being that such records were created and designed by law enforcement agencies for their own use in investigating crime, and for that purpose all that is needed is the fact of an arrest on a certain charge, and the fact and place of any confinement imposed. If investigating officers did need disposition information, they checked directly with the agency which made the arrest entry.

The point I make here is that any central filing agency in a state which forwards an arrest record to another law enforcement agency is running a substantial risk. The burden should be on the receiving agency to determine accuracy and completeness before it releases that record to any court or to any other agency outside the immediate law enforcement family which may be entitled to receive it. I take this position because for actual law enforcement investigation purposes, arrest records are needed in a hurry and law enforcement should be encouraged in furnishing a record with speed. When the record is to be used in fixing bail, probation, sentencing, parole and confinement, there is plenty of time to check for accuracy and completeness.

I submit that the requirement of absolute accuracy and completeness should be imposed at the point where the record is to leave the hands of law enforcement and go to other criminal justice agencies.

VI

As I pointed out earlier, I greatly favor the provisions of S. 2963 for creating a Board and a Committee to handle administration and the issuance of regulations. S. 2964 provides that most of the regulations would be put out by the U.S. Attorney General. Under that procedure, the states would have very little input on the regulations as they are being drafted, whereas under S. 2963 the states would have a voice in the initial wording of proposed regulations. It has been my experience on the state level, and I would guess that the same is at least partially true on the federal level, that the man who gets to draw up the proposed regulation is in a powerful position. His first words seem to get cast in bronze, and it almost takes proof of error beyond a reasonable doubt to get a word changed here and there.

VII

I object to the provisions in both bills relative to the bringing of civil actions for alleged violations of the act in federal court. It seems to me that it is an unwarranted and unnecessary extension of the jurisdiction of federal courts. If the action is to be brought against a state officer or employee, I see no reason why the action cannot be brought in state court unless it can be shown that the claimant cannot receive adequate redress in state court.

Nor is it clear what effect these bills would have on the established civil immunities of judges and other officers involved in the criminal justice process.

VIII

There are other provisions of the bills with which I am not in agreement, such as some of the provisions for the sealing of records. I see no need for sealing an arrest record in a case where a state has dismissed its charge because he can best be prosecuted in federal court, or in the courts of another state. Nor where we dismiss because we are able to revoke a previously granted probation, and feel that to be adequate punishment.

I see no way of updating a criminal record in situations where a federal court in some distant place has held one of our state court convictions to be void, without our knowledge and without our participation in that determination.

Many of these are technical matters of draftsmanship which I am sure will receive the close attention of this Committee, and of other witnesses before it, and I only want to conclude with a quotation of one sentence taken from the Findings and Purposes of S. 2964:

"(b) Particular risks, from the standpoint of the individual, may be presented when criminal justice information is used for a purpose not related to criminal justice. * * *."

That statement sums up the entire theme of my presentation. Those of us who are involved in the criminal justice process believe that the needs of society clearly outweigh the interests of the individual who through his own actions involves himself in that process, so long as the information we possess does not go outside the law enforcement family. I therefore feel that the proposed legislation should be designed to encourage the free flow of criminal justice information between true law enforcement agencies, and that individual privacy should be assured by stringent regulation of the release of such information, with the release decision to be made by an independent board in accordance with such standards as the Congress may see fit to require.

Senator ERVIN. I am very glad you brought in the question of intelligence information as distinguished from criminal justice data. I infer, although you did not so state expressly, that as the basis for making the distinction between the limitation upon release of criminal justice information, where that information has ceased to be of current value, that they might very well put a limitation upon this release.

There are many cases, you point out, where it is essential to proper law enforcement to release at the time some criminal justice information. You pointed out, for example, that if you have got a dangerous criminal at large, the officers of the law are entitled to know that because they are likely to suffer injury from it. And a lot of times the release of information will result in somebody outside of the law enforcement agency being able to identify the party as the perpetrator of an offense. And then I can think of illustrations where the FBI or law enforcement officers get information from unknown sources that there is going to be an attack made upon an individual, or perhaps a kidnaping of an individual, when the release of that information many times is helpful, that is, to the people who are the objects of the attack or the kidnaping. It gives them a chance to protect themselves.

Mr. MEYER. You are absolutely correct. As I mention in my statement, I believe in some cases, instead of waiting for regulations of the Attorney General or something like that, law enforcement itself, if you feel this is necessary, should only have to go to the nearest court of record and say, "Judge, we have information that looks like there is going to be a kidnaping or an assault. May we tell the intended victim?" And of course I agree with you, Senator, there are times when that intelligence information, you have just got to get it out. The victims of kidnaping, the family of the victim, there is a lot of information that they are entitled to.

Senator ERVIN. And as for criminal information, I have known many instances of bank robberies or other robberies where the description of the automobile the person that perpetrated the offense drove off in was disseminated rapidly and resulted in the apprehension.

Mr. MEYER. That is correct.

We had sort of an unusual case out in Nebraska a couple of years ago. A man that escaped about 10 years ago while being taken up to Omaha for trial, he escaped because he had a derringer-type pistol concealed in his underwear, and he was able to hold that officer and make his escape. Well, some 7 or 8 years later—and that is why I hope we do not conceal the record—he was arrested in Scottsbluff, and the sheriff out there called the patrol and said, "Have you got anything on this guy?"

And they went to his old file, and there was a notation on there, "He escaped last time because he had a derringer type pistol in his jockey shorts."

And the sheriff said, "Hold on, wait just a minute." And he ran back to the jail and searched this man, and sure enough there it was.

He came back to the phone in less than a minute and said, "He had it."

So we enjoy intelligence information sometimes.

Senator ERVIN. We have a good example of the wisdom sometimes of releasing intelligence information. In the Georgia kidnaping case recently the fact that the man talked about the 300,000 gallons of fuel that he had, caused somebody in Miami to call up the FBI in Atlanta, and they had the man under arrest just a short time after the ransom had been paid. So you cannot put strict limitations on it. I think you have got to have a dividing point at which criminal information which has lost its current value ought not to be released, but where the release of it will assist law enforcement it should be permitted.

Mr. MEYER. Mr. Chairman, this is where your big problem is. What you are trying to do by this legislation is to control judgment decisions. And there are so many different circumstances that can affect the judgment in a particular situation that you are going to have an awful problem drafting good and effective legislation which will protect the individual, his privacy, and yet preserve law enforcement as we think it should be preserved. And that is why I sort of urged this dual approach, let law enforcement keep its law enforcement information, watch it when it gets outside of there, and do not let law enforcement make the decision.

Senator ERVIN. I take it you are firmly committed to the proposition that criminal records should be restricted to the law enforcement field and not given to outside people except in the case of a supervisory body?

Mr. MEYER. Senator, like I said in here, I am looking out for law enforcement. We need that. And we want to keep it.

Senator ERVIN. And I am glad that you take that position, because Senator Hruska and myself have been fighting for some time to stop this indiscriminate use of FBI records to assist employers in determining who should be employed. It is very helpful to them. But at the same time I do not think that is the function of Government.

Mr. MEYER. I am not going to get into that one. But I am looking out for law enforcement.

Senator ERVIN. Senator Hruska?

Senator HRUSKA. The pending legislation in the Nebraska legislature, is that a comprehensive act or is it directed to satisfy the requirements of the federal regulations of LEAA.

Mr. MEYER. At the present time, with the letter that I have written to the introducer and to the committee considering the bill, it is designed to meet the very stringent requirements that appear in these LEAA and FBI proposed regulations. I do not see how we are going to meet some of the requirements in those regulations. And my great hope is that they would hold those regulations up until the Congress has had an opportunity to determine what the policy should be in this area. Then our legislature meets every year, and we will design any kind of legislation that the Congress feels is necessary. But I feel you are rushing us into this—not you, I am speaking about the regulations—are rushing us into something that we are not prepared to cope with.

Senator HRUSKA. Are the regulations in final form? Sometimes they are published and the record held open for suggestions and modifications.

Mr. MEYER. They were just announced on February 12 or 14, and the first hearings I think are around in May sometime. But they have a proposed effective date of July 1 of this year. And this is what is disturbing me, because our legislature will go home within the next—I think we have about twenty legislative days left. And these regulations will become effective after they go home. Well, if we do not have something to work with, how am I going to satisfy the Department of Justice that Nebraska is doing everything it can to obey the law? It is a real battle.

Senator HRUSKA. Of course many legislatures do not meet in this interim, and it will disqualify them, if there are any disqualifying marks in the regulation.

Mr. MEYER. And of course I do not like some of the regulations. But what are we going to do? We are faced with this. I wish there was some way that they would be held up until Congress fixes the policy, and then we should obey that policy.

Senator HRUSKA. I have no further questions, Mr. Chairman.

Senator ERVIN. I want to thank you very much for your most helpful contribution to our work and invite you to consider both of these bills further. And if anything occurs to you that you think could be removed from them that would be helpful, or anything that could be added to them that would be helpful, we would certainly appreciate it.

Mr. MEYER. Thank you very much, Mr. Chairman.

Senator ERVIN. The committee will stand in recess until 10 o'clock tomorrow morning, when we will meet in the same place.

[Whereupon, at 1:10 p.m., the committee stood in recess to reconvene Wednesday, March 6, 1974, at 10 a.m.]

CRIMINAL JUSTICE DATA BANKS—1974

WEDNESDAY, MARCH 6, 1974

U.S. SENATE,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10:05 a.m., in room 318, Russell Senate Office Building, Senator Sam J. Ervin, Jr. (chairman) presiding.

Present: Senators Ervin and Hruska.

Also present: Lawrence M. Baskir, chief counsel; and Mark Gitenstein, counsel.

Senator ERVIN. The subcommittee will come to order. I regret that Senator Hruska will not be able to be here at the opening of the hearing today because he has another committee meeting, and the same observation applies to Senator Gurney, both of whom were in attendance all day yesterday.

Senator Goldwater, I want to welcome you to the committee, and to thank you on behalf of the committee for your willingness to appear and give us the benefit of your views with respect to this very important legislation, these very important legislative proposals we are considering. Thank you very much.

TESTIMONY OF HON. BARRY GOLDWATER, A U.S. SENATOR FROM THE STATE OF ARIZONA, ACCOMPANIED BY TERRY EMERSON, LEGAL COUNSEL

Senator GOLDWATER. Thank you, Mr. Chairman. It is a pleasure to join you today in your latest hearings on the subject of computers and privacy, a matter which I believe you investigated extensively in 1971. Though the primary focus of your current hearings is upon the use of criminal justice data banks, I know you are interested in the general subject of personal data bank systems and the ominous trend to national population numbering.

Mr. Chairman, I will devote my testimony to this broader subject because I have introduced legislation, S. 2810, which is now pending before this subcommittee, to establish safeguards for the individual regarding the keeping, use and accuracy of automated personal data systems of all types. The credit for having initiated the bill should honestly fall upon the shoulders of my son, Congressman Barry M. Goldwater, Jr., who first introduced it in the House last September.

Mr. Chairman, we are not speaking about an alarmist's flight of fantasy. The computer era is already upon us. There are currently 150,000 computers in use in the United States,[1] and some 350,000

[1] This estimate refers to private and government computers, including minicomputers. Source: Congressional Reference Service, Library of Congress.

remote data terminals.[2] Conservative estimates indicate that there will be 250,000 computers and 800,000 terminals by 1975.[3] Over 10 percent of all business expenditures on new plant and equipment in America is currently spent on the computer and its subsidiary systems.[4]

Revolutionary changes in data storage have taken place or are imminent. Computer storage devices now exist which make it entirely practicable to record thousands of millions of characters of information, and to have the whole of this always available for instant retrieval.

For example, the National Academy of Sciences reported in 1972:

> That it is technologically possible today, especially with recent advances in mass storage memories, to build a computerized on-line file containing the compacted equivalent of 20 pages of typed information about the personal history and selected activities of every man, woman, and child in the United States, arranging the system so that any single record could be retrieved in about 30 seconds.[5]

On larger systems today, the basic unit of time measurement is the nanosecond—1 billionth of a second. It is hard for us to conceive but 1 nanosecond is to 1 second what 1 second is to 33 years.[6]

Distance is no obstacle. Communications circuits, telephone lines, radio waves, even laser beams, can be used to carry information in bulk at speeds which can match the computer's own. Cross-country, trans-Atlantic, and interstellar transmission between computer units is not only now feasible, but is now being done.

Time sharing is normal. The time sharing systems with which we are familiar today are adequate for up to 200 users who are working at the same time. But we are now hearing of a system whereby it is feasible for there to be several thousands of simultaneous users or terminals.[7]

An international body of experts who surveyed this subject in 1971 concluded that it is likely that, within the next 20 years, most of the recorded information in the world will be on computers and more than half the telephone calls will be communications to and from computers.[8]

What does all this mean to you and me? How are we personally involved or associated with these developments? All we have to do is think of our daily lives.

Details of our health, our education, our employment, our taxes, our telephone calls, our insurance, our banking and financial transactions, pension contributions, our books borrowed, our airline and hotel reservations, our professional societies, our family relationships, all are being handled by computers right now.

As to strictly governmental records, it was calculated in 1967 that there were over 3.1 billion records on individual Americans stored in at least 1,755 different types of Federal agency files.[9] Need I remind anyone that unless these computers, both government and private, are specifically programed to erase unwanted history, these details from our past can at any time be reassembled to confront us?

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[2] M. Warner and M. Stone, "The Data Bank Society," at 33 (1970).
[3] A. Westin and M. Baker, "Databanks in a Free Society," National Academy of Sciences Project on Computer Databanks, at 327 (1972).
[4] "The Data Bank Society," at 41.
[5] "Databanks in a Free Society," at 320-21. (Emphasis in original.)
[6] "The Data Bank Society," at 42.
[7] P. Muller and H. Kuhlmann, "Integrated Information Bank Systems, Social Bookkeeping and Privacy," XXIV International Social Science Journal 584 (1972).
[8] The International Commission of Jurists, "The Legal Protection of Privacy: A Comparative Survey of Ten Countries," XXIV International Social Science Journal 427 (1972).
[9] "Government Dossier (Survey of Information Contained in Government Files)," committee print of Subcommittee on Administrative Practice and Procedure, Committee on the Judiciary, U.S. Senate, 90th Congress, First Session, at 9 (Nov. 1967).

Also, I might mention census data, which most of us think as being sacrosanct. Even census statistics, forbidden by law from disclosure in identifiable form, can be quite revealing.

The Census Bureau operates a popular line of business selling statistical summaries broken down into census tracts covering urban neighborhoods as small as a thousand families each. Any person or any organization can purchase this information which, while not containing specific names, does give a detailed outline of a small sector of the population, with size and type of housing, the way people travel to work, their type of work, their ages and sexes, all in a given neighborhood.[10]

This information could be very valuable to those who would manipulate or influence social conduct. Matching other lists which already exist, relatively simple computing equipment can enable anyone wanting to know to determine the location of all persons in a small category.[11] Thus, we can lose our anonymity without knowing it. Without our awareness, we become vulnerable to the possibility that this information can be put to use by administrative planners or policy makers for purposes of our social manipulation or conditioning.

If this were not enough, I might remind my colleagues that in 1966, the then Bureau of the Budget brought before Congress a comprehensive proposal to create a vast computerized national data center which would serve at least 20 different Federal agencies.[12] The people who proposed and evaluated this recommendation for the government, testified at a House hearing on the matter that there was no way to avoid keeping records about specific individuals and individual attributes in this data center. Each of the government witnesses admitted that the records that would be included in the central data bank would leave a trail back to particular individuals.[13]

Although this idea was put aside for the moment, after being exposed in the glare of congressional scrutiny, the time to think about the future is now. We must design the safeguards, and set the standards, of personal privacy now while a national numbering system is still only a mental concept. We must program the programers while there is still some personal liberty left.

The question we must face was posed by Malcolm Warner and Michael Stone, a behavioral scientist and a computer scientist, who ask in their book, The Data Bank Society:

> If one central source has all the data concerning our life-history, and is bent upon regulating our behavior to conform to the prescribed goals of society, how can this be opposed? Only by the society demanding that sufficient thought be taken before the threat becomes a *fait accompli*.[14]

What these writers recognize is that a welfare-statism society, in order to control its members, needs information. Total control requires total information. On the basis of this information, conclusions can be drawn, plans can be made, for directing us.[15]

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[10] U.S. Department of Health, Education and Welfare, "Records Computers and the Rights of Citizens," Report of the Secretary's Advisory Committee on Automated Personal Data Systems, at 293 (July 1973).
[11] Id., at 293-94.
[12] See generally "The Computer and Invasion of Privacy," Hearings Before a Subcommittee of the Committee on Government Operations, House of Representatives, 89th Congress, Second Session (1966).
[13] Id., at 96-98, 112.
[14] The Data Ba ık Society, at 73.
[15] Id., at 214-15.

Other writers reach the same conclusion. Paul Muller and H. Kuhlmann, writing in the International Social Science Journal, conclude that:

> Integrated information-bank systems, at least looked at from the aspect of privacy, might bring with them the imminent danger of a one-sided alteration of the relationship between institutions and individuals, with the possibility of the individuals becoming open to scrutiny by the institutions, while the institutions themselves remain as complex and "inscrutable" as before. . . .[16]

Mr. Chairman, what we must be alert to is that the computer society could come about almost by accident, as computers proliferate and integrate.

We did not start to build a nationwide telegraph network in the 1840's, only independent telegraph links. But it was not long before we had an integrated national network.

We did not start to build a nationwide telephone system in the 1890's. Yet, today we have a highly integrated telephone network.

Automated information systems have the same qualities as communications systems. It is cheaper to share information by tying together independent systems than by building a great number of duplicative systems.[17]

Thus, we are building today the bits and pieces of separate automated information systems in the private and government sectors that closely follow the pattern to the present integrated communications structure. The direction of growth is clear. Increasingly, data stored in computer memory banks is being shared by several users.[18]

Independent credit systems built to cover small areas find it economical to cross-connect. Airline systems swap information back and forth to get reservation information on individuals.

It is no wonder that in the summer of 1972, the International Commission of Jurists, in publishing a study on the right to privacy in 10 Western nations, concluded that:

> The latest and potentially the greatest threat to privacy is the recording, storing, and dissemination of personal information by computers.[19]

Mr. Chairman, it is the theme of my testimony that, as we move closer and closer to a fully data-banked society, privacy must be planned beforehand. It is for us to determine today just how much freedom shall remain for the individual in the future.

Mr. Chairman, I would propose to answer this challenge by legislating into law a Federal code of safeguard requirements for automated personal data systems, the first law of its kind in America.[20]

My proposal is generally consistent with the recommendations of the Secretary's Advisory Committee on Automated Personal Data Systems of the Department of HEW. This landmark report, canvassing the total impact on the individual, is a logical starting point from which Congress can begin to mold its own solutions.

The basic proposals of the Secretary's committee, as I have incorporated them into S. 2810, are these:

1. There must be no personal data system whose very existence is secret.

[16] XXIV International Social Science Journal 596 (1972).

[17] "The Computer and Invasion of Privacy," at 121-22.

[18] In 1972, a National Academy of Sciences project on computer databanks concluded that: "It is the increased feasibility of data sharing . . . that will be the most important effect of advances in computer technology during the next 8 years." "Databanks in a Free Society," at 342.

[19] XXIV International Social Science Journal 578 (1972).

[20] In 1973, Sweden adopted the only existing nationwide statute aimed specifically at the regulation of computerized personal data systems. This law is essentially a licensing program.

2. There must be a way for an individual to find out what information about him is in a record and how that information is to be used.

3. There must be a way for an individual to correct information about him, if it is erroneous. And I might say that I think all of us have experienced this in the computerized handling of bills and accounts. I get a bill every month from a hotel that I paid 2 years ago. And the hotel keeps saying, we know you have paid it, but the computer forgets it. So it can make those mistakes even though they can be eventually corrected.

4. There must be a record of every significant access to any personal data in the system, including the indentity of all persons and organizations to whom access has been given.

5. There must be a way for an individual to prevent information about him collected for one purpose from being used for other purposes, without his consent.

The only exception which my bill would make from these general rules is where I believe it is necessary to protect a broader national interest in the public safety, particularly in the categories of classified foreign affairs and defense secrets and criminal justice records which are pertinent to legitimate law enforcement purposes. If the exemptions of my bill are not broad enough, I am willing to make needed changes for the public safety.[21] In this time of highly organized criminal forces who are mobile worldwide, I feel strongly that we should not tie the hands of those who would protect us in back of themselves.[22]

Mr. Chairman, another important provision of my bill would stop the growing use of the social security number as a national population identifier. There already have been issued a total of 160 million social security numbers to living Americans.[23]

[21] In this connection, I suggest that all bills on privacy before the committee be tested against the realities of daily law enforcement activities.

For example, take the case of the police officer who investigated a traffic incident in Peoria, Ill., when a motorist reported that her car had been sideswiped by another vehicle. The investigating officer found an automobile fitting the description approximately 18 blocks from the scene and immediately ran a computer check on a license plate found hidden under the seat. This check led to information that the drivers of the car were suspects in a homicide case. The individuals later admitted that they had participated in the murder and robbery of a young woman and the theft of her car. Under the language of one of the bills now before the committee, S. 2963, these murderers may still be free.

Neither arrest, nor criminal history, record information could have been disclosed in this case because the requesting police officer did not arrest, detain, or commence criminal proceedings against the occupants of the car before requesting the information as required by section 202. Since there were no outstanding arrest warrants in this case, not even wanted persons information could have been supplied. (Section 102(13).)

Unless a very broad interpretation is given to S. 2963, it would also prohibit many other proper inquiries by police officers. I am referring to prearrest inquiries made while merely following a car or after a motorist is stopped for a minor traffic matter, perhaps amounting to no more than a warning. I have come across many cases where State police troopers have used their judgment in these situations to run an information check and have found that the driver of the car was wanted in a city hundreds of miles away on charges of armed robbery, rape, or murder. Also, we must consider the prearrest situation where police investigators must be able to determine, before approaching a suspect, whether he may be armed and dangerous.

Both S. 2963 and S. 2964 require that all criminal justice information must be sealed, after specified periods of years, on the basis that the information is "unlikely to provide a reliable guide to the behavior of the individual."

This unverified assumption is ignorant or uncaring of the fact that great numbers of criminal repeaters commit their subsequent crimes after the time periods of the bills. Though access to sealed information may be granted by court warrants, the mechanics of the sealing procedures would often make it impossible for the police to know what files to ask for or to reach the files in time.

The sealing provisions of S. 2963 and S. 2964 also appear to be based upon an assumption that failure to prosecute or convict an accused within a specified time invariably means that the arrest was unfounded. To the contrary, the LEAA reports that a landmark study now underway will show that noncooperation from witnesses is responsible for about half the criminal prosecutions that are scrubbed. Destruction of evidence is the cause in a significant number of additional failures.

I would caution that if we are not careful to avoid disruptions of essential law enforcement functions, the effort to prevent a police state may only result in creating an anarchy in which we all are held hostage to the whims of terrorists and kidnappers.

[22] Dr. Donald Michael, Director of the Center for Research on the Utilization of Scientific Knowledge at the University of Michigan, believes: "A federally integrated attack on crime, fully using the ability of the computer to organize and interpret data about criminals and crimes, eventually would free many terrorized people from threats of death or disaster and open business opportunities now preempted by the freewheeling criminal." "The Computer and Invasion of Privacy," at 186.

[23] February 1974, estimate by Social Security Administration.

These numbers are used not only for the social security program, but for State unemployment insurance programs; for Federal and State taxpayer identification; for identification of all civil service employees; for registration of all purchasers of U.S. Savings Bonds and other Government securities; to identify FAA pilot records; to identify all recipients of State old-age assistance and medicare benefits; to identify the retirement records of all civil service retirees; for Veterans' Administration hospital admission numbers; to locate the medical histories of many Indians; as the Service number of all military personnel; to identify all customers of banks, of savings and loan associations, of credit unions, and of brokers and dealers in securities; for use in receiving drivers licenses; to identify all applicants and beneficiaries of public assistance programs; to identify aliens working in the United States; and to identify children in the ninth grade and above in many school systems, among other uses not mentioned.[24]

No statute or administrative rule prohibits use of the account number in other record systems. Indeed, an Executive Order by President Roosevelt is still in effect requiring that any Federal agency establishing a new system for personal identification must use the social security number.[25]

Mr. Chairman, it is time to halt this drift toward reducing each person to a number. Professor Charles Reich has aptly referred to the idea of giving each person a population number as "tying a tin can around him." All the rest of his life, he would have this tin can jangling along behind him. We would all become marked individuals.[26]

I might interject at this point that it is impossible for me to remember my social security number. Every time I am asked for it I have to phone Washington and ask my Secretary. I know my serial number in the Air Force, but I don't know my social security number, and I don't particularly want to know it.

A national population number would deprive us of what anonymity we each retain as individuals. Once identifiable to the administrator in government or business, by an exclusive number, we would become vulnerable—to being located wherever we are, to being manipulated, to being conditioned, to being coerced.

It is my belief, Mr. Chairman, that in order for the individual to truly exist, some reserve of privacy must be guaranteed to him. Privacy is vital for the flourishing of the individual personality.[27]

By privacy, I mean the great common law tradition that a person has a right not to be defamed whether it be by a machine or a person. I mean the right "to be let alone"—from intrusions by Big Brother in all his guises.[28] I mean the right to be protected against disclosure of information given by an individual in circumstances of confidence, and against disclosure of irrelevant embarrassing facts relating to one's own private life, both elements having been included in the

[24] "Records, Computers and the Rights of Citizens," at 115-121.

[25] Exec. Order 9397, Nov. 22, 1943.

[26] "The Computer and Invasion of Privacy," at 42.

[27] Based on anthropological and sociological studies, and evidence from the British Psycho-Analytical Society and the Royal College of Psychiatrists, the Committee on Privacy of Great Britain reported in 1972 that the need for privacy is a basic, natural one, important both to individual physical and mental health and to "the imaginativeness and creativity of the society as a whole." Report of the Committee on Privacy, Home Office, Great Britain, at 33-34 (July 1972).

[28] In 1970, I relied upon the right "to be let alone" as the Constitutional basis of an amendment I offered which became part of the Postal Reform Law, protecting individuals from intrusions of unsolicited smut mail. 39 U.S.C. 3010; P.L. 91-375, § 14, Congressional findings. In this context of privacy, see *Rowan v. United States*, 397 U.S. 728 (1970); *Breard v. Alexandria*, 341 U.S. 622 (1951); *Pent-R-Books, Inc. v. U.S. Postal Service*, 328 F. Supp. 297 (D.C. N.Y. 1971); *Universal Specialties, Inc. v. Blount*, 331 F. Supp. 52 (D.C. Cal. 1971).

authoritative definition of privacy agreed upon by the International Commission of Jurists at its world conference of May, 1967.[29]

By "privacy" I also mean what the Supreme Court has referred to as the embodiment of "our respect for the inviolability of the human personality"[30] and as a right which is "so rooted in the traditions and conscience of our people as to be ranked as fundamental."[31]

Mr. Chairman, I call upon Congress to protect the right of privacy by enacting the safeguards I have proposed. In addition, I call upon the executive branch to take the following immediate steps.

First, the President should announce privacy requirements under section 111 of the Federal Property and Administrative Services Act of 1949, which allows him to establish "uniform Federal automatic data processing standards" for all computers used by Federal agencies.

Second, a citizen's guide to files should be issued by each Government agency, specifying the nature of each of its files containing information about individuals; the class and number of persons covered; the uses to which the file is put; and whether individuals have access to any of their records in the file.[32] Third, the President should cancel the Executive Order of 1943 which now spreads the use of the social security number.

What we must remember, Mr. Chairman, is that privacy in a data bank society must be planned. Privacy, as liberty, is all too easily lost. I urge that you act now while there is still privacy to cherish.

Mr. Chairman, there are additional pages to my prepared statement, but they are all footnotes.

And I would like in that respect to identify the gentleman next to me as Terry Emerson, my legal assistant who put this all together.

Senator ERVIN. You might let the record show that the footnotes which are attached to Senator Goldwater's statements will be printed in the record.

Senator GOLDWATER. Thank you very much, Mr. Chairman. And I do hope we can get something done soon.

Senator ERVIN. Thank you.

I am very much gratified that you are interested in this area. I think that the computerization of information poses an almost indescribable threat to what Justice Brandeis described as privacy; that is, the right of the individual to be let alone by government and also by commercial enterprises in certain areas of his life.

Senator GOLDWATER. I might add, I agree 100 percent with you. I would refer just a little bit to history.

Being a conservative, I think history tells us a lot.

Hitler developed the SS for the same purpose that computers are being used today, and had he had computers in those days his violence and his terror would have been much greater.

Peron in the Argentine did the same thing.

In fact, the danger of the welfare state is that it requires information on individuals to make them stay in line. And it has always produced a dictator. And that is one of my reasons for being so fearful of what we are doing today in the welfare state field, not just as it

[29] Conclusions of the Nordic Conference on the Right to Privacy, 1967, reprinted in XXIV Int'l. Social Sci. J., at 419 (1972).

[30] *Tehan v. Shott*, 382 U.S. 406 (1966).

[31] *Griswold v. Connecticut*, 381 U.S. 497 (1965). See also *Roe v. Wade*, 410 U.S. 113, 153-155 (1973).

[32] I am indebted to the National Academy of Sciences Report on *Databanks in a Free Society* for the idea of a Citizen's Guide to Files. See pp. 362-363.

applies to the use of computers, but the need of this information for a welfare state to exist.

Senator ERVIN. I certainly share your view about the importance of history. I think any society which does not learn and practice the lessons which history teaches is doomed to repeat the mistakes and suffer the misfortunes of the past.

Senator GOLDWATER. "What is past is prolog. Study the past."

Thank you very much, Mr. Chairman.

Senator ERVIN. Thank you very much.

Attorney General Saxbe is the next witness.

Mr. Attorney General, we are delighted to welcome you to the committee. And I wish to express my appreciation of the fact that you are interested in the field covered by the Department of Justice bill, because I think it is time for us to bring some order out of the chaos which prevails in this area.

TESTIMONY OF HON. WILLIAM B. SAXBE, ATTORNEY GENERAL OF THE UNITED STATES

Attorney General SAXBE. Thank you, sir.

The interest that is expressed by myself and the rest of the members of the Justice Department is genuine, I assure you. And we hope to work with you and your subcommittee in any way that we can to further this.

I have a statement here which I wish to read that will further explain some of the elements that we have here.

Mr. Chairman, it is a pleasure to appear before your subcommittee today and to testify on the vital issue of the control of data in criminal justice information systems. The Justice Department has long been aware of the need to deal with this issue and in the last two Congresses has introduced and supported legislation in this field.

The administration as you know is strongly committed to the need to protect the rights of privacy of the citizens of this country. The President highlighted this in his State of the Union Message and has recently appointed a Cabinet level committee chaired by the Vice-President to examine the broad issue of privacy as it applies to governmental health, tax, social service records and the like. I am a member of that committee, and we are moving forward to present recommendations to the President before the end of this fiscal year.

I am also aware, Senator Ervin, of your long-standing interest in this field and the exemplary efforts of you and the members of your subcommittee in seeking legislation in this area. I come in a spirit of cooperation and hope that together we can develop legislation which strikes a proper balance between the legitimate and vital information needs of the criminal justice system and the constitutional rights of persons affected by the collection and dissemination of criminal justice information.

Part of the citizen's right of privacy is lost through engagement in criminal activities. The facts of his arrest, trial, and conviction are all matters of public record. Arrests appearing on police blotters, grand jury indictments, and records of court proceedings are matters of public information. The degree to which a citizen's right should be lost or modified by contact with the criminal justice system, particularly where arrest does not lead to conviction, is a matter which the legislation before this subcommittee seeks to define.

In my view both the Department of Justice bill, the Criminal Justice Information Systems Act of 1974, S. 2964, and your bill, Mr. Chairman, the Criminal Justice Information Control and Protection of Privacy Act of 1974, S. 2963, reflect a strong concern for security and privacy. They both deal effectively with the fundamental issues involved.

With the many advances in computer technology which have occurred in recent years there is a substantial danger that the rights of privacy of individuals could be infringed upon by our criminal justice information systems, and while there is no overwhelming evidence of such abuse, nevertheless the potential for such abuse does exist.

In the past a criminal justice agency's capacity to collect, store and disseminate data was limited. Most systems were manual in nature and the very inefficiency of these systems was one of the chief protections of individual privacy, even recognizing that these manual systems were difficult to update and contained inaccurate information which was sometimes used to the detriment of an individual.

The scattering of data and files and the inefficient means for accessing data all served to reduce the scope and effectiveness of precomputer information systems. The widespread use of computers and sophisticated interstate transmission networks, including potential satellite transmission for connecting these computers, has removed much of the protection the inefficiency of previous systems may have provided to personal privacy.

Advances in computer technology have led to qualitative as well as quantitative changes. The ease with which computers allow access to records has greatly increased the capability to correct records and has led to more accurate recordkeeping. Computers have markedly increased the operational utility of those records by permitting instantaneous response to the needs of criminal justice to reduce crime and improve the performance of the criminal justice system. Computers have facilitated planning, evaluation and general improvement of the criminal justice system.

The use of computers also has greatly increased the ability of government to acquire, store, retrieve, and disseminate information about individuals. The ease with which computers handle data has led to a growing tendency to gather more and more data. With the large amount of data available there has been a tendency to seek new uses for it, including the development of investigative leads and postconviction sentencing reports. While these new uses may increasingly threaten the individual's right to privacy, the development of legislative safeguards have not kept pace. As the National Advisory Commission on Criminal Justice Standards and Goals recognized in its Report on the Criminal Justice System:

> No longer is it possible to rely on the inefficiency of information systems for protection of privacy. Computer-based information systems require conscious planning for protection of personal privacy. Constraints must be imposed on the system to ensure that the highest practicable level of protection is obtained.

The legislation pending before this subcommittee seeks to provide the necessary constraints.

JURISDICTIONAL BASIS FOR THE BILL

Much of the data in criminal justice information systems is transmitted in interstate commerce. There is no doubt that the Federal Government can regulate its use under the commerce clause of the Constitution. Nor is there any doubt that the Government can regulate its own systems and systems for which it provides funds.

SUMMARY OF KEY PROVISIONS

Mr. Chairman, I would now like to outline some of the key provisions of the Department's bill. It is not my intention to present an indepth discussion and analysis of the highly technical provisions of this bill. I will leave that to your later witnesses from the Law Enforcement Assistance Administration and the Federal Bureau of Investigation.

For some time it has been apparent that comprehensive Federal legislation is needed to deal with the complex issues of the utilization and the dissemination of data in criminal justice information systems.

In 1970, Congress passed legislation, sponsored by Senator Mathias, calling on the Law Enforcement Assistance Administration to develop legislative proposals for assuring the security and privacy of data contained in criminal justice information systems funded by LEAA.

In 1971, the Department of Justice presented to the Congress legislation regulating the noncriminal justice uses of criminal justice information. Legislation was also introduced by Members of Congress to deal with this issue.

The bill which the Department has just submitted to Congress is a refinement of the earlier bills submitted in 1971 and 1972. It embodies many of the principles in those bills, as well as in the bills introduced by individual Members of Congress, such as yourself, Mr. Chairman. It also includes many of the excellent recommendations of the National Crime Information Center Advisory Board, project SEARCH, as well as many of the recommendations developed by the National Advisory Commission on Criminal Justice Standards and Goals in its Report on the Criminal Justice System.

The Department's legislation will assure the security and privacy of data contained in criminal justice information systems. Within this context it also regulates the legitimate uses of intelligence by criminal justice agencies.

Security, as used in the legislation, refers to protection of the system against unintended or accidental injury or intrusion. Privacy on the other hand refers to protection of the interests of the people whose name appears for whatever reason in any criminal justice information system.

It is, of course, readily apparent that where a system does not have the proper security there is a grave danger that individual rights of privacy may be compromised.

Without security procedures an unauthorized person can add to, change or delete data in the system and extracts of information within the system can be used for private motives or personal gain.

The Department's bill deals with the security issue by providing that complete and accurate records be kept of access and use made of any information in the system, and standards must be established to guard against unauthorized access to data. The bill also provides that

programs must be included for the training of system personnel so that they are aware of the requirements for uses to which information can be put and persons to whom it can be disseminated. This is most important since direct access to information is available only to authorized officers or employees of a criminal justice agency. These are important provisions.

The vital issue of the type of information which can be maintained in a system is comprehensively addressed. It is important to note that the Department's bill defines categories of criminal justice information: offender records, offender processing, and intelligence information.

Each type of criminal justice information must be kept separately and there are different standards as to the dissemination of such data. The Department's legislation recognizes that there are legitimate needs for arrest data by criminal justice agencies. Arrest data, even without a conviction, will give leads to law enforcement officials. Such data can identify a pattern of possible criminal activity which ultimately can lead to a conviction.

S. 2964, the Department's bill, recognizes that an individual has the right to review criminal offender record information regarding himself contained in criminal justice systems for the purposes of challenge and correction. A right, I might add, that has already been recognized by Department of Justice regulations. He has a right of administrative review where the agency responsible for the original entry does not take appropriate steps to correct or revise the record. We believe that it is important that under no circumstances should an individual be required to divulge this information to anyone.

Another key provision is the sealing of criminal offender record information under specified circumstances. This means that a record is closed and the information is not available to anyone either inside or outside the criminal justice community. The exceptions are the individual himself, on order of a court, or by a specific determination which must be made by the Attorney General. Such determinations could include authorization to unseal an individual's record when that individual is arrested for a serious offense. If the individual is not convicted of the offense for which he is arrested, then the record would be sealed again. I would also recommend that you give serious consideration to allowing criminal justice agencies to use sealed records in appropriate circumstances, including employment in criminal justice and for identification purposes.

Use of intelligence information must be strictly limited and subject to stronger regulations than other type of criminal justice information. The Department's bill recognizes this and sets forth very stringent requirements and controls over collection and dissemination of such information. First, intelligence may only be compiled by a criminal justice agency and it may only be collected for the purpose of a criminal investigation and analysis. This information can only be used for a criminal justice purpose and a need for the use must be established. The only exception is where its use is necessary for the reasons of national defense or foreign policy.

Another key provision is the requirement for accuracy, updating and completeness of information. The bill places primary responsibility on each participating agency to assure that the criminal offender

record information it contributes is accurate and complete and regularly and accurately revised to include dispositional and other subsequent information.

The Department bill requires regulations promulgated by the Attorney General. It is my belief that from the standpoint of administrative efficiency there must be one individual directly responsible for the issuance of detailed and technical regulations. Under existing law, I already possess this authority. Indeed on February 14, pursuant to my authority, joint proposed regulations were issued governing the dissemination of criminal record information maintained by the Federal Bureau of Investigation and criminal justice agencies receiving funds directly or indirectly from the Law Enforcement Assistance Administration.

Finally, the responsibility for the collection and dissemination of criminal justice information lies with the criminal justice agency. Therefore, it is just as important to require that the storage facilities be under the management control of a criminal justice agency. A controversy exists between law enforcement and other governmental agencies over the need for dedicated computer systems. Administrative agencies generally have a strong preference for a shared system while law enforcement officials feel strongly that a system should be dedicated solely to criminal justice. The legislation requires that management control be in a criminal justice agency. It requires that regulations be issued prescribing standards and procedures for the security of criminal justice information. Lacking management control over system operators and programers, law enforcement officials cannot assure that the data is properly protected.

IMPACT ON THE FEDERAL GOVERNMENT

This legislation will, of course, have a major impact on the operations of many agencies of the Department of Justice including the Law Enforcement Assistance Administration, the Criminal Division, the Federal Bureau of Investigation, the Drug Enforcement Administration, the Federal Bureau of Prisons, the Parole Board, and the Immigration and Naturalization Service. All of these either fund, support or utilize criminal justice information systems.

To the degree that a State criminal justice information system fails to comply with this legislation, LEAA may decide not to fund that system. To the degree that the FBI or DEA procedures, for example, do not comply with the legislation, these agencies will need to change their procedures. New security procedures will need to be established by the component agencies of the Department. Regulations insuring the rights of privacy will need to be developed.

In preparing this legislation the Department of Justice sought to take into account the concerns of various divisions within the Department and other Federal interests. As I indicated earlier, we sought to strike a balance between legitimate criminal justice needs such as those raised between component agencies of the Department and the need to protect the citizens' right to privacy.

There is one area I would like to bring to your attention because I think it needs further exploration, and I think that Congress is the proper forum in which this exploration can take place. The area I refer to is that of noncriminal justice use of criminal justice information—both arrest and conviction information.

Congress, for example, has passed a law prohibiting the Federal Government from employing anyone who has been convicted of a crime arising out of a civil disorder. If the Federal Government is to follow this congressional mandate, Government agencies investigating potential employees must have access to information which is now in criminal justice information systems—information which because of the lapse of time between the conviction and the application for employment may be sealed under the legislation submitted by the Department. Thus, Congress must decide whether this restriction on employment is to continue or whether it should be an exception to the need to secure the privacy of criminal justice information.

Congress should address the specific instances or classes of noncriminal justice uses of criminal justice information which Congress feels it would be appropriate to allow and those which should be barred. The Department's legislation, for example, already sets up two classes of permissible noncriminal justice use—national defense and foreign policy. Traditionally, the Government has been given a broad mandate to take appropriate action to protect national defense and foreign policy interest and this legislation seeks to continue that policy. It should be noted that the legislation uses the narrower words national defense, not national security.

There are other instances or classes of noncriminal justice use which you may wish to consider including employment checks on State and local government employees and credit information checks. When the FBI testifies, it will address this issue more specifically.

In the drafting of this legislation, the Department tried to accommodate the concerns of other Federal departments and in many instances this was possible. The area of noncriminal justice use of criminal justice information presented the greatest difficulty and disagreement, and I would hope that you will seek the views of other agencies such as the Treasury Department, the Civil Service Commission, and the Defense Department in your hearings on this important issue of the security and privacy of criminal justice information systems.

CONCLUSION

In conclusion, I submit that the time has come for establishing, by legislation, standards for assuring security and privacy of data contained in criminal justice information systems.

The Department of Justice has long been concerned with this area. In 1969 it initiated funding of work by the Project SEARCH group which led to the development of its Techinal Report No. 2 on Security and Privacy and in the development of model State laws and regulations. The NCIC Advisory Policy Board has also been active in developing and, along with the FBI, implementing security and privacy standards. Most recently, the National Advisory Commission on Criminal Justice Standards and Goals in its *Report on the Criminal Justice System* has stated such standards. I have recently issued proposed regulations in this area on which we are now receiving public comment. But the actions and regulations of a single department cannot do the job; comprehensive legislation is needed.

Efficient law enforcement and the protection of privacy are fundamental values but in certain instances these values come into conflict. This legislation is aimed at promoting full consideration of these values and their possible conflict.

Mr Chairman, in offering this legislation, and in appearing here, I want to state that there is a division of opinion within the Justice Department. I am well aware of this, and am here to fully and completely state their views before this committee. I think it is the only way that these issues can be properly decided.

There is a serious question as to whether in sealing, not only within my Department, but also in the police departments of the country, you are doing a service to the public or a disservice to the public. There is also a question of conflict on this sealing. What good does it do to seal a record of an individual when any newspaper can run the same information, and has it on a computer available in its morgue?

If we pass a bill that is too severe in nature, it is going to mean a compilation of criminal justice histories by credit bureaus, employment bureaus, by employers, and by Federal Bureaus. They are going to start their own recordkeeping, and we have not then solved the problem. In fact, we have made it even more difficult for an individual to secure privacy, because everybody has his record and has it readily available, and they don't have to look to criminal justice sources.

I think it is important, as I pointed out here, that all of these records that we are talking about, and criminal offender records, which is the basis of what we are talking about, are public records. The dockets from which they come, the court proceedings, are all public records. We cannot seal these. There is no way that we can seal these records. So we are talking about simply making it more difficult for people to obtain these records. And there is serious disagreement within the law enforcement community whether or not you are not compounding the problem.

The other statement that I wish to make is that while we do have these recommendations in this bill, the question has arisen, well, if you have got serious disagreement, why are they in there? They are in there because we think we can live with them. We couldn't send this bill up here and then come up and disavow it. We think we can live with the bill. And the choice has to be made by the Congress as to how far they want to go and to what degree we want to take the chance of starting up other recordkeeping in other nonpublic agencies.

In regard to the committee recently established by the President on privacy, it is interesting that the area where there are the fewest complaints—and that is in criminal justice—should be the first to come in with a bill on privacy. It seems to me that privacy is violated in much more damaging ways by other Federal departments—the leaks of the IRS, the employment records, the various other security agencies in the several departments, the use of the social security number, the use of relief and welfare information, the opening up to students of other informational banks—all these create a great deal more complaints than we have had in the criminal justice area.

I again point out that we have not had serious complaints in the criminal justice area on leaks of information.

Now, the dissemination to noncriminal justice areas is where the problem arises. And this, of course, is where we think the committee should address itself. And we can abide by this. But again we run into the ever present problem, do we drive this into recordkeeping in areas where it cannot be controlled?

I have already been informed by many employers, employment agencies and credit bureaus, that no longer do they depend upon criminal justice information. They go down and they take the names off the docket every day, the arrest records. They may be right or wrong.

And I have a personal story to relate on this, because I have had personal experience on it. When I was attorney general in Ohio, a lawyer from Cincinnati came into the capital city for a convention and was arrested on a drunk and disorderly charge. He was picked up on the streets at night and was taken to the police department, wherein he declared he was William B. Saxbe, the attorney general of the State of Ohio. And even though he had identification on him that proved otherwise, he was booked as William B. Saxbe on the docket. And they put him in the drunk tank, and in due time he sobered up and got his senses about him and came back the next day and told them his right name and made bail and went home to Cincinnati to his wife, where the real punishment occurred.

This was reported to my office in a day or two. I live some 35 miles from Columbus, and I had an alibi.

So how do you get your name off the police docket? I find out there is no way you can get your name off the police docket. And here is the attorney general on their docket as a drunk and disorderly person. It took judicial action to get this off. Obviously it was a mistake. But the interesting thing is that had I been some less well known member of the community, I question whether it could ever have been removed.

The question, of course, to a politician would be, why do you want it off at all? Well, you want it off because 5 years from that time somebody might come in and say, "Do you know that William B. Saxbe was picked up on a drunk and disorderly charge 5 years ago?" And a person in political life realizes what this means.

So by this example I realize what we are trying to do to help the average citizen when this type of a mistake is made.

Senator ERVIN. We had a rather amusing story—I don't remember all the details—in North Carolina along that line. Several very prominent members of the legislature were caught playing poker in violation of our antigambling statute in the days just before we got involved in the First World War. The newspapers were bandying about the names of several prominent Germans who were supposed to be in the Western Hemisphere stirring up possible trouble against the United States. And this police officer evidently didn't do much reading of the newspapers. So a member of the legislature gave him the name of one of these Germans in the United States. And the paper came out, holding the Germans responsible. And our intelligence officers were investigating the possibility that they were all in North Carolina in a hotel room playing poker.

Mr. Attorney General, I think we have two very helpful bills. And the fundamental purpose of both of the bills is the same, as I see it. It is a twofold purpose. One is to aid in the enforcement of the criminal laws both at the Federal and State and local levels. And the other is to see that those whose names in one way or the other get into the criminal justice system have their privacy protected to the maximum extent possible. And the question is balancing these two interests of society. And I can assure you that the members of the committee are

going to approach this problem on a cooperative basis and try to get the best bill that we possibly can, because our objectives are identical. And this is a field in which we need legislation.

But I would have to agree with you that those engaged in law enforcement as a rule are more discreet in respect to what information they release than many other segments of our society.

Senator Hruska?

Senator HRUSKA. Yes; I have some questions, Mr. Chairman. I understand the Senate has a vote at 11 o'clock fixed by unanimous-consent agreement on the cloture petition. I wonder if we could suspend for long enough and then come back; it is almost 11.

Senator ERVIN. Yes; that will be all right, if the Attorney General can wait.

Attorney General SAXBE. Yes, sir.

Senator HRUSKA. Could we verify if the vote is on schedule?

Senator ERVIN. I think that would be wise.

Senator HRUSKA. Mr. Chairman, I have a background for some questions I wish to ask. I might say that this background has been furnished to the Attorney General. So that it will appear in the record, I am going to state this background at this time.

In 1970 Attorney General Mitchell decided to authorize the FBI to take over operational control of a prototype exchange of arrest records developed by Project SEARCH. As you are no doubt aware, Mr. Attorney General, this decision has been quite controversial among representatives of State and local government.

A number of memorandums which have been made available to the subcommittee by your office suggest that the Attorney General ignored a number of recommendations made by the Office of Management and Budget at the time of the 1970 decision. OMB recommended that the new system operated by the FBI be very similar to the original SEARCH experiment:

(1) that files be kept on a decentralized basis where each State could control access and enforce its own privacy policy, and

(2) that the new system be under the policy control of a board which would give equal voice to representatives of State government. I understand that the FBI was never informed of these recommendations and indeed that they have not been followed in the development of the NCIC program.

In a letter to the Attorney General, Arnold Webber, Associate Director of OMB stated:

> We feel that an important aspect of this project was the successful demonstration of the administration's concept of the new federalism. The States have developed SEARCH by themselves—except for Federal funding. They want to retain an equal voice with the Federal Government in policy development concerning the full implementation and operation of this system.

Mr. Webber was quite blunt on the implications of expanding the summary records program operated by SEARCH to a complete criminal history records program, as the NCIC is presently operated:

> Such expansion would have severe implications for individual privacy and would intrude into the States' desire to maintain and control their own detailed criminal history files. The preservation of the States' interests in this regard is consistent with and supports the concept and spirit of the new federalism.

So this question arises, and I would like to have your comment on it. Is the original SEARCH concept of limited files on the Federal level and an equal voice for States in policy development more consistent with the concept and the spirit of the new federalism than the substance of the order of 1970 by the Attorney General giving this activity and assigning it to the FBI?

Attorney General SAXBE. This is a matter of great concern to me. It was presented to me not on the date that some reported, but around the first of February. And I have not made a decision on this.

Now, as to your specific question——

Senator ERVIN. I was just going to suggest, we have a live quorum call preliminary to a vote on the cloture petition, and I think maybe it would be better to get your answer while you can make it complete instead of in fragments.

We will stand in recess until after the vote. We will return as quickly as possible.

[Recess.]

Senator ERVIN. Mr. Attorney General, I am sorry for the delay. We got into quite a wrangle on the Senate floor.

I think Senator Hruska, who was asking questions, is on his way back over.

Mr. BASKIR. Would you object if I asked a few questions?

Attorney General SAXBE. No, go ahead.

Mr. BASKIR. Mr. Attorney General, there is, of course, a lot of debate, as reflected in your testimony, about the nonlaw-enforcement use of various kinds of criminal records. There are a number of statutes that bear on whether a prospective Federal employee has been convicted.

Do you know of any that are concerned primarily with arrests or any other kind of criminal record which do not amount to a conviction that are used with respect to the Federal employment?

Attorney General SAXBE. I am not sure about the Byrd amendment. Doesn't that contemplate arrests, or does that require conviction?

Mr. BASKIR. I think that it requires a conviction. That is my recollection.

Attorney General SAXBE. Offhand I can't give you any example of one that carries arrest only. However, the input is an accumulative thing, based on a lot of things. Civil service examinations include a lot of things beside criminal input, as you know. And I would guess that just arrests alone would have some substantial influence on it.

Mr. BASKIR. In terms of the existing Federal law it may be more a changing of practice in terms of Federal employment rather than of changing legislative provisions, that is, referring to employment and conviction records?

Attorney General SAXBE. I believe that is correct.

Mr. BASKIR. Some of the questions that Senator Hruska had has a lot of implications, and it is a little awkward to ask these questions before the main questions, but the bill contemplates that the Attorney General issues regulations to oversee the management of this.

Did you contemplate delegating the authority to operate the NCIC system or the interstate system to a division within the Department, for example, to keep the delegation in the bureau, without creating an independent office attached to the Attorney General's office?

Has there been some thought with respect to how that provision of the Department's bill might be implemented?

Attorney General SAXBE. No. However, there is this advisory board which has recently expanded to include judicial and other persons and private citizens on it of the NCIC, which is going to have the primary policy responsibility on the NCIC. That is the way it is operating at the present time.

Now, the recommendation that this board be expanded has been accomplished to get input from other than strictly law enforcement people.

I don't believe that there is any important policy decision that would be made on that other than by this board. The day-to-day operation is rather routine, as you know. On NCIC information there is nothing put out that isn't asked for. In other words, they don't issue a daily bulletin of stolen articles, a daily bulletin of fugitives, and so on. You ask, and you get a reply.

I think it is significant to note that the traffic on there concerning the criminal offender would, I would estimate, be less than 1 percent. The primary function of the NCIC is to provide statistical information, and on inquiry, direct information on eight categories of stored information.

Now, on this, the six categories have to do with stolen property, one category has to do with fugitives, and one category, comprising less than 11 percent of the information, is on our criminal offenders.

Most of the people that ask for information are dealing with people involved in their communities. So they have no need to go to Washington to get information about someone in their community, they have the record there.

In the city of Washington 95 percent of the offenders are people known to the police in Washington, or will be known, that is, this is their residence, and they have no other base of operations.

In Los Angeles, the same thing. The few cases that extend beyond the metropolitan area, or even beyond the State, are the only cases that they would ever come to Washington to ask information on.

Now, this traffic is insignificant compared to the majority of the traffic on the NCIC. The computerized criminal history again only comprised 11 percent. And the inquiries comprise—I tried to get Director Kelley to set a figure—some place between 1 and 5 percent, I guess nearer 1.

So we are not talking about a big amount of traffic here.

Now, Senator Hruska inquired about the conflict within NCIC. I haven't resolved this, so I can't give a good answer here. It is one of the most difficult things I have tried to wrestle with, just to understand it. I have had a month to work with it. And as I told someone a while ago, I think I am beginning to understand it, but I can't explain it to anybody. It is such a complicated concept of what people have put together.

But I do know this about the NLETS. This is a communications system between the States to permit them to communicate one between the others. I think there are 17 States which are members. It is very inexpensive. All they have to do is pay the line charges as their part of it. There are no overhead costs.

Now, what can they talk about on there that couldn't be handled on NCIC, for instance? Well, a lot of processing information goes on,

where to pick up the prisoner, how to deliver him, who is going to pick him up, the arrest of a criminal wanted in some place else, and frankly, a lot of chatter, as near as I can determine.

This switching capability is really just an ability to talk to one another, that is all it is. But the NCIC input is necessary to make this valuable, I mean, the NCIC is just another source of information, and the best source, because, how many people do we want in the area of building criminal offender records?

The problem is not going to be easily resolved. But it isn't near as complicated as some people would have you believe, including the participants in kind of an internecine battle.

Mr. BASKIR. Thank you.

Senator ERVIN. Senator Hruska.

Senator HRUSKA. Mr. Attorney General, the question I asked when we recessed was this: Is the original SEARCH concept of limited files on the Federal level, and an equal voice for States in policy development, more consistent with the concept and spirit of the new federalism than the idea of having the FBI undertake the management of the SEARCH system?

Attorney General SAXBE. I think the answer would be, in support of a new federalism, yes. I have a very aggressive young man in LEAA who used to be on your staff who tells me this about 14 times a day. I can't even approach it in any way, because this is a concept under new federalism, whatever that is. And I would have to, in a question asked that way, say yes. But this concept of new federalism and mine might not be the same.

Senator HRUSKA. Let's rephrase it, then.

Instead of putting it in terms of new federalism, what about the wisdom of the policy of taking this activity outside of the purview of the States themselves so completely as to deprive them virtually of any representation in the management of this system, and vesting it in FBI. What about the wisdom of that policy?

Attorney General SAXBE. I don't think anybody would contemplate that. However, we have got to start at what the mission should be, how can we best perform the mission for which every criminal justice agency in this country is set up, how can we best store and retrieve and disseminate information necessary for law enforcement. That is what we are really concerned with. It isn't to get involved in a hassle on whose job it is to do it, rather it is, who can best do it. And I haven't really decided yet.

This is the big issue that we have before us.

I have determined this, that however it is decided, it should be on the basis of, how did we best run our business.

Senator HRUSKA. There are those who contend that it would be better handled on a different basis. And that is not necessarily spoken critically or in derogation of the FBI. But the FBI after all is oriented toward a certain mission, and a certain aspect of law enforcement. And they do it well.

The chairman observed yesterday that he considers the FBI one of the most efficient and one of the finest law enforcing bodies in the world. And I agree with that. But the States have different problems in connection with the setting up of these records. And they have different items of information and wider area of responsibility in some way than what the FBI has.

The FBI concerns itself with investigation, and with the preparation of evidence for the trial of cases. The States have much more than that to deal with in their systems, in their SEARCH system. They also have the trial of cases. But beyond that they have sentence, they have corrections, they have their rehabilitation programs, they have got their parole system, matters with which the FBI doesn't particularly concern itself, and which are not embraced in their mission. This was one of the reasons for the very controversial and rather heated debate in the Justice Department, as I understand it, before the FBI was assigned this task.

This reason is in addition, of course, to the idea that maybe there should not be centralized control, that it ought to be on a disbursed basis. Would you have any comment on that aspect of it?

Attorney General SAXBE. Well, I think both sides—and I might add that it is not a serious disagreement. They are going to live with it no matter how this comes out, they have to—but the idea that we are talking about an area that can be staked out by one or the other and then the other shouldn't invade is not correct. As I was pointing out just before you arrived, the NCIC has tremendous ability to respond to inquiry on national information other than criminal offender records. Of the total number of inquiries that are made to it, the ones on criminal history amount to only about 1 percent. The rest of them are in the other seven categories, which are stolen property, fugitives, and so forth.

These are proper areas, traditional areas for the FBI. And they perform a regular function.

Now, the flap is about, who is going to handle switching? Switching is a completely different thing that has to do with communications between police departments. If Washington is going to talk to Alexandria, they don't need any system, they just pick up the telephone and call them. And this is true in practically all of the metropolitan areas. And this is where 95 percent of the information is needed, internally. For those few cases that go beyond the metropolitan area or go beyond the State, they need to have a lease line for them to pick up and talk. And then processing information also is involved in this, that is, the picking up of a fugitive, who is going to handle it, who is going to direct him how and where are they going to keep him, this type of information which is generally considered as processing information.

So this switching is the thing that is up in the air. The rest of it is pretty well operating without much opposition one from the other.

Permitting the one to do all the switching is not going to put the other out of business. In fact, NCIC, I think, is here to stay. They have got the equipment. They only have to pay the rent for the lines. And it performs a valuable function allowing them to talk to each other.

At the same time the daily information needed on the NCIC is growing; it is building up; it is needed. And I don't think there is any intention to reverse this.

Senator HRUSKA. I am sure that is right. The basic idea of the concept of NCIC is sound. And it is not only inevitable but it is indispensable; we have to have that.

But I do come now to what we call the switching operation. For the benefit of the record, NLETS means national law enforcement telecommunication systems. That is the switching operation, isn't it?

Attorney General SAXBE. That is the switching.

Senator HRUSKA. And now the decision is for your department to make. Very likely the application has been made to you for the assignment of that switching function to the FBI. Did they make a request for a budget item in that regard? Is that the form in which the question now rests.

Attorney General SAXBE. They tell me that they have the money now in their budget.

Senator HRUSKA. What, then, is pending before you? There was an application, wasn't there, that they be delegated that responsibility and that activity?

Attorney General SAXBE. That is correct.

Senator HRUSKA. And, of course, some of the States and some of the component members of the NLETS system are taking exception to that possible assignment, as I understand it.

Attorney General SAXBE. And, frankly, the NLETS is going to proceed no matter what the NCIC does, or the FBI. All the FBI would do would be to handle the control of the net and exert some discipline on it. But they have the drops in the 50 States, so they wouldn't have to pay any of the line charges, and this kind of thing. That would be the only competitive advantage they would have.

As I say, I have had a difficult time trying to get the handle on this. I am not sure that I do yet. But I am in no great haste to make this decision.

Senator HRUSKA. Well, that is of some comfort to some of us. I think ultimately it might be that the Congress might undertake to establish a policy in that regard. Certainly we are going to consider it; I think we should study it.

We were told yesterday by one of the State attorneys general that he felt the availability of criminal justice information systems to non-law-enforcement agencies is a question of policy that should be decided by someone else than the police system themselves. And that would probably imply that it should be a legislative standard that would be established and then administered by someone who would be assigned that responsibility. Perhaps the same could be said of the switching activities as well as some aspects of the material that was involved in the 1970 decision when FBI was given the jurisdiction and the authority over the other part of the criminal justice system.

Additionally it should be considered that there are other Federal agencies that are involved: The Department of Defense, the Civil Service, and the Department of Treasury. They are interested in the NCIC and its uses. They are interested in the switching business. Maybe we ought to hear from them, Mr. Chairman, as to what their ideas are regarding who should be in charge of such a system and who should assume management and operation and control.

You had a number of years experience in the field of law enforcement, Mr. Saxbe. I understand your tenure as attorney general in Ohio was longer than any other individual holding that office.

Would you expand on the proposition of disseminating among police departments of arrest records which have not been updated

with notations of disposition? If the dissemination of information is limited only to those items where there is an arrest and a positive followup as to disposition of that arrest, would that be bad for law enforcement activities, in your judgment? Would it limit them or would it impair their ability in police work?

Attorney General SAXBE. Absolutely, I believe that it is very necessary that arrest records be disseminated on important cases. Now, I think you have got to distinguish that and say that arrest records are not sent out on misdemeanors. Arrest records are only circulated where it is a crime of some serious nature; they take fingerprints, for instance—the limit that the FBI puts on it.

This man Byck that shot the pilot up in Baltimore had been arrested twice here in the District. But he never showed up on any criminal history or criminal arrest record because they are not of a significant nature; they were for misdemeanors or illegal picketing or something like that.

If, on the other hand a man is arrested in Alexandria on a bank robbery charge—with the ease that they can make bond today and are immediately freed—and is subsequently arrested a week later on another bank robbery charge in Gaithersburg, and he makes bond there because there is no record of his arrest; he could have a whole string of bank robberies within the time that the first case had come to trial, and he would not even be a fugitive. Therefore, to say that no arrest record could be circulated unless there is a disposition, without any time limit, would not be a service to the community.

Senator HRUSKA. Yesterday Clarence Meyer, the Attorney General of Nebraska, indicated that access to State courts rather than Federal courts should be permitted for the purpose of bringing civil action for violation under some of the provisions regulating these data systems. Would you have any thoughts on that?

Attorney General SAXBE. I would think that would be a good suggestion, because practically all of the systems that we are going to control by this act are going to be State systems. And if you made a claim and go to the Federal court to enforce something against a State system, I don't think you should deny him a Federal court.

Senator HRUSKA. If there is a legitimate basis for it. But under the general rules of jurisdiction I would see no objection to that.

Mr. Chairman, I have no further questions at this time.

I want to thank the Attorney General for two things, not only for his appearance here, but also for his efforts and the cooperation of his department in the preparation of the bill which it was my privilege to introduce in the Senate. Very likely neither of the bills that we introduced are going to survive intact. I hope not, because that is not their purpose—that is certainly not my mission—and the chairman has indicated that thought himself. But in drawing up the bill as we have it before us, together with the bill which the chairman has worked on with his staff so well, we have the issues before us. By having witnesses such as you, we can thresh out a lot of the details in the bills so that we can make a better choice as to one or the other. And I want to thank you for that help.

Attorney General SAXBE. I appreciate the Senator's remarks. And I think that the best thing we did by this was to demonstrate our good faith and willingness to have a bill. And I join with you and with

Senator Ervin in realizing that there probably won't be any of our bills that is the final outcome, but we hope something is.

And I think that we have got enough meat in these bills to really work with it.

Senator ERVIN. As Senator Hruska and I both stated at the time of the introduction, we introduced the bills as blueprints for discussion, knowing that there are many valuable features in the bills. But we also hoped to get suggestions for betterment, because we were just discussing what the Attorney General of Nebraska brought up yesterday about what civil remedies for violations of the provisions of the bills should be in both the Federal and the State courts. A lot of the time the Federal court is far removed geographically from where a person may be injured as a result of violation of the law, and he ought to be allowed to go into the nearest State court for redress.

Attorney General SAXBE. Yes, sir.

Senator ERVIN. Thank you very much for many helpful suggestions. I am sorry that the situation arose in the Senate where we had to detain you as long as we did.

Attorney General SAXBE. Thank you, sir.

Mr. BASKIR. Mr. Chairman, our next witness today is Mr. Matthew Hale, who is general counsel for the American Bankers Association.

Senator ERVIN. And he bears the name of a very distinguished lawyer and judge of a bygone generation.

Mr. HALE. Thank you, sir.

Senator ERVIN. I want to welcome you to the committee and express our appreciation to you for being here with us and giving us your views and that of the organization you represent with respect to these matters.

I presume you would rather proceed with your testimony now rather than come back this afternoon.

Mr. HALE. It is entirely up to the committee, whichever you prefer, sir.

Senator ERVIN. If it is all right with you we will just proceed, in the absence of objection from my colleague.

TESTIMONY OF MATTHEW HALE, GENERAL COUNSEL, AMERICAN BANKERS ASSOCIATION

Mr. HALE. Mr. Chairman and members of the subcommittee, I am Matthew Hale, general counsel of the American Bankers Association, a trade association consisting of 96 percent of the Nation's 14,000 banks.

It is a privilege to appear before this subcommittee to express the views of the American Bankers Association on S. 2963 and S. 2964, with respect to bank access to information in the files of the FBI and other criminal justice agencies concerning prospective bank employees—specifically, information about their arrests and convictions.

I might say that the discussion this morning has in fact gone far beyond the scope of the testimony that we have prepared which is mostly limited to bank employment problems.

I should say for the committee's benefit that the ABA has been working for years now with the Banking, Housing and Urban Affairs Committee in connection with the Fair Credit Reporting Act. I

cannot say we are always in complete agreement with the committee, but we have worked with them very extensively in trying to get a workable bill in the field of credit bureau reporting on consumer credit, employment, and insurance.

We have also been working with Senator Tunney, Senator Mathias, and other Senators and Congressmen in connection with the so-called Bank Secrecy Act and the current bill on the subject, which is now awaiting the outcome of the Supreme Court case involving a California Bankers Association suit against the Treasury Department.

We are also working with the Treasury Department trying to clear up problems in the field of access to information in the field of taxation. It is a very complicated, very confused situation. We hope that we can clear up the many, many problems that come up in this area.

Speaking generally, banks are extremely conscious of the need for confidential treatment for information about their customers' financial transactions. They are encouraged in this treatment by the desire to avoid incurring the liability which banks occasionally incur when they don't treat customers' records confidentially. I would like to ask the permission of the committee to submit some materials from prepared statements and other materials in connection with this particular aspect of bank confidentiality.[33]

Banks are also conscious, not just of the need for confidentiality of customer material, but also of the need for security of customers' funds and assets and also of the need for law enforcement. We have worked constantly with the FBI and others on measures to protect banks against holdups and embezzlement and crimes of that sort, and naturally we are concerned both for the banks' sake and their customers.

The ABA, after thorough consideration of the matter in its bank personnel division and government relations council, recommends that banks should be able to get information as to convictions of applicants for employment, including pleas of guilty and non contendere. However, the ABA does not feel that it is necessary to obtain information as to arrests which do not result in convictions, and we recommend enactment of the bill without this provision. I should add that the ABA position does not represent unanimity; there were some vigorous dissents.

We have had some dissents among our members who do feel that the arrest materials would be valuable. But the ABA position as adopted, after careful consideration in the matter in the association, is that we can do pretty well without the arrest records.

S. 2963 and S. 2964 involve the balancing of two important rights: the right of the prospective employee to be free from inappropriate and unreasonable inquiries about his past and his background—his right to be free from invasion of his right to privacy; and the rights of bank customers to have their funds and their financial transactions handled by honest and trustworthy bank officers and other employees.

Each of these rights is important to the individuals involved and to the public interest. Each must be protected and preserved. But, as Mr. Justice Holmes tells us in *Hudson County Water Co.* v. *McCarter*, 209 U.S. 349, 355, (1908):

[33] See appendix, Volume II.

> All rights tend to declare themselves absolute to their logical extreme. Yet all in fact are limited by the neighborhood of principles of policy which are other than those on which the particular right is founded, and which become strong enough to hold their own when a certain point is reached. * * *

The problem, for legislators as for judges, is to determine where to find this point of equilibrium between the rights of applicants for bank employment and the rights of bank customers.

Banks handle vast amounts of other people's money—over $600 billion in deposits on June 30, 1973, and over $400 billion in trust assets at the end of 1972. These deposits and trust assets are important to the depositors and to the beneficiaries of the trusts, including the many, many beneficiaries of employment pension trusts.

Loans from these institutions are essential to the operations of the Nation's industry and commerce. These bank deposits are also important to the Government, to industry and commerce, and to the public generally, as the principal element in the Nation's money supply and the Nation's principal payments transfer mechanism.

The employees in this sensitive and important industry, who handle these incredible sums of money day after day, must be reliable and trustworthy. Banks and similar institutions would be derelict in their duties to the Government, to industry and commerce, and to the public, if they did not require their employees to meet the highest possible moral and ethical standards, and if they did not screen applicants for employment with the greatest of care.

The importance of the standards which bank officers and other employees are expected to live up to may be judged from 12 U.S.C. section 1829, which makes it a crime for a bank, without the written consent of the FDIC, to employ those who have been convicted, or hereafter are convicted, of any criminal offense involving dishonesty or a breach of trust. Another statute, 12 U.S.C. section 1818 (g)–(n), adopted in 1966, also demonstrates the congressional concern for the standards and behavior of bank officers and other employees. Under this law if they are convicted of a felony involving dishonesty or breach of trust, they may be suspended or removed by the appropriate banking agency, the Controller of the Currency, the Federal Reserve Board, and the FDIC.

At the same time, the applicants for positions in banks should not be subjected to unreasonable and unwarranted investigation and to invasion of their rights, including particularly their constitutional rights to privacy, in the broadest sense. Regard on the part of an employer for an applicant's rights will promote respect on an employee's part for the rights of the bank's customers.

Congressional policy against unreasonable infringements on individual rights to privacy has been spelled out in the Fair Credit Reporting Act, 15 U.S.C. sections 1681 ff. This act contains, among other findings, the statement that there is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and respect for the consumer's right to privacy. To accomplish this objective the act regulates consumer reporting agencies in many ways.

For instance, it requires a user of a consumer credit report to advise an applicant for credit, employment or insurance, whose application has received unfavorable consideration because of adverse information

in a credit report, to tell the applicant the name of the consumer reporting agency which supplied the adverse report; and it requires the agency to advise the applicant of the nature, substance, and sources of information in the applicant's file, in order to give the applicant a chance to correct errors.

The Fair Credit Reporting Act also prohibits consumer reporting agencies from supplying certain information on the ground that it is obsolete for the purposes of the act. As a general rule this means adverse information more than 7 years old or information about bankruptcies more than 14 years old. While these provisions do not, of course, apply to the FBI—and there is no such statutory presumption of obsolescence under 12 U.S.C. section 1829—they indicate clearly the policy of the Congress to protect applicants for employment, or for credit or insurance, against prejudice by reason of inaccurate or outdated information supplied by credit reporting agencies.

I would like to add a reference to two other bills which are now pending, the pension bills—H.R. 12481 and H.R. 12855 combined into H.R. 2—which we expect the Congress will shortly confer on and finally agree on. Both of these bills, the House bill and the Senate bill, include a provision—let me read it—"No person who has been convicted of, or has been imprisoned as a result of conviction for robbery"—and a long string of other crimes—"shall serve as an administrator, officer, trustee," and so forth, "of any employee benefit plan, or as a consultant to it, during or for 5 years after a conviction or after the end of an imprisonment for any crime listed in this paragraph, unless the Board of Parole certifies that it can be safely done."

These two bills—the House and Senate pension bills—contain very similar provisions, which undoubtedly will be in the final act, which again demonstrate the importance of knowing about criminal convictions.

The need for information from the FBI is the result of the growth and increasing mobility of the population. In Chelsea, Vt., where my grandfather grew up, or in Morganton, N.C., Mr. Chairman, there used to be and there still may be, little need to ask the FBI for information about an applicant for a job in a bank. The bank officers probably knew the applicant's parents and his brothers and sisters and uncles and aunts. They probably watched the applicant progress through the local schools and through college, and they probably knew just as much about his wife and her family.

When I was in Hawaii in a convention a few years ago I happened to be sitting next to a local banker and asked him if he knew Senator Fong.

"Why, of course I do," he said. "My grandmother and his grandmother came over on the same boat."

And for three generations those two families have known each other, and neither of them would need to ask the FBI about the characteristics and the quality of members of the other family.

However, this kind of detailed knowledge about applicants and their backgrounds is not generally possible in large metropolitan communities, or in large banks which must hire new employees by the hundreds each year to replace employees who have retired or taken other jobs. And of course this kind of personal background knowledge was not common on the frontier, where I understand it

was a breach of good manners to ask what a man's name was back East.

Even in Chelsea and Morganton, the wars, the draft, the automobile, summer residents, retired out-of-Staters, and corporate transfers have made it more and more important, in more and more cases, to find out how an applicant has conducted himself in his earlier locations.

This is why the FBI report on a prospective employee's background is so essential—to give an employer today some measure of the information which was common knowledge in many small communities in days when people were more apt to spend their whole lives in one place.

For many years banks have been getting information about arrests and convictions of prospective employees from local police and the FBI. This information has made it possible for the personnel department of a bank to exercise an informed judgment as to whether an applicant was likely to make a reliable and trustworthy employee, and to obtain the written consent of the FDIC, as required by 12 U.S.C. section 1829, if they concluded that an applicant who once upon a time had been convicted of a criminal offense involving dishonesty had in fact reformed and was now trustworthy.

We believe that in most cases the employing banks exercised discretion in using this information; that they did not reject applicants because of youthful peccadilloes; and that they did not reject applicants because of unwarranted arrests for offenses which it later became clear they had not committed. At the same time, such youthful convictions, or long arrest records even without convictions, may have served as useful warning signals calling for further review of the circumstances leading up to the convictions or the arrests.

However, we must recognize that there is a possibility that qualified applicants, who might have made real contributions to the banks and to the communities, may have been rejected on the basis of erroneous arrest records, or unfounded arrests, or convictions bearing no relation to the bank employment. Unfortunately, the more applications a personnel department must handle, the more necessary it is to establish standardized screening procedures. In such situations there is a strong temptation to adopt the safe and easy rule that even a single arrest for or a single conviction of any criminal offense, however unrelated to banking, will be an absolute bar to employment.

In 1971 the practice of checking applicants' fingerprints was halted by the decision in *Menard* v. *Mitchell*, 328 F. Supp. 718; see also 430 F. 2d 486, 1970. The court held that the FBI had no statutory authority to disseminate arrest records outside the U.S. Government for purposes of employment checks.

Authorization for continued use of FBI records for bank employment purposes was granted in Public Law 92–184, the 1972 Supplemental Appropriations Act. A similar provision was contained in the 1973 State, Justice, and Commerce appropriations bill—H.R. 14989, 92d Congress—as reported by the House—House Report No. 92–1065, May 15, 1972, but this was struck from the bill on the House floor on a point of order—Congressional Record, May 18, 1972, pp. H4697–8. The Senate Appropriations Committee inserted the authorizing provision in the bill when it was reported—Senate Report No. 92–821,

June 14, 1972. On the Senate floor a proviso was added prohibiting the FBI from furnishing arrest information unless the arrest was followed by a plea of guilty or nolo contendere or conviction in court—Congressional Record, June 15, 1972, pp. S9520-9523. That is the so-called Ervin amendment. This proviso was, however, dropped in conference—House Report No. 92-1567, October 10, 1972—and the bill became law without the proviso—Public Law 92-544, see Congressional Record, October 13, 1972, p. S. 17978—in the following form:

> The funds provided for Salaries and Expenses, Federal Bureau of Investigation, may be used hereafter, in addition to those uses authorized thereunder, for the exchange of identification records with officials of federally chartered or insured banking institutions to promote or maintain the security of those institutions, and, if authorized by State statute and approved by the Attorney General, to officials of State and local governments for purposes of employment and licensing, any such exchange to be made only for the official use of any such official and subject to the same restriction with respect to dissemination as that provided for under the aforementioned appropriation.

This problem arose again in connection with the 1974 State, Justice and Commerce appropriations bill—H.R. 8916, 93d Congress. The House took the position that the 1973 act provision was permanent law. As I understand it, the Senate disagreed and added the entire provision, including both the authorization and the proviso limiting use of arrest records to cases where a conviction had been obtained—Congressional Record, September 17, 1973, p. S16657. The House conferees refused to agree to this, and the conference report was adopted in the Senate reluctantly, with the understanding that the matter would be cleared up by separate legislation—Congressional Record, November 14, 1973, pp. S20380-20389.

Legislative proposals dealing broadly with access to arrest and conviction records in the files of the FBI and other criminal justice agencies are now contained in S. 2963 and S. 2964, particularly section 201 of S. 2963 and section 5 of S. 2964, which are now before this committee.

Both bills would permit access to conviction records for employment checks where authorized by Federal or State statute. S. 2964, in addition, would permit access to conviction records if authorized by Federal Executive order, and to arrest records if authorized by Federal statute or Executive order or by State statute.

Section 206 of S. 2963 and section 9 of S. 2964 would also require the issuance of regulations which must call for the sealing or purging of information in the files of criminal justice agencies, including conviction records, after 7 years in the case of felonies and 5 years in the case of misdemeanors.

The issue before this subcommittee and before the Congress is, as Mr. Justice Holmes pointed out, to find the proper balancing point between the rights of bank applicants and the rights of bank customers. This must be done in the light of the practical necessity that many bank personnel departments, particularly large ones handling hundreds or thousands of applications a year, will establish standardized screening procedures that may tend to draw hard and fast lines between desirable applicants and undesirable applicants on the basis of predetermined standards.

However, the issue before the subcommittee and before the Congress does not involve the standards upon which banks should judge

applicants for employment. In this respect, it differs from 12 U.S.C. section 1829. Instead, the issue is the extent of the information which the employing bank may obtain about applicants for employment. The question is whether the bank personnel department may be informed by the FBI that the applicant has an arrest record or has a conviction record, or whether the bank must make up its mind without obtaining such information from the FBI.

It is the ABA's view that the dividing line should be drawn between arrest records and conviction records, and that the FBI should be permitted to make available to employing banks conviction records but not arrest records. We expect banks to make sophisticated and judicious use of conviction records and not invariably decline to employ every applicant who has been convicted of a criminal offense, regardless of the circumstances, regardless of the applicant's record since that time, and regardless of the type of position involved. At the same time, we would hope that banks would not use the fact that the applicant has no conviction record and the bank cannot obtain an arrest record as proof that the applicant is trustworthy and reliable. Neither presumption is conclusive. Neither presumption should be accepted without discrimination in its application to the particular individual and the particular position.

Nevertheless, as a general rule we are convinced that access to conviction records is essential, for purposes of 12 U.S.C. section 1829, if for no other purpose. Clearly, no bank should be required to employ a person to handle other people's money without having access to readily available information as to convictions for criminal offenses.

I would like to raise briefly a question about the privacy that is involved in these conviction records. As I heard Senator Goldwater discussing the question of privacy in his statement, he referred particularly to personal information about an individual which the individual would not want to make public—about his home life, about his private affairs and whatnot. We are not talking about that kind of information here. We are not talking about secret information about his conviction. In fact, so far as the Constitution requires anything, it requires public trial and publicity rather than secrecy before a man is convicted, and a public statement, a public plea of guilty or nolo contendere, if he chooses to waive a public trial of the charge against him.

So, the question here is not so much privacy in the fundamental sense, the sense Senator Goldwater was using, as a question of when privacy shall be imposed on public matters, when the employing banks or other people may not be given access to information about completely public matters.

Senator Ervin. I think it is essential to our judicial system that courts should be open, and that the records of courts should be open to public inspection. I think the public policy on this side is one of the strongest public policies in existence, because if courts are not open and the records of what courts do in particular cases coming before them are not open to public inspection, I don't think there would be very much confidence or trust reposed by our people in the court of justice.

Mr. Hale. I agree.

To some extent, of course, this simply means that when you hear of banks getting conviction records, especially from the FBI, you hear definitely about the ordinary case. If the applicant for employment is named Ponzi or Ivar Kreuger or Richard Whitney or Mr. DeAngelis or Mr. Silverthorn, no bank personnel department would ever employ him. The celebrated cases of people who have gotten into difficulty with banks will be known. And as Attorney General Saxbe says, this kind of information is probably in most newspaper files already, if you can find it. But if the applicant for a job in New York has committed a minor embezzlement in Ohio or Florida, the chances are the New York bank wouldn't know about it unless it can get it through some such arrangement as the FBI general library of information of this sort.

And again, I want to distinguish quite clearly here between the fact that Mr. So-and-So was convicted of embezzlement and the evidence in the file concerning the conviction, and that kind of thing. We are only speaking here of the fact that Mr. So-and-So, the applicant, was in fact convicted of embezzlement or larceny or betting trust funds on the horses at such and such a point and was sentenced to such and such a term in jail.

Senator ERVIN. Of course, what these businesses are trying to do fundamentally as far as the individual is concerned is to be sure that he will not be unjustly condemned in seeking employment by a record which is incomplete and doesn't tell the real truth, or tells very little truth about it.

Mr. HALE. In that respect we fully agree. We agree with the similar provision in the Fair Credit Recording Act that a person who has been turned down for credit because of an adverse credit report has a right to find out what is in the report, and if he thinks it is wrong, to correct it. That is clearly provided in these bills.

Senator ERVIN. And then there is another consideration.

This Biblical character could find no place for repentance, and he sought it with tears. And there ought to be some recording agency that drops a tear sometimes and blots out our iniquities. Therefore the Subcommittee must decide whether or not a man ought to be given an opportunity to escape from his past, if he really wants to, or whether he should be hounded throughout life and penalized about having made a mistake sometime, perhaps on the spur of the moment or perhaps in his youth. The sealing provisions of these bills are concerned with that question.

Mr. HALE. We fully agree that there is a place for the Prodigal Son. We fully agree with the provision in the FDIC Act, that the FDIC may give its consent to the employment by a bank of an individual who has committed a crime involving dishonesty or breach of trust, if the bank and the FDIC are convinced that the man is reformed and is now trustworthy. But we feel it should be a conscious decision made in the light of all the circumstances.

So far I have been speaking of conviction records. Arrest records, on the other hand, even though they may in many cases prove useful as a warning signal for further investigation, provide so much less value as evidence of criminal offenses and so much greater danger of abuse, that we feel, on balance, it is better that the FBI should not make these available.

This position is consistent with the legal maxim that a person is presumed innocent until he has been proved guilty. While all lawyers recognize that those who have committed crimes are not always prosecuted, or even if prosecuted, are not always convicted, and while the presumption that a person is presumed innocent until proved guilty does not qualify him for a sensitive position of trust—for work in a bank or for that matter for admission to the bar—the presumption is sufficiently strong and sufficiently valid to serve as the basis for withholding arrest records.

In the light of the disagreement as to whether the rider in the 1973 Appropriations Act is permanent legislation, and in the light of the fact that this rider does not contain the limitation to conviction records, the ABA recommends that the bill reported by the Committee should make it clear that the FBI may continue to make information as to convictions, including pleas of guilty and nolo contendere, available for use in connection with employment in banks and certain other financial institutions, and to make it clear that information as to records of arrests not resulting in convictions should not be made available for that purpose.

The rider in the 1973 Appropriations Act applies to all federally chartered or insured banking institutions. It is not entirely clear just what institutions this covers, for instance it is not clear whether this covers mutual savings banks and savings and loan associations. In addition, limitation to federally chartered or insured institutions would omit a number of depository institutions where the need for this information is just as great. We would suggest, therefore, that the Committee make conviction records available for all depository banks, including private depository banks which are not eligible for FDIC insurance—like Brown Brothers-Harriman, for instance—and also for the handful of trust companies which administer pension and other trust funds, but do not accept deposits and are therefore ineligible for FDIC insurance.

I should like also to comment a little further on the sealing or purging provision in the two bills. S. 2963 bases this provision on the fact that the passage of time means that "the information is unlikely to provide a reliable guide to the behavior of the individual." This presumption seems as questionable as most of the other presumptions in this field. It seems clear that to deny banks information about a 10-year-old conviction for embezzlement relating to an applicant for employment in a bank, on the basis of this presumption, would be unwise and unfortunate.

Of course if the bank is not informed of the conviction, the bank would not violate 12 U.S.C. section 1829 when it hired the person involved—since the section only applies where the offender is employed "knowingly"—though it would seem that the provisions of section 1829 would become applicable if the bank later learned about the conviction. Nevertheless, it seems clear that the sealing or purging provision is inconsistent with the policy set forth in 12 U.S.C. section 1829. That statute clearly requires both the bank and the FDIC to review every individual case where an applicant or an employee has been convicted of a criminal offense involving dishonesty or breach of trust. The statute provides ample room for the bank and the FDIC to approve the employment if they find this would be in the public

interest. However, section 1829 clearly applies to all convictions, not just those which occurred within the last 5 years or 7 years.

The sealing or purging provisions in S. 2963 and S. 2964 we feel are distinguishable from the comparable provisions of the Fair Credit Reporting Act. That act applies to private consumer reporting agencies, less likely to have accurate and complete information than the FBI, and to all applications for consumer credit, employment, and insurance, not just to information for use in connection with employment in banks where a congressional policy has been laid down in 12 U.S.C. section 1829 and 12 U.S.C. section 1818.

We would be glad to make suggestions to the committee staff and the Senate legislative counsel as to specific statutory provisions which would accomplish these objectives, which would fit in with the problem of trust companies, private banks, and possibly other kinds of depository institutions, such as mutual savings banks, and savings and loan associations, although, of course, we don't presume to speak for the mutual savings banks and savings and loans.

May I say, Mr. Chairman, we appreciate this opportunity to present our views to the committee. We hope they will be helpful to you. You certainly may call on us for further information any time it would be helpful.

Senator ERVIN. As I interpret your statement, you take the position that the Government has an interest in furnishing the conviction records to banks or financial institutions covered by Federal insurance to protect the Federal Government itself?

Mr. HALE. Yes.

Senator ERVIN. That justifies it.

Now, you also suggest that in effect anyone in any institution which accepts deposits, or any agency which is handling pension funds, should have access to conviction records?

Mr. HALE. Yes. It wasn't our suggestion on the pension funds. That is congressional action.

Senator ERVIN. I am just wondering whether more embezzlement and theft by employees does not occur in institutions that are not ordinary commercial institutions other than banking institutions, or agencies handling pension funds, or accepting deposits. I wonder if you couldn't make the same justification for saying anybody engaged in a commercial enterprise ought to have access to conviction records.

Mr. HALE. Well, of course, we wouldn't presume to speak for the general line of commerce and industry. However, I would distinguish the banking industry on the ground that Congress has entrusted the commercial banking industry with the task of providing most of the Nation's money supply—checking accounts, and the Nation's transfer mechanism. The banking system is in fact carrying out the congressional power to make money, and supplying credit for the needs of business, industry and interstate and foreign commerce.

So that I think banking does have a special situation.

Senator ERVIN. I just wonder if these commercial enterprises furnish food and clothing and motor vehicles and other things to the people that are not performing their function, because they are just about as important.

Mr. HALE. I suppose the only additional distinction is that at least in the bank the product you are handling is money, which is very easy to get away with, and very tempting, whereas in the salad oil business it is probably much more difficult.

Senator ERVIN. In these commercial enterprises other than those which are engaged in banking, the banks handle the money which they produce in effect.

Senator HRUSKA. Would the Senator yield?

Senator ERVIN. Yes.

Senator HRUSKA. Isn't it true that an insurance company, for example, handles a lot of money that is the money of other people, just like banks, that is repayable on a different basis?

Mr. HALE. They certainly do.

Senator HRUSKA. And many pension funds?

Mr. HALE. Senators, I wouldn't argue against your making this information available to other people besides the banking industry. I think one can distinguish the banking industry from other industries on the ground of its special relation to the Government. But I certainly wouldn't want to argue that the committee should not make conviction records available to industry generally. That might well be appropriate.

Senator HRUSKA. Yesterday the suggestion was made that maybe one way of handling the problem would be to have the applicant for a position represent in his written application that in the last 10 years he has neither been arrested nor convicted, and make it subject to the burden of a penalty if there is misrepresentation of material fact. I believe that the criminal code, title 18, section 1001, has a penalty attached to it, any misrepresentation in writing or even orally made to a Government agency or Government official. Would an approach like that be of any practical use in your banking industry?

Mr. HALE. We do have a statute—18 U.S.C. section 1014—which the Congress recently amended at our suggestion, that false statements made in connection with an application to an insured bank for a loan are Federal offenses. The section 1001 penalty is applicable to a statement made to the Government, so I think that you would have to make every bank application in essence an application to the FDIC. However, I am not sure that there would be anything wrong with that.

On the other hand, as a practical enforcement method it seems to me that there is a lot to be said for sending the applicant's fingerprints to the FBI and having them say, yes, there is a conviction, or no, there isn't. I think the principle is a perfectly good one, though—unless conceivably the Justice Department might say, we don't want to have that number of extra cases to try. I hope there wouldn't be many, so maybe that would not be a problem.

Senator HRUSKA. I have no further questions.

Senator ERVIN. Would it satisfy the concern of the banking industry to restrict the records of convictions to those which are convictions for crimes involving dishonesty or a breach of the trust?

Mr. HALE. Well, it would be a help, sir. On the other hand, I think if an individual has demonstrated a real contempt for the law by receiving—well, even parking tickets if he has received 200 or 300 of them—I really think that would raise a question in my mind as to

whether the applicant is a safe person to handle other people's money in banks, or whether he would be a safe person to admit to the bar.

Senator ERVIN. I want to thank you very much for your testimony. And I am especially appreciative of the fact that the Banking Association as a whole has come to the conclusion that on balancing the interest of the individual who applies for employment and the interest of the bank, that the interest of the individual whose record may show some arrests outbalances the other. Thank you very much. And also I would like to accept your suggestions that you would be willing to cooperate with the committee on phraseology to be used as amendments to the—to accomplish the purposes you have enumerated.

Mr. HALE. We would be glad to do anything we could to help.

Senator ERVIN. Thank you very much. And I am sorry that the controversy on the Senate floor detained you so long on this occasion. The committee will stand in recess until 10 o'clock tomorrow, when it will meet at the same place.

[Whereupon, at 1:30 p.m., the committee recessed, to reconvene at 10 a.m., Wednesday, March 6, 1974.]

CRIMINAL JUSTICE DATA BANKS—1974

THURSDAY, MARCH 7, 1974

U.S. SENATE,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:05 a.m., in room 318, Russell Senate Office Building, Senator Sam J. Ervin, Jr. (chairman) presiding.

Present: Senators Ervin, Gurney, Hruska, Tunney, and Mathias.

Also present: Lawrence M. Baskir, chief counsel; and Mark Gitenstein, counsel.

Senator ERVIN. The subcommittee will come to order, and the counsel will call the first witness.

Mr. GITENSTEIN. Our first witness this morning is Hon. Elliot Richardson.

Senator ERVIN. Thank you for your willingness to appear before the committee and give us the benefit of your views on this matter.

TESTIMONY OF HON. ELLIOT L. RICHARDSON, FORMER U.S. ATTORNEY GENERAL

Mr. RICHARDSON. Thank you very much, Mr. Chairman, and members of the subcommittee. I am very pleased to be here this morning and have the opportunity to testify on a subject which has been of interest to me for a period of time.

I have a prepared statement, Mr. Chairman, which I would like to have submitted for the record in full. But recognizing that you have a number of other witnesses here this morning, including my good friend and former colleague, Chief Clarence Kelley of the FBI, I would like to summarize the highlights of this testimony for you initially, and then, of course, would be glad to respond to any questions of the committee either during the course of this summary or at its conclusion.

Senator ERVIN. That will be satisfactory to the committee. And let the record show that the written statement will be printed in full at the conclusion of the remarks of the witness.

Mr. RICHARDSON. Thank you, Mr. Chairman.

Of the two bills before the subcommittee, one, S. 2964, submitted by the Department of Justice, is the outgrowth of work that was initiated at the Department while I was Attorney General. The other, S. 2963, has been developed I understand by members of the subcommittee staff.

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The background of these bills rests upon an awareness that many American citizens are becoming profoundly concerned about the coercive potential of so-called computer data banks. I suspect most people—and I count myself in that majority—do not have a good understanding of how computer-based recordkeeping operations work.

We have some sense of the tasks they can perform for our benefit, but most of us have had little or no part to play in developing them and in deciding when and how they will be used. We know that they are used by organizations, both public and private; and that their use is growing. And we have general concern about things they will enable recordkeeping agencies to do to us.

Nowhere are these concerns more sharply focused than on the nationwide network of computer data banks that our State criminal justice agencies have been developing during the past 5 years, with the support of the Department of Justice and the Congress under the Omnibus Crime Control and Safe Streets Act of 1968.

There are perhaps two main reasons why citizens' concerns focus most sharply on law enforcement computer systems. One is that law enforcement agencies are the organizations to which we have always committed the most potent force for maintaining domestic order, exercising control over the behavior of citizens, and apprehending and seeking punishment of those among us who violate the rules of domestic order.

The second is that the information that law enforcement agencies collect and store about individuals has great inherent potential to cause embarrassment and harm.

The chairman will recall in testimony before this subcommittee on March 15, 1971, while I was serving as Secretary of HEW, I announced my intention to establish a public advisory committee to look into the legal and social implications of computer-based personal data systems. On July 31, 1973, I had the privilege of making public and endorsing that committee's report, "Records, Computers, and the Rights of Citizens," at a joint press conference with my former Cabinet colleague, Secretary of Health, Education, and Welfare, Caspar W. Weinberger.

One of the principal conclusions of the Secretary's Advisory Committee on Automated Personal Data Systems, as I am sure most of you know, was that adequate protections for personal privacy cannot be expected to evolve naturally from the efforts of those that design and use computerized personal data systems. Nor can we prudently wait for such protection to be devised through judicial decisions expanding either the common law or the constitutional doctrine of personal privacy.

The task, in short, is one for legislation and administrative rulemaking. Only thus can we hope to formulate coherent, general safeguards to protect individuals from the risks to which they have become vulnerable as a consequence of the accelerating spread of this powerful new technology.

Philosophically, the problem can be stated quite simply. On the one hand, we must be concerned about social order; on the other, we must be concerned about individual liberty and/or autonomy. However, the balance between these two guiding principles is always hard to strike in our society because of our ethical and Constitutional commitment to their interdependence. In the present situation, further-

more, we are hampered by our ignorance of the impact and effectiveness of criminal justice information practices.

We still need to make careful studies of the effects of criminal justice recordkeeping systems so that we can determine how much they are helping to strengthen police, court, and correction operations, at what cost, and at what real or potential danger to citizen liberties.

I expect these hearings to elicit much useful information, but I think it will still be important to proceed as logically as possible and with caution. In approaching the legislative task, it is essential to remember that computer technology as such is not the issue, nor is information as such.

Computer technology and information are neutral in themselves. It is how they are used that matters. We should not confuse records and the information that they contain with the underlying actions that they represent or the uses that may be made of them. For example, much concern has been expressed about arrest records. A number of studies seem to show that an individual with a record of arrests finds it harder to get a job or to obtain credit than an individual who has never been arrested. Similarly, there are studies indicating that an individual who has a record of prior arrests is often dealt with more severely by the police, prosecutors, and courts than an individual who has never been arrested before.

Even assuming that the record of a person's previous arrest is accurate, it is argued that such a difference in treatment is unfair.

I would submit, however, that the real issue is not the arrest record per se or even the fact of having committed the act reported in the arrest record; rather, the central issue is the behavior of the policeman, the prosecutor, the judge, the employer, or creditor, as that behavior is triggered by knowledge of a prior arrest—knowledge that could come from any source, not just from the arrest record.

In issue, in other words, is the decision process of the policeman, prosecutor, the judge, the employer, and the creditor. If one were confident that the fact of prior arrest is irrelevant to the decisions that these people must make, then one could say that a prior arrest should not be taken into account in the decisions. To do so, however, we must first be able to establish the predictive value or lack thereof of a person's prior arrest for the purpose of deciding how to treat him if he has a subsequent encounter with the law, or whether or not to employ him, or to grant him credit.

There are many people who feel that a prior arrest should not be allowed to have any bearing on such decisions unless the person was duly convicted for the charge for which he was arrested. In their view, only prior convictions should be taken into account in making these decisions. Even there I understand there are some that would pursue the same line of reasoning with respect to prior convictions.

What expectations should they create about an individual's future behavior? Even if we were confident that people with prior arrests or prior convictions have a demonstrable tendency to be poor employment or credit risks but become objects of repeated law enforcement detention, we would not be able to say that the prior arrest or conviction of any particular individual is a sure guide to making such a judgment about him. We might be able to estimate the probabilities, but we could never be certain.

I believe that the principal objective of the legislation before you should be to encourage trust in our society—trust by citizens of their institutions; trust by institutions of citizens; and trust of citizens for each other.

Obviously, the legislation dealing with criminal justice information systems cannot by itself achieve that objective. Many other steps must be taken. However, this legislation can help; and we should not flinch from doing as much with it as we can.

I favor the provisions of both bills which would require all criminal justice agencies to give public notice of the existence and character of their automated criminal justice information systems. I would go beyond that and urge that there should be no criminal justice agency information systems whose very existence is secret.

It may be argued that if criminal justice agencies, particularly investigative units, are required to disclose publicly the existence and general character of their information systems, their ability to function effectively will be reduced. I am skeptical of such argument; in fact, I suspect that people who are likely to be the object of such investigative information systems are those that are most likely to be aware of their existence. And that it is desirable in the interest of the rest of us who may at some point be touched by them to be at least aware of their existence.

Turning to the subject of criminal history records, I suggested earlier that it is not the records nor the information that they contain that cause problems, but rather the circumstances in which they are deemed relevant. In my view, conviction records present a particularly vexing problem in this regard. And here, I think it is important to emphasize that the consequences attached to conviction are, in my view at least, in urgent need of examination.

As the task force report on corrections of the President's Commission on Law Enforcement and Administration of Justice said:

> As a general rule civil disability law has simply not been rationally designed to accommodate the varied interests of society and the individual convicted person. There has been little effort to evaluate the whole system of disabilities and disqualifications that has grown up. . . . As a result, convicted persons are generally subjected to numerous disabilities and disqualifications which have little relation to the crime committed, the person committing it or, consequently, the protection of society. They are often harsh out of all proportion to the crime committed.

While I do not believe, Mr. Chairman, that this bill should in itself be the vehicle for reform of the whole area of disabilities and disqualifications, it does seem to me that it is an issue that is raised by this bill and which should be independently pursued as a follow-on to action on the bill.

As to arrest records, their capacity for triggering unfair disability and disqualification is likely to grow tremendously as a consequence of their increasing circulation among computerized systems. Accordingly, I urge that the circulation of arrest records be prohibited in the developing nationwide network of automated criminal justice information systems.

Generally speaking, I see little justification for routinely depositing arrest records into a computerized system that permits them to be accessible directly to all other participating law enforcement jurisdictions. Access to the record of any particular arrest should be limited to the agencies that have to deal with the arrested individual in disposing of the charges. Dissemination would thereby be permitted only to another criminal justice agency, and only if the other agency had a specified operational need to use the arrest information.

By prohibiting the dissemination of mere arrest records outside the community of criminal justice agencies and by limiting their dissemination among criminal justice agencies, we will go far toward curtailing the use of arrest record information in decisions about employment, credit, insurance, and other matters not related to the administration of criminal justice.

You will also bring our policies and practices with respect to the use of arrest record information more in line with those of other countries.

The substance of these findings is set forth in the quotation on page 13 of my transcript:

> Outside the United States arrest records are maintained for identification purposes within the framework of crime investigation and, as a rule, only law enforcement authorities, the prosecutor, and sometimes judicial authorities have access. Previous arrests are hardly ever taken into consideration in connection with employment; even in cases where government positions of trust are at stake, their use is limited.

It is my understanding that except in a few States, the wholesale computerization of arrest records has not yet been undertaken. One reason for this is the cost involved. Another reason why this enormous task has not been undertaken is the genuine doubt that many people in the law enforcement community have about the utility of wholesale computerization of all arrest records.

I fear, however, that the evolution of our automated criminal justice information network is likely to lead to far more computerization of arrest records than is either useful for law enforcement agencies or healthy for the society.

Therefore, I urge that strict and focused limitations be imposed on the entering of identifiable arrest record information in the national computer-linked system and that strict access and disclosure limitations be placed on arrest records and be maintained by all criminal justice agencies.

Turning now to the sealing and purging of records, I share the view expressed by many that much of the discrimination practiced against persons who have had prior arrests and convictions has the quality of a self-fulfilling prophecy and contributes to recidivism.

As I said earlier, we will not achieve reform of social attitudes toward prior arrests and convictions by sealing or expunging official records. Indeed, we might accelerate reform by publicizing the fact that arrests and even convictions are not as unusual an experience in our society as many people seem to assume.

There is a problem, further, that an individual cannot save face if sealing and purging are required; and how to cope with rumors, innuendos, or downright false accusations as to what the records show. It is a difficult act to make a record inoperative by legerdemain. Rehabilitation in the eyes of society should be sought through forthrightness, forgiveness, and understanding that are best nourished by trusting and understanding of reality.

Although I am not attracted by sealing and purging provisions, I am sympathetic to their objective. The broadcast circulation of individually identifiable arrest records should be prevented because it

is a clear and present danger to individual citizens; and there is a paramount need for reform in America's means for restoring the social status of reformed convicts.

Finally, Mr. Chairman and members of the subcommittee, it seems to me clearly important that the information and records about individuals be as complete and pertinent as may be necessary to fulfill the purposes for which the information is to be used.

One means of assuring accurateness, completeness, and pertinence is to give individuals the right to examine their records and to seek appropriate changes in them. Both bills before the subcommittee contain provisions that would establish such rights. To me, these provisions seem clearly desirable.

That concludes my summary of my prepared statement, Mr. Chairman and members of the subcommittee. I would be very glad to respond to your questions.

[The prepared statement of Elliot Richardson follows:]

Prepared Statement of Hon. Elliot L. Richardson, Former U.S. Attorney General

Mr. Chairman and Members of the Subcommittee: The Subcommittee has before it two bills whose aim is to establish protections for individuals from the harm that may come to them as a consequence of applying computer and telecommunications technology to the management of information that is gathered and used in connection with the administration of criminal justice. One of these bills, S. 2964, has been submitted by the Department of Justice; it is the outgrowth of work that was initiated while I was Attorney General. The other, S. 2963, has been developed, I understand, by members of the Subcommittee staff.

Before addressing specific comments to these bills, I would like to make some general comments about why legislation regulating the management of criminal justice information is needed and what I think the objectives of that legislation should be.

The fundamental reason why we need legislation is that many American citizens are becoming profoundly concerned about the coercive potential of so-called computer data banks. I suspect that most people, and I count myself in that majority, do not have a good understanding of how computer-based record-keeping operations work. We have some sense of the prodigious tasks that they can be made to perform for our benefit, but most of us have had little or no part to play in developing them, or in deciding if, when, and how they will be used. We know only that their use by record-keeping organizations, both public and private, appears to be growing, and we, therefore, are concerned about things we believe they enable—or will come to enable—record-keeping organizations to do to us. Nowhere are these concerns more sharply focused than on the nationwide network of computer data banks that our State criminal justice agencies have been developing during the past five years with the support of the Department of Justice and the Congress under the Omnibus Crime Control and Safe Streets Act of 1968.

There are perhaps two main reasons why citizen concerns focus most sharply on law enforcement computer systems. One is that law enforcement agencies are the organizations to which we have always committed the most potent forces for maintaining domestic order—for exercising control over the behavior of citizens and for apprehending and seeking punishment of those among us who violate the rules of domestic order. The second is that the information that law enforcement agencies collect and store about individuals has great inherent potential to cause embarrassment and harm.

Citizen concern about the potential abuse of police power, and of police records, antedates the founding of this nation. It explains the limitations on the exercise of the police power that are provided in our Constitution. It is reflected in many statutes, and in long chains of court decisions. It accounts for the rules of evidence that prevent certain kinds of police-gathered information from being used in judicial proceedings. Indeed, when viewed historically, responding to concerns about the need to devise constraints on the use of law enforcement data banks is

not a new endeavor. Rather, it is like learning a new dance step with an old partner: the basic elements of the experience remain as we have known them, but we must catch the new rhythms and learn to make the right moves.

Needless to say, our knowledge that people are genuinely concerned about a problem does not mean that lawmakers are necessarily the ones to respond to it. However, the need for a legislative response in this instance seems clear.

The Chairman will recall that in testimony before this Subcommittee on March 15, 1971, while I was serving as Secretary of Health, Education, and Welfare, I announced my intention to establish a public advisory committee to look into the legal and social implications of computer-based personal data systems. On July 31, 1973, I had the privilege of making public and endorsing that committee's report, *Records, Computers, and the Rights of Citizens*, at a joint press conference with my former Cabinet colleague, Secretary of Health, Education, and Welfare, Caspar W. Weinberger.

One of the principal conclusions of the Secretary's Advisory Committee on Automated Personal Data Systems, as I am sure most of you know, was that adequate protections for personal privacy cannot be expected to evolve naturally from the efforts of those who design and use computerized personal data systems. Nor can we prudently wait for such protection to be devised through judicial decisions expanding either the common law or the Constitutional doctrine of personal privacy. The task, in short, is one for legislation and administrative rule making. Only thus can we hope to formulate coherent, general safeguards to protect individuals from the risks to which they have become vulnerable as a consequence of the accelerating spread of this powerful new technology.

What risks must we protect against? In the main, as I have suggested, they are not new. To understand them, however, we must consider the interests at stake.

Philosophically, the problem can be stated quite simply. On the one hand, we must be concerned about social order; on the other, we must be concerned about individual liberty and autonomy. However, the balance between these two guiding principles is always hard to strike in our society because of our ethical and Constitutional commitment to their interdependence. In the present situation, furthermore, we are hampered by our ignorance of the impact and effectiveness of criminal justice information practices.

It was partly in recognition of the need to improve criminal justice information practices, and particularly law enforcement information practices, that the President's Commission on Law Enforcement and Administration of Justice recommended, in 1967, that computer technology be exploited to develop an integrated national criminal justice information system. Indeed, most of the attention given to science and technology in the Commission's report, *The Challenge of Crime in A Free Society*, was concentrated on applications of computers and communications technology to law enforcement operations.

The Commission recognized that law enforcement records containing derogatory personal information "may contain incomplete or incorrect information," or "may fall into the wrong hands and be used to intimidate or embarrass . . . (or) . . . to harass ex-offenders." It also noted that the "mere existence [of such records] *may diminish* an offender's belief in the possibility of redemption." However, the Commission was inclined to be optimistic. It urged that special attention be directed at protecting personal privacy, but it felt that the new technology could be used to "create both more useful information and greater individual protection."

Seven years and many millions of dollars worth of systems later, we can only wish that the Commission's optimism had been borne out. If it had been, we would not now have to fashion legislation on the basis of less knowledge and understanding than we need to be confident that we are doing a good job. We still need to make careful studies of the effects of criminal justice record-keeping systems, so that we can determine how much they are helping to strengthen police, court, and correction operations, at what cost, and at what real or potential danger to citizen liberties. I expect these hearings to elicit much useful information, but I think it will still be important to proceed as logically as possible and with caution.

In approaching the legislative task, it is essential to remember that computer technology as such is not the issue; nor is information, as such. Computer technology and information are neutral in themselves; it is how they are used that matters. We should not confuse records and the information they contain with the underlying actions that they represent, or with the uses that may be made of them.

For example, much concern has been expressed about "arrest records." A number of studies seem to show that an individual with a record of arrest finds it harder to get a job or to obtain credit than an individual who has never been arrested. Similarly, there are studies indicating that an individual who has a record of prior arrests is often dealt with more severely by police, prosecutors, and courts than an individual who has never been arrested before. Even assuming that the record of a person's previous arrest(s) is accurate, it is argued that such a difference in treatment is unfair.

I would submit, however, that the real issue is not the arrest record per se, or even the fact of having committed the act reported in the arrest record. Rather the central issue is the behavior of the policeman, the prosecutor, the judge, the employer, or the creditor, as that behavior is triggered by knowledge of a prior arrest—knowledge that could come from any source, not just from the arrest record. At issue, in other words, is the decision process of the policeman, the prosecutor, the judge, the employer, and the creditor. If one could be confident that the fact of prior arrest is irrelevant to the decisions that these people make, then one could say that previous arrests should not be taken into account in their decisions. To do so, however, we must first be able to establish the predictive value (or lack thereof) of a person's prior arrest for the purpose of deciding how to treat him if he has a subsequent encounter with the law, or whether or not to employ him, or to grant him credit.

There are many people who feel that a prior arrest should not be allowed to have any bearing on such decisions unless the person was duly convicted of the charge for which he was arrested. In their view, only prior convictions should be taken into account in making these decisions, and even there I understand that there are some who would pursue the same line of reasoning with respect to prior convictions: What expectations should they create about an individual's future behavior?

Even if we were confident that people with prior arrests or prior convictions have a demonstrable tendency to be poor employment or credit risks, or to become objects of repeated law enforcement attention, we would not be able to say that the prior arrest or conviction *of any particular individual* is a sure guide to making such judgments about *him*. We might be able to estimate the probabilities, but we could never be certain.

We are faced then with asking ourselves the question: Should a person with a prior arrest or conviction be treated as though that fact about him has predictive value? And our answer will depend on our answer to other questions. For example, what future significance do we feel should attach to a person's past wrong-doing? Do we have a punitive social philosophy of criminal justice or a rehabilitative one? Do we view the presumption of innocence as an absolute value?

It is clear that we are not at one as a society in answering these questions, and that our failure to agree grossly complicates the task of designing legislation to deal with police recordkeeping practices. However, I believe that a principal objective of the legislation before you should be to encourage trust in our society—trust by citizens of their institutions, trust by institutions of citizens, and trust of citizens for each other. Obviously, legislation dealing with criminal justice information systems cannot by itself achieve that objective. Many other steps must be taken. However, this legislation can help and we should not flinch from doing as much with it as we can.

PUBLIC NOTICE OF SYSTEMS

One of the most important things that any such legislation can do is to help overcome ignorance about the existence and character of criminal justice recordkeeping and information exchange practices.

Accordingly, I favor the provisions in S. 2963 and S. 2964 which would require all criminal justice agencies to give public notice of the existence and character of their automated criminal justice information systems. Moreover, I would prefer to see these provisions go even farther by requiring that all *manual* systems also be described for the benefit of the public.

In my view, and in the opinion of most who have studied these matters, the basic principle of these provisions is fundamental: *there should be no criminal justice agency information systems whose very existence is secret*. It may be argued that if criminal justice agencies—particularly investigative units—are required to disclose publicly the existence and general character of their information systems, their ability to function effectively will be reduced. I am skeptical of such arguments. I suspect that people who are the object of the most sophisticated investigative information systems know such systems exist and know much

about their character—far more, for example, than the average citizen. Yet the fact that many such systems are suspected to exist, and that their purposes and general character are not understood, serves as an unnecessary source of fear and distrust of police investigative units, of the police in general, and even of other governmental institutions that are in no way involved in law enforcement. It is time to remove the veil from what all our government agency information systems are about.

CRIMINAL HISTORY RECORDS

I spoke earlier about some of the difficult issues raised by the use of criminal history records. I suggested that it is not the records or the information they contain which cause problems but rather the circumstances in which they are deemed relevant. In my view, conviction records present especially vexing problems in this regard. Civil disabilities imposed by law make the life of an ex-convict in the United States very difficult. As the Task Force Report on Corrections of the President's Commission on Law Enforcement and Administration of Justice said:

"As a general rule [civil disability law] has simply not been rationally designed to accommodate the varied interests of society and the individual convicted person. There has been little effort to evaluate the whole system of disabilities and disqualifications that has grown up . . . As a result, convicted persons are generally subjected to numerous disabilities and disqualifications which have little relation to the crime committed, the person committing it or, consequently, the protection of society. They are often harsh out of all proportion to the crime committed."

It seems to me that in reforming our criminal justice system high priority should be given to the whole area of disabilities and disqualifications resulting from criminal conviction. I would not urge that a bill dealing with criminal justice information system practices be used as the touchstone for such reform. The underlying issues are too pervasive and deep-rooted to be resolved in such an indirect manner.

The same, however, is not true of mere arrest records. Their capacity for triggering unfair disability and disqualification is likely to grow tremendously as a consequence of their increasing circulation among computerized systems. Accordingly, I urge that the circulation of arrest records be prohibited in the developing nationwide network of automated criminal justice information systems. Generally speaking, I see little justification for routinely depositing arrest records into a computerized system that permits them to be accessed directly by other law enforcement jurisdictions. Access to the record of any particular arrest should be limited to the agencies that have to deal with the arrested individual in disposing of the charges against him. Dissemination would thereby be permitted only to another criminal justice agency and only if the other agency had a specified operational need to use the arrest information.

By prohibiting the dissemination of mere arrest records outside the community of criminal justice agencies and by limiting their dissemination among criminal justice agencies, we will go far toward curtailing the use of arrest record information in decisions about employment, credit, insurance, and other matters not related to the administration of criminal justice. We will also bring our policies and practices with respect to the use of arrest record information more in line with those of other countries.

I am impressed by the results of the 1967 survey conducted by the National Council on Crime and Delinquency of laws and practices relating to the dissemination and use of arrest records in other countries. Of the 39 countries responding, 38, including almost every Western European country, the United Kingdom, Australia, Israel and Japan, reported policies and practices designed to avoid the discrimination against persons with arrest records that is common in the United States. The findings of the survey are described in an article in the April 1967 issue of *Crime and Delinquency*. In general, they show that a "criminal record" in these countries lists only convictions, and that in some countries they list only convictions for serious crimes that cannot be appealed further. Moreover, none of the countries reports routine disclosure of information on previous arrests to prospective employers. As the authors of the article conclude:

"Outside the United States arrest records are maintained for identification purposes within the framework of crime investigation and, as a rule, only law-enforcement authorities, the prosecutor, and sometimes judicial authorities have access. Previous arrests are hardly ever taken into consideration in connection with employment; even in cases where government positions of trust are at stake, their use is limited." (p. 501)

It is my understanding that, except in a few States, the wholesale computerization of arrest records has not yet been undertaken. One reason for this is the substantial cost involved in going back through existing paper files of criminal history records. The Washington Area Law Enforcement System (WALES) estimates that it would cost over a million dollars to computerize arrest and conviction records from its criminal jackets, in part because a well-qualified person can code for computerization only four average records per day. Another reason why this enormous task has not been undertaken is the genuine doubt that many people in the law enforcement community have about the utility of wholesale computerization of all arrest records. I fear, however, that the dogged evolution of our automated national criminal justice information network is likely to lead to far more computerization of arrest records than is either useful for law enforcement agencies or healthy for the society. Therefore, I urge that strict and focussed limitations be imposed on the entering of identifiable arrest record information into the national computer-linked system and that strict access and disclosure limitations be placed on arrest records maintained by all criminal justice agencies.

SEALING AND PURGING OF RECORDS

I share the view expressed by many that much of the discrimination practiced against persons who have had prior arrests and convictions has the quality of self-fulfilling prophecy and contributes to recidivism. But, as I said earlier, we will not achieve reform of social attitudes toward prior arrests and convictions by sealing or expunging official records. Indeed, we might accelerate reform by publicizing the fact that arrest, and even conviction, are not nearly as unusual an experience in our society as many people appear to assume.

My principal concern about sealing and purging, however, is that they have an obvious capability to backfire. How, after a record has been purged, can one cope with rumors, innuendos, or downright false assertions as to what the record showed? How, after a record has been sealed can one hope to deter or promptly counter misrepresentations of its content?

It is difficult to make a record "inoperative" by legerdemain. Rehabilitation in the eyes of society should be sought through forthrightness, understanding, and forgiveness which are best nourished by trusting acceptance of reality.

Although I am not attracted by sealing and purging provisions, I am sympathetic to their objective. The broadcast circulation of individually identifiable arrest records should be prevented because it is a clear and present danger to individual citizens; and there is a paramount need for reform in America's means for restoring the social status of reformed convicts.

INDIVIDUAL'S RIGHT TO CHALLENGE HIS RECORD

Whether the concern is effective management of an administrative information system or fairness to individual record subjects, it is important that the information in records maintained about individuals be as accurate, complete, and pertient as may be necessary to fulfill the purposes for which the information is to be used. One means of assuring accuracy, completeness, and pertinence is to give individuals the right to examine their records and to seek appropriate changes in them. Both bills before the Subcommittee contain provisions that would establish such rights. Generally speaking, these provisions seem desirable. It would be a good idea for them to specify that an individual shall have the right to review and obtain copies of information in his record in a form which is intelligible to him, and further, that any procedures established—or fees charged—for obtaining copies of his record will never be so complicated—or so great—as effectively to frustrate reasonable exercise of his right of access.

Senator ERVIN. Your statement correctly indicates that the problem of trying to bring about the social rehabilitation of people who have been impaled by the criminal law is much more extensive than this limited bill that we have before us.

I was much impressed by your reference to disabilities which so often follow a man who has been convicted. I have noticed as much in my own State. We have a State law that a person convicted of a felony is thereafter disabled to vote in a State election unless he has his citizenry restored by a legal process of which the average convicted

felon has never heard and knows nothing about. And many of them come back and vote, and thereby, unknowingly, as far as they are concerned, commit another felony.

It makes you sometimes wonder. Take the rather ironic statement made by a dean of the law school that is now Duke University. He said the law is very peculiar in the requirements that it makes upon different classes of men. It requires a layman to know every detail in the law; it requires a lawyer to know a reasonable amount of law; and that it does not require a judge to know a damned thing.

As you point out, that is beyond the purview of this particular bill and should not be coupled with this bill.

As I understand it, you say arrest records should be confined solely—that is, arrest records which do not disclose what happens subsequent to the arrest should not be permitted to get beyond at least those that were charged with the enforcement of the law.

Mr. RICHARDSON. That is correct, Mr. Chairman. I believe that should be so and even among law enforcement agencies there should be provision for their being made available only where there is some real need for it. This could in turn take the form of certain kinds of arrest records where there is established to be some predictive value as to the possibility an individual who has been apprehended is dangerous or is associated with organized criminal activity, for example. And, of course, arrest records can have a bearing on ultimate disposition itself at a stage where a probation report is submitted.

Senator ERVIN. I also interpret your statement to indicate that you believe that what you might call criminal intelligence as distinguished from a criminal history record, should be confined to the law enforcement officers.

Mr. RICHARDSON. Yes, I do. I think that, Mr. Chairman, I think that criminal intelligence information should be substantially more restricted in access than criminal history information.

I know that there is a difference among the bills on the question of whether or not criminal intelligence information should be collected and stored in automated systems at all. My own view is that there are some situations where computerizing criminal intelligence can have some utility. I have been exposed, for example, to the analyses of infiltration of legitimate business by organized crime, which seeks to develop correlations among the names of people who turn up as incorporators or clerks of newly formed companies, in order to trace the involvement of members of organized criminal syndicates into new areas of investment. Here there can be some value in the identification of this kind of correlation through feeding a lot of information about corporations into a computer. There may be other leads developed through that kind of capacity of the computer to correlate information.

But I think that it follows, on the other hand, that if you are feeding a lot of information of this kind into an automated system that there ought to be very strict controls over access to it. And one of the incidental advantages, of course, of an automated system is that it is possible technically to key access to it.

The question I think here really is what ought to be the statutory safeguards established in any event. However, it does seem to be impor-

tant that a clear distinction be made between criminal intelligence on one side and criminal histories or offender information on the other. And that the former be subject to very strict limitations of access.

Senator ERVIN. I was very much impressed with your statement that while the objective of sealing criminal records after a lapse of time is laudable, that that does not really deal sufficiently to bring relief for that problem. I think your observation is correct and it was illustrated in the case of an individual that I happened to know in times past. He was a banker during the depression. He was convicted of violation of banking laws, and he did serve a sentence. And he decided the thing to do was to go where he was not known, where people did not know anything about his conviction and his serving a sentence. He went to a community where nobody knew about it, but sooner or later, about the time that he was making some progress, somebody turned up that knew of his conviction and released a rumor, the truth, in the community.

He moved several times in that way, and finally decided that the only way he could really rehabilitate himself was to go back to his home where everybody knew about this; and he would not have to face discovery as he had in these other places. He did that very thing and eventually got elected mayor after he rehabilitated himself in his home town, which is one of our larger places in North Carolina.

Mr. RICHARDSON. That is a significant illustration, Mr. Chairman. I have been plagued—I think that is as good a word as any—by a driving record throughout my whole political life. It was the subject of a Drew Pearson column on the eve of the confirmation hearing for my nomination as Undersecretary of State. And I had to ask the chairman, Senator Fulbright, to open the hearing, normally held in executive session for State Department appointees, in order that I could deal with this. It first surfaced as a result of an exhaustive investigation of my background by a major Massachusetts political figure whom I had investigated as a U.S. attorney.

Every time I have a law enforcement job, and sometimes in between, later as attorney general of Massachusetts and Attorney General of the United States, this turns up.

I wondered, in the light of this legislation, whether I would have been better off or worse off if the record had been sealed. I suspect that the key conviction involved was one for driving under the influence of alcohol back when I was about 18 years old in 1938. I wonder whether I would have been better off or worse off if the record had been sealed. Even the driving record I do have has been subject to considerable distortion and inflation. And by being able to point to the actual record of fines over a period of years in my early youth, it has been possible to say that is all there is. But if the Massachusetts politician, whose corruption I had been investigating, had been able to put together a hearsay record which I could not then have refuted by the real record, I am not sure that this might have been even worse.

I do not know to what extent a parallel is valid. But at least in every single one of the confirmation hearings, I had the transcript that was developed in the first hearing by Senator Fulbright made a part of the record. And I have presumably been regarded as rehabilitated.

Senator ERVIN. I do not have any doubt about that.

Senator Gurney.

Senator GURNEY. Thank you, Mr. Chairman.

I can understand your problem, Mr. Richardson. I remember defending an 18-year-old boy one time in Florida—this was during some of those spring festivals that we have in Florida, this particular one over in Daytona Beach. This young man was picked up simply because he had a glass with alcoholic beverages in it out in the open—that is, on the street—and that happened to be a crime in Daytona Beach. He was cold sober. He was not doing anything, just standing there.

On these particular occasions sometimes the police are a little over exuberant, and they arrested him. Obviously he was guilty of violating this particular ordinance, but otherwise he was perfectly innocent. He could not have been behaving himself better. I suppose if you see a record like that, then you could do with it as you pointed out in your own case—just make a horrendous thing out of it when there was nothing there at all really. If the police officer had used any judgment, he would not have taken the young man in for anything. Your point is well made.

I wondered if we could expound a little bit on these arrest records again, which you did spend a great deal of time on, and which, of course, is a very large issue in these whole hearings. How can we handle those so we will not hurt people in the future?

And on page 11 of your statement you say,

> I urge that the circulation of arrest records be prohibited in the developing of a nationwide network of criminal justice systems.

Taken simply alone, I suppose that might mean that there could be no information disseminated about those, but I doubt that is what you mean, is it? Or could you perhaps explain a little better how we should handle these. In other words, we know, particularly in this organized crime business, you find some characters that have a long list of arrests. It might even be 10, 15, 20. Never have been prosecuted, or if they have been prosecuted, it has been dismissed in some cases or found not guilty, perhaps because they have the benefit of a very talented legal counsel and were able to escape a conviction.

Yet, we all do know, too, that information is important to the enforcement agencies. How would you handle that? That is really what I am asking.

Mr. RICHARDSON. Senator Gurney, in the case of individuals who are involved in organized crime and have that kind of arrest record that you just referred to, this could be made available through access to a criminal intelligence file without having the arrest record information in the criminal history automated system. The chances that an individual with that kind of record is wholly unknown to another arresting authority in terms of his organized criminal connections there are pretty remote.

In any event, if he is under arrest in a situation where the fact is not immediately known, it would certainly be found pretty quickly, and that in turn could then lead to the development of whatever information is available in the criminal intelligence files.

Senator GURNEY. Would this be another way of perhaps putting what you are saying in the computerized system, the name ought to appear, John Doe with something after that, that there is intelligence

on him with the New York City Police Department, the Chicago Police Department, or some such thing as that; or even, perhaps, that he does have arrest records at certain police departments?

Is that what they are talking about?

Mr. RICHARDSON. That would be a good way, I think, of doing it, for people of that sort, thereby, at the same time, protecting ordinary individuals who may have been picked up for something at some time, but on the basis of which it later developed that there was no case. But I think you could certainly, in effect cross-reference the criminal intelligence file in the case of individuals who are part of the organized underworld.

Senator GURNEY. What about the system itself?

Who do you think ought to run a nationwide criminal data computerized system, the Justice Department or the States?

How do you think that should be set up?

Mr. RICHARDSON. I think in the short run, Senator Gurney, that for the Justice Department to do it, pursuant to the legislation that emerges from these hearings and under regulations established by the Attorney General, would be a reasonable approach. But I think in the meanwhile, further thought should be given to the creation of a board on which there would be representation of the States.

I hesitate to endorse the idea of a commission to administer this program at this stage, because, for one thing, I think additional experience would be useful. But for the second reason, the more important one, that it seems to me that there is real merit in looking at the problem of access to information in computerized systems more comprehensively than this legislation undertakes to do.

I touched in my prepared statement on the report which dealt generally with automated personal data systems and which was issued by Secretary Weinberger on July 31, 1973. That report approaches the problem of personal data in computerized systems more broadly. It includes bank records, insurance companies, mental health records, social security system records, and so on, as well as criminal histories.

Further, there is the consideration that there is just about to get underway in the Department of Justice a study of the administration of the Freedom of Information Act which, of course, includes the exemptions of disclosure of information under that act. All of this suggests to me that the question of the handling of information about people by government be looked at quite comprehensively, in terms both of the kinds of information that ought to be made available in the public interest and the kinds of information that ought to be protected in order not to injure individual reputations. So, therefore, it would seem to me that before setting up a commission for the sole purpose of administering the constraints on disclosure of criminal histories, that the Congress might wish to look at this whole subject more broadly and perhaps set up a commission that had this broader jurisdiction. So, therefore, I would suggest that it might be desirable, until you had a chance to do that, to let the interim administration of this program be vested in the Attorney General.

Senator GURNEY. One other question.

On page 9 of your statement, you mention, under public notice of existence in the second paragraph, that all criminal justice agencies give public notice of the existence and character of their automated criminal justice information system. I certainly agree with you.

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Do you have any suggestion on how that ought to be done so that the citizen will know that he, perhaps, has information on him in some file?

Mr. RICHARDSON. Here, of course, we are dealing with only the existence of the system. There needs independently to be a provision for the right of the individual to examine his or her record and to seek changes in it. Here I think that it would be sufficient simply to publish in the Federal Register some notice of the existence of the system.

While not every citizen would read the Federal Register, of course, nevertheless the existence of the system would become known pretty widely because of that. And that, in turn, would then put an individual on notice that he might or might not be in it. And if he or she had any real reason to be concerned, it would then be possible to go to the system and ask to have information made available in order to determine its accuracy.

Senator GURNEY. In any event, there should be some kind of, maybe, periodical publication somewhere that these systems do exist and that one can find out whether he or she is on file by contacting department so-and-so, something like that?

Mr. RICHARDSON. Yes. It could be updated and republished annually, perhaps.

Senator GURNEY. I think my time is up, Mr. Chairman.

Senator ERVIN. Senator Mathias.

Senator MATHIAS. I have no questions but I would comment, though.

When Mr. Richardson was before this committee at the time of his confirmation as Attorney General, I was one of those that extracted from him a commitment interest in the subject of the proper supervision of the national criminal intelligence data banks. And I think neither he nor I foresaw the circumstances under which he would fulfill that commitment, and I am very pleased that he is here today, because he might well have an opportunity to avoid that kind of particular service. He is as good as his word, appearing here, and expressing his opinions on the subject.

Mr. RICHARDSON. Thank you, Senator Mathias.

I can only say in a world in which so little is foreseeable, it is all the more important to have a few constants, and one of them certainly should be the willingness to deliver on a specific commitment, and I am glad to be here, even though under unforeseeable circumstances.

Senator MATHIAS. The commitments were specific, and the fulfillment is specific, and I appreciate it.

Senator ERVIN. I would like to make a few observations before Senator Hruska asks his questions.

Both these bills provide that an individual who believes that there is a record concerning him in the criminal justice information system, that he can demand that he be informed of that, and also that he can obtain a copy of the record, even after it has been sealed.

And, another thing, the laws of many States provide that when in a criminal case, the accused takes the stand, he can be asked for the purpose of impeachment about his prior convictions or prior pleas of guilty, but that he cannot be asked about whether he has merely been charged. This is a recognition that the mere fact that the man may

have been arrested and never tried would be very detrimental to him in the eyes of the jury on the question of whether he is guilty or innocent. This is consistent with the position, I take it, that where arrest records, or a record indicating the mere making of a charge that is followed by no other action are disseminated freely, that the injury to the individual outbalances any good or purpose that would be served by society.

Mr. RICHARDSON. I think that is true.

Senator ERVIN. Now, this is another point where there is a great deal of opinion. The FBI for many years had the practice of furnishing criminal records, history records, even if it were nothing but an arrest, to financial institutions that were insured under the Federal law.

And, of course, I would like to know what your opinion of that is.

Do you have any thoughts about that subject?

Mr. RICHARDSON. I would oppose the making of arrest information available in that situation, Mr. Chairman. I think Senator Gurney's point about the cross reference to an intelligence file might serve to trigger the potential importance of further inquiry in some situations. But I do not think arrest records should be made available routinely to non-law-enforcement agencies.

Senator ERVIN. Do you think it is a function of the Federal Government to furnish even conviction records to financial institutions, even those that are insured under the Federal Deposit Insurance system?

Mr. RICHARDSON. This I find a tougher question. I gather that the approach taken in both bills would, in effect, leave for further deliberation the question of access to other governmental agencies and would leave for State determination access by State agencies to the files of individuals maintained by the State.

On the whole, it would seem to me that conviction information to an agency that can establish a need to know, or, in other words, some sort of predictive correlation between the information and the decision that it has to make, could be made available. But I think there should be a burden on the agency to show that.

Senator ERVIN. Senator Hruska.

Senator HRUSKA. Mr. Richardson, I want to add my welcome to the others that have been extended. There was a time when we saw you more regularly.

Mr. RICHARDSON. Thank you, Senator Hruska.

Senator HRUSKA. We always enjoyed your appearances.

Some concern has been expressed on the behalf of the press because of limitations that are contained in the bills, with reference to availability and accessibility of criminal records and criminal histories.

What thoughts have you on that subject?

Mr. RICHARDSON. I am sorry, Senator Hruska. Concerns on what aspect?

Senator HRUSKA. Availability of criminal history and criminal information, arrest records and all of that.

Mr. RICHARDSON. To the press?

Senator HRUSKA. To the press; and, of course, the right of the public to know.

Mr. RICHARDSON. I do not think, Senator Hruska, that there should be an automatic public right to be able to obtain arrest record information, for example, with respect to an individual who perhaps simply has been charged but never convicted of anything. With respect to official records with regard to trials, convictions, and so on, there is nothing, as I understand it, in the legislation that would change common law. The press can still look up court records.

The question, really, here before the committee is one of access to computerized systems. And it would simply seem to me that there was no right of the media to be tied in with such a system as we are talking about here.

Senator HRUSKA. If a criminal justice information system is defined as including all of the equipment and facilities and activities of those law enforcement agencies that contribute to the computerization, then would that not be a source of trouble?

Would there not be a conflict between that kind of a definition that would forbid access to any of those things, being as much as they are an integral part of the gathering system of computerized data banks?

There is that on one side. Then we have the traditional, conventional, historical public records, which are all the items that are gathered in a police station or in a county attorney's office or a State attorney's office.

Mr. RICHARDSON. The bill, of course, would not on its face cover police blotters any more than it would cover court dockets. The coverage by local press of local police station actions and courts would be unaffected by this legislation. The question merely is whether the legitimacy of access of information that is in the computerized system itself, and I see no problem. It would seem to me appropriate to limit that access essentially along the lines provided for in the bills.

Senator HRUSKA. There are limitations in both bills, some limitations on intelligence information. Intelligence information, of course, is a very great potential source of abuse, of inflicting harm. But on the other hand, in some types of criminal activity, it is very important and vital information.

Referring to a field where you have a great deal of expertise, which you have demonstrated both as Attorney General and as U.S. district attorney, the field of organized crime, for example, there we find intelligence information is very important, in fact vital.

Is there anything in either of these bills that would in any way impair the usefulness and the availability of intelligence information in that regard?

Mr. RICHARDSON. I think, Senator Hruska, the only thing that would seem to me that would impair the collection and storage of intelligence information is the provision of S. 2963, which restricts the computerizing of intelligence information. And as I was saying earlier, it seems to me that there are situations where this can be useful in developing correlations within the mass of data in order to develop patterns, for example, of organized crime infiltration into legitimate business or patterns of distribution of stolen securities, for example, or the simple storage and access of information about what securities have been stolen from what particular banking institutions.

In very complex investigations involving many cities and sometimes a number of countries, there can be, it seems to me, a value in being able to store and retrieve intelligence information in an automated system. I would not, therefore, favor that restriction.

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Beyond that, though, I do believe that it is desirable merely to constrain access to criminal intelligence information. Indeed, I think that is not only desirable but highly practicable, because there is no public interest in the availability of that information, except to duly constituted law enforcement authorities in combating organized crime.

Senator HRUSKA. As a matter of fact, within a restricted number of people, within a law enforcement family, those that are specialists in organized crime activities, whether it be stolen securities, drug traffic or whatever it is, the gambling business, so it is restricted, and therefore the necessity for the sanctions upon any unlawful dissemination or access to such files.

But my inquiry is directed as to whether or not there are provisions in the bill that would actually impede the efforts of organized crime sections or special officers from gathering and using that type of information which they must have, if they are going to deal with organized efforts where maybe dozens, or maybe scores, of people scattered over a large geographical area are involved. And the only way that a great mass of information is assembled is by computerizing, so it can be made available and so it can be synchronized and organized and made useful. It is to that that I address my inquiry.

Mr. RICHARDSON. That is what I was saying a moment ago. There should not be a prohibition against the utilization of computers for that purpose.

Senator HRUSKA. Thank you.

That is all the questions I have, Mr. Chairman.

Senator GURNEY. Mr. Chairman, may I ask another?

Senator ERVIN. Yes.

Senator GURNEY. Mr. Richardson, may I ask another question of you? It is not on the subject of this bill, but it is an allied subject, and it causes me much more concern as to the right of privacy and also causes me more concern, I think, than any single aspect of the criminal justice in this country today.

Here we are talking about the availability of arrest records, criminal records, to agencies, people, corporations, media. And, of course, we have had, been going on for a year now, in the United States grand jury proceedings with a good part of the grand jury proceedings, the testimony and the evidence, being printed on the front pages of the newspapers every day and being broadcast every evening over television and during the day, of course, by radio.

Would you like to comment at all on that, whether that is something that we ought to concern ourselves with as a Congress, as a Judiciary Committee?

And if we should, would you care to comment on whether we ought to do anything about it, and what?

Mr. RICHARDSON. It is an important problem, Senator Gurney. I have thought about it quite a lot, but I cannot suggest any legislative remedy. The legislation now on the books seems to be adequate to deal with the problem to the extent that it is possible to identify anybody responsible for a leak of grand jury information.

The problem arises both out of the existence of leaks that are hard to pin on anyone, but also out of the fact that it would not be reasonable to try to prevent a witness from talking to people other than the grand jury with respect to what the substance of his testimony was.

Some of what is interpreted to be a leak of grand jury information actually comes from the witnesses or from their lawyers, and I do not think that they should be prevented from telling other people what they know if they want to.

Beyond that, the press are exceedingly resourceful in putting together a composite picture out of small bits and pieces gathered from individuals. The device of presenting a story four-fifths of which is outrageously wrong and containing one nugget of valid information to an assistant U.S. attorney and telling him that you are going to go with it if he does not deny it is a way of getting confirmation of that one thing. You go to someone else with a similar approach and add another piece. Pretty soon the press has a pretty good picture, without ever having talked to anyone who really thought that he was leaking information.

Now, that leads to the conclusion, it seems to me, that there ought to be some greater constraint on the part of the media itself. I have talked to a number of press people and radio and television people about this, and there is considerable disagreement among them. Some of those that I would regard as most conscientious and responsible feel that it would be worthwhile to encourage a new effort on the part of the media to develop self-restraining ordinances in this area.

In any event, though, while I think that would be desirable, I do not believe that we can or should attempt to deal with the matter legislatively. I think that would inevitably be tainted by the aspect of prior constraint on first amendment rights.

Senator GURNEY. I appreciate your observations.

I am not all that knowledgeable on this subject, but in England, from whom we received our own common law system of justice here, that all publicity about criminal prosecution is avoided, not only the grand jury proceedings but also the trials themselves until the verdicts are in.

Do you have any knowledge about how they handle this? Of course, I know they do not have a constitution or a first amendment. Do you know how they handle it?

Mr. RICHARDSON. I know a little about it, Senator Gurney. My old boss and teacher, Mr. Justice Frankfurter, used to bring to my attention from time to time examples of particular severity on the part of the British courts in punishing the press for contempt. I remember he brought to my attention once a Scottish case involving the printing on the front page of the picture of an individual who had been arrested and charged with murder. The newspaper that printed the picture was fined £50,000, in the days when the pound was worth quite a lot more than it is now.

I think that is characteristic of the British approach to the use of contempt powers for prejudicial pretrial publicity. And I have sometimes thought as a prosecutor and as a citizen that it would be a good thing if our courts were tougher. But I think it is totally impractical to advocate that in this country, and there are offsetting public interests.

For one thing, I think it is important from time to time that the press investigate situations where there is some reason to question whether the prosecutor and the investigative process itself is being conducted honestly and on the merits. And severe powers of contempt

would, in that situation, permit the corrupt conduct of a criminal case to be protected by the exercise of contempt powers.

Beyond that, there are public interests inherent in the so-called right to know which go a long way towards offsetting—and just to shorten this up a little bit, what it amounts to, in effect, it seems to me, is that if you could have a greater degree of constraint on the part of the press and preserve much of the benefit that we get out of press coverage, then the problem becomes one of judicial administration designed to protect individuals against prejudicial pretrial publicity.

And this, as we have seen in the recent selection of the jury in New York in the *Vesco* case, can be done, at least to a substantial degree, through care in the selection of the jury.

Senator GURNEY. I thank you very much for your observations. I have to agree that it is an extremely difficult problem, and it is a problem that is hard to resolve.

Senator ERVIN. Is it not fair to say that virtually all revelations and discoveries about corruption and inefficiency in government at all levels have resulted from the fact that some people on the inside leaked?

Mr. RICHARDSON. Yes; one way or another, that is essentially true. They either leak initially, or they eventually agree to talk, one or the other.

Senator ERVIN. I believe that in England that they had a crime of seditious libel. If anybody made any derogatory statements concerning a public official, no matter how true it was, he could be put in jail for it, could he not?

Mr. RICHARDSON. I think it is true.

Senator ERVIN. One of the reasons they wrote the First Amendment was to get away from that kind of a government.

Mr. RICHARDSON. Yes; and the English have been a very law-abiding people on the whole, traditionally. And I do not think the degree of official corruption in England in modern times, at least, is substantially a smaller problem than it is in the United States. Certainly that is true of the judicial system and the police.

And we do have a public interest in helping to maintain the honesty, or to expose the dishonesty, of the law-enforcement process itself that they do not have in England.

Senator ERVIN. I want to thank you very much for making a very substantial contribution to the study and work of the subcommittee.

Mr. RICHARDSON. Thank you very much, Mr. Chairman, and members of the subcommittee. It has been a privilege to be here today.

Senator ERVIN. The counsel will call the next witness.

Mr. BASKIR. Our next witness this morning is the Honorable Clarence Kelley, Director of the Federal Bureau of Investigation.

Senator ERVIN. Chief Kelley, I want to welcome you to the committee and thank you for your willingness to come and give us the benefit of your views with respect to this matter. It is a matter in which you and your agency have a profound concern and a great depth of experience. I would suggest that you name those who are accompanying you for the purposes of the record.

Mr. KELLEY. Yes, sir, Mr. Chairman. On my right is Mr. Fletcher Thompson who is Assistant Director in charge of the Identification Division. On my left is Mr. Wason G. Campbell, Assistant Director in charge of the Computer Systems Division.

Senator ERVIN. You may proceed in your own way.

TESTIMONY OF HON. CLARENCE M. KELLEY, DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION; ACCOMPANIED BY ASSISTANT DIRECTORS FLETCHER THOMPSON, IDENTIFICATION DIVISION; AND WASON G. CAMPBELL, COMPUTER SYSTEMS DIVISION

Mr. KELLEY. Mr. Chairman and members of the subcommittee. I appreciate this opportunity to offer you my views and to participate in the development of needed legislation on this important issue, the balancing of the protection of individual rights with law enforcement needs in formulating legislative controls on criminal justice information systems.

I want to make it clear that I support the formalization and clarification of controls on criminal justice information systems. I am in complete agreement with the ultimate objectives of the bills we are going to discuss today; namely, the protection of the individual, whether he be an accused who is innocent, one who is acquitted, or one who is convicted, against improper use of information collected by criminal justice agencies.

We are all concerned with the unwarranted use of criminal justice information, whether it be used to improperly deny an individual employment opportunities or credit availability, or whether it follow him through life to the detriment of his reputation, even after his rehabilitation. On the other hand, we should be careful that our zeal in protecting the rights of such individuals, however long overdue and necessary this protection may be, does not blind us to the sometimes competing rights of other individuals; namely, the public at large, especially the victims of crime. I am concerned that certain segments of these bills will deny to law enforcement valuable information necessary to fulfill its responsibilities to protect the rights of those other individuals against criminal activity.

There is also an indication in S. 2963, and H.R. 9783 that, rather than attempt to regulate the use of computerized criminal justice data, it is easier and more desirable to prohibit the use of advancing technology by law enforcement. While some may argue that this assures a greater degree of protection against unwarranted use of such information, it certainly hamstrings law enforcement when it has a legitimate need for such information.

A blanket prohibition against using modern technology by criminal justice agencies, in any area, whether detection or prevention of crime, or use of information systems, smacks of "evening the sides" between offender and law enforcement, and makes the administration of criminal justice something of a game. Criminal justice agencies should be encouraged to employ any technological advance which would make the criminal justice system more efficient, fair, and effective, while still protective of individual rights. Blanket prohibitions appear to be the result of little effort to effect necessary balances.

My appearance here today is to support, not to oppose, the objectives of these bills. The FBI participated in the preparation of S. 2964. I support the objectives and most provisions of the bills, so I will not address myself to those portions of the bills with which I agree or feel no clarification is necessary. However, there are certain segments of the bills which, while admittedly aimed at the unwarranted use of criminal justice information, could severely restrict or

preclude the effective use of criminal justice information by law enforcement to investigate and prosecute criminal activity. It is those portions which I will discuss today in my prepared testimony and request that they be clarified, modified or omitted. Because I have limited my statement to such portions of these bills, I do not want it interpreted that the FBI is opposed to these bills specifically, or to measures to define or expand the protection of individual rights against unwarranted government activity generally. Nothing could be further from the truth.

What we are discussing here today is the use and dissemination of criminal justice information, after it is accumulated, and regardless of how it is accumulated. I hope at some future time to have an opportunity to discuss with you, or other committees of the Congress, the more basic issue of the need for, and standards for, collection of information, as it relates to individual rights. There are several bills currently pending before Congress on this elemental issue, and there is a great deal of public and congressional concern over the scope and methods of criminal justice information and national security intelligence collection. I share that concern, and want to assist in forging a balanced policy on that issue which will insure the maximum degree of individual civil liberty, consonant with the protection of the safety and security of society, which is to say, the protection of the civil liberties of all in the United States.

The legislation under consideration today presents several important issues in which I am vitally interested.

The first is sealing. These bills provide for the sealing of criminal offender record information—even against criminal justice agencies. Record information is to be sealed after a stated period of time during which the individual has been free from the jurisdiction or supervision of any criminal justice agency. The objective of these measures appears to be the protection of an individual from having his record follow him after he is rehabilitated. While studies indicate that the majority of criminal recidivism occurs within a time frame short of the time periods enumerated in some of the bills, all criminal recidivism does not. If only 10 murderers or kidnapers repeated their crime outside the statutory time frame, is not this enough to warrant criminal justice agencies access to offender records which may provide leads in subsequent murder or kidnaping investigations?

For example, during a kidnaping investigation, while the victim is still a hostage, the investigation may develop several suspects. An examination of past criminal records can produce information which reflects that one or more suspects have been involved in similar criminal activity. This could narrow the investigation and would lead to a detailed examination of their modus operandi, as contained in what the bills define as criminal intelligence files, which could produce invaluable information in deciding how to cope with the case, and might result in saving the victim's life.

Further, proponents of the sealing propositions appear not to have understood, or to have given little consideration to, the mechanics of identification procedures and investigative techniques. For example, if sealing comtemplates physically removing rap sheets and fingerprint cards from current files and depositing them in a closed or sealed file section so as not to be available for current day-to-day use, the result could be as follows: When a police department submits

fingerprints lifted from the scene of a murder and asks the identification division—either of the FBI or of its own department—to compare the prints with those of several suspects, the prints of one of the suspects, who happened to be the murderer, could be sealed and thus not available for comparison.

Another example, dealing directly with offender record information, as opposed to fingerprint comparison, is the case of a police officer on his way to make an arrest of an individual for embezzlement, a white collar type of crime. If that individual's sealed record reflects a long list of violent assaults and/or past commitment to a mental institution, even though these events may have occurred more than 7 years prior, I feel the lack of this information unnecessarily increases the risk to the safety of that officer and third parties because the officer is not alerted to take special precautions.

Under the provisions of these bills it is not clear how an identification division will be able to maintain records. If an individual with a prior criminal record is arrested and uses a new alias, the only positive method of identification is comparison of his fingerprints with those submitted from previous arrests filed as to the classification, not name. If these prior arrest fingerprints are sealed from current day-to-day use, there will be no way to learn of his prior record, effect positive identification, and, if felt necessary, petition for unsealing.

If such fingerprint cards are sealed and only a name index of fingerprint cards which are sealed is maintained, the use of a new alias would be all that is necessary to preclude location of that record.

The unsealing provisions of these bills are meaningless, unless it is intended that sealing does not apply *within* the identification divisions of the FBI and respective criminal justice agencies. You are then confronted with the proposition that the sergeant in charge of the identification division of a police department cannot inform an investigative officer of the same department of the contents of a sealed record, and must require that officer to get a court order or a "specific determination of the Attorney General" to unseal the record. Is this a realistic expectation; especially in the case I mentioned earlier of the planned arrest of an embezzler with a sealed record of violence?

Members of the subcommittee, there is a continuous need for criminal justice agencies to have unfettered access to prior criminal records for subsequent investigations and for the safety of their personnel and innocent bystanders.

Some of these bills provide that a criminal record is to be sealed within a certain time after an arrest if there has been no conviction during that period, no prosecution is pending, and the individual is not a fugitive. In some proposed legislation no mention is made of subsequent arrests. The fact that no prosecution is pending or that the individual was not convicted and is not a fugitive should not automatically lead to the conclusion that the arrest was faulty or unfounded. Failure to prosecute or convict could have been caused, and often is caused, by refusal of witnesses to testify either of their own volition, or because they were threatened or murdered, or because evidence was destroyed. Under some provisions it would appear that each arrest of a violent child molester would be sealed on, for example, its fifth anniversary, even though there had been subsequent arrests for similar offenses, as long as no witnesses had been willing to testify against him.

I am completely opposed to sealing any criminal justice information against criminal justice agencies. The likelihood of abuse of such information, as long as it is confined within criminal justice agencies, appears to be so minimal in contrast to the value of this information for criminal justice purposes that I unequivocally urge you to omit any restrictions on criminal justice agency access to any type of criminal justice information.

The sealing of certain criminal justice information against noncriminal justice agencies is a major public policy question which must be given serious consideration by the Congress. Personally, I agree with the position of the Department of Justice as stated before this subcommittee in 1972 that:

A person's criminal history is extremely important in assisting Federal employers to make well informed decisions about whom they hire. If a certain Government agency is attempting to fill a position in its payroll office, we believe that the agency has a right, in fact a duty, to determine if an applicant has been convicted of embezzlement.

We are also (concerned with the prohibition on) the use of (criminal offender) records for employment screening in certain vital and sensitive industries in the private sector, such as banking and securities. In such industries, the screening of applicants is a proper and necessary procedure designed to maintain the integrity of these institutions, and to preserve the public confidence in them.

* * * Many jurisdictions require a fingerprint check before issuing licenses to purchase firearms or to be a private detective, a pharmacist or an attorney. While we recognize that there can be abuses of this procedure, we do not believe that the public good would be advanced by eliminating the use of these records altogether for licensing purposes. I submit that there are certain categories of individuals that must be thoroughly investigated before a license is issued because of the nature of the activity which the license sanctions. The public deserves this protection and we would be remiss to deny it.

Therefore, we would prefer to permit a wider dissemination of criminal arrest records (to non-criminal justice agencies, but with restrictions).

* * * (The restrictions detailed require that all non-criminal justice agencies with a valid non-law enforcement purpose for using criminal justice information obtain that information only through a law enforcement agency under provisions of law and approved by the Attorney General by regulation). By valid non-law enforcement purposes, we have in mind such activities as employment suitability and security within the Federal Government and Federal industries in the private sector.

H.R. 188 and H.R. 9783, on the other hand, provide for the purging of certain criminal justice records. This is excessive since there may be many reasons, some beneficial to the subject of the record, for later having this material available. For example, if someone were accused of having been convicted of murder 10 years earlier, there would be no record for him to prove that he had been acquitted.

Another issue I would like to discuss is that of dedicated versus shared information systems. I feel that any legislation dealing with control of criminal justice information systems should specifically and unequivocally provide that every system is to be under the control of a criminal justice agency, and that no criminal justice information system should share equipment, facilities or procedures with any noncriminal justice system. Wherever a shared system exists, there is always the risk that the noncriminal justice agency which shares the system could accidentally or intentionally obtain access to the criminal justice information contained in the system.

The collection and computerization of criminal intelligence information is also made an issue in these bills. I do not feel that any criminal justice agency should include criminal intelligence information in a

system to which direct, unchecked access is given to other agencies, even though they be criminal justice agencies.

Extremely sensitive criminal intelligence information is received from informants. Much of this information is so singular in nature that it would severely jeopardize the source's security if any participating agency could access the computer without demonstrating a need to know such information to the contributor.

As a further example of the dangers of unchecked multiagency access to computerized intelligence, take the case wherein an informant supplies information that certain law enforcement officials are taking bribes to allow bookmaking in a particular city. If their department has unchecked, direct access to the computer in which this intelligence is stored, this could jeopardize any effective investigation, and the safety of the informant.

Often raw intelligence information is volunteered by complainants or informants that law enforcement is not in a position to authenticate. The unfettered distribution of this type of information, which may be inaccurate or false, could unjustly embarrass individuals and subject law enforcement to well-founded criticism.

A facile and superficial answer to these arguments might be, do not put such information in a multiagency direct access computer. This raises the more basic question, how does an agency decide what intelligence to put into such a computer? I foresee dissatisfaction with such a system on the part of every agency which feels it is fully contributing intelligence information, but feels that other participating agencies are holding back. This could eventually lead to the situation where only very low level intelligence, of little value to anyone, would be included in such a system.

However, there should be no prohibition on a criminal justice agency utilizing any method of advanced technology to improve its efficiency and effectiveness. I feel any criminal justice agency should be permitted to computerize intelligence information for its own use. This would make that criminal justice agency more effective and more efficient in its own jurisdiction. The agency, with in-house computerized intelligence information, could then disseminate that intelligence information to any other criminal justice agency which demonstrates a need for the specific information requested.

Criminal offender processing information, as defined in S. 2964, could include information similar to criminal intelligence information, for example, information provided confidentially to an investigator conducting presentencing investigation, or to a prison official. For the same reason that criminal intelligence information is not available to the individual to whom it pertains, I feel that criminal offender processing information should not be available to the individual to whom it pertains.

These bills provide for an individual to obtain access to his own criminal offender record, and also provide procedures for him to challenge that record. I support these provisions. Currently, the FBI provides copies of offender record information to the individual to whom it pertains upon proper identification. I believe that any legislation, however, which provides for the right of individual review should clearly specify that any action taken to correct a record should be taken against the originating agency of the challenged

entry, rather than against the agency from whom a composite record was obtained. For example, if an individual contests an arrest entry by the Washington Metropolitan Police Department, corrective action should be sought directly from that Department rather than the FBI, which furnished the individual his composite record. Further, I feel that stiff penalties for alteration and subsequent use of a criminal record by anyone who has obtained a copy via these review provisions should be added to such legislation.

S. 2963 provides for the creation of a Federal Information Systems Board and a Federal Information Systems Advisory Committee. As the bill is currently written, it would create an independent agency with centralized control over all information systems, both Federal and State, and apparently would not be limited to criminal justice information systems. For anyone who is concerned over the possible creation of a master mechanism to control, administer, and provide access to all types of information anywhere recorded about a particular individual, this concept should be highly objectionable. In my view, it is preferable to have independent information systems dealing with specific topics such as criminal justice, social security, taxes, welfare, et cetera, under the sole direction of those directly concerned with the activities for which the information is used. The Board which is contemplated under this bill would have representatives of the public, unrelated to criminal justice; however, the bill does not specify in any detail what the qualifications of these individuals are to be. The Board concept appears to be akin to the civilian review board concept that some have attempted to impose on local police departments, and as such implies that criminal justice agencies are incapable of fairly administering a criminal justice system. I reject that implication, and I hold up as an example of effective, fair, and efficient multi-State and Federal cooperation on a criminal justice information system, the National Crime Information Center.

Finally, I note that some provisions of these bills preclude even indirect access by noncriminal justice agencies to criminal offender record information. I feel that there are several legitimate needs for some noncriminal justice agencies to have access to this type of information; for example, for processing applicants for various State and Federal Government positions, for determining suitability for access to classified and sensitive information, et cetera. The Congress also agrees that criminal record information should be available to some noncriminal justice agencies, as exemplified by Public Law 92–544, which, in general, provides for dissemination of such record information among various State and Federal agencies and financial and banking institutions. The extent of access to be given or denied noncriminal justice agencies to offender record information is a serious public policy question, which must be given serious consideration before any legislation is enacted.

The reconciliation of the conflict between the individual's privacy rights and the public's informational needs is a complicated problem. As you know, the President has recently established a Domestic Council Committee on the right of privacy. We will work with him and the Committee in their efforts to develop specific recommendations to insure that individual privacy is protected notwithstanding the impact of what the President referred to as the information revolution and the advance of technology.

Members of the subcommittee, that is the conclusion of my prepared remarks, and I and my associates will be pleased to attempt to answer any questions you may have.

Observations of Clarence M. Kelley, Director of the Federal Bureau of Investigation on S. 2964, S. 2963, H.R. 188 and H.R. 9783

Rather than examining each section of each bill independently, I find that these bills deal with several general topic areas of interest to me. I will examine the bills therefore on a topic basis, followed by a section-by-section analysis of those portions which do not fall within the topic areas.

I. Sealing and Purging of Criminal Records

Subsection 3(1) and Section 9 of S. 2964, and Section 206 of S. 2963 provide for the sealing of records of certain individuals. Such records would not be available either for criminal justice or noncriminal justice purposes unless, as provided under S. 2963, a court order was obtained for the unsealing of the record. Likewise, under S. 2964, a court order or the approval of the Attorney General would be necessary to obtain such records. In neither bill, however, is there any indication as to how an inquiring criminal justice agency would be alerted to the fact that such a sealed record was in existence.

Section 2, Subparagraph C of H.R. 9783 contains provisions for the purging and destruction of an individual's criminal record relating (1) to an arrest that is at least two years old, if no other arrest occurred during that period, and (2) to a conviction which is 10 years old, if no later conviction occurred during such 10-year period. (Presumably someone who has been in jail for 10 years, without opportunity to be convicted again, would have his record purged.)

Subsections 3102(a) and 3102(c) of H.R. 188 forbid dissemination of criminal arrest records to anyone, including criminal justice agencies, relating to (1) an arrest which occurred more than two years before the date of such dissemination and concerning which there is no prosecution pending in court, unless the individual has been convicted of a felony; and (2) an arrest concerning which the prosecuting attorney responsible for conducting any prosecution arising out of such arrest agrees no prosecution is warranted and that no criminal arrest record should be kept. Additionally, Subsection 3102(d) prohibits the use or even maintenance of the aforementioned records by U.S. or federally assisted law enforcement agencies. Section 3105 allows for the records, referred to above, to be maintained, disseminated, or used if court permission is obtained, after showing compelling public interest for such use. A "compelling public interest" is not defined. These provisions seem to imply that such arrests must have been faulty or unfounded. There may be many reasons other than a bad arrest why no prosecution has occurred within the time period stated, e.g., refusal of witnesses to testify, either of their own volition or because they were threatened or murdered, because of the destruction of evidence, etc. Under this provision, the arrests of a violent child molester would be destroyed on their second anniversary, even though he had been subsequently arrested for similar offenses, as long as the victims were unwilling to testify.

I am strongly opposed to any sealing of criminal offender records against criminal justice agencies. Arrest records have served to assist law enforcement authorities in the solution of many cases. They provide leads to suspects, knowledge of the whereabouts of other individuals who can thus be eliminated as suspects and, as a result, save valuable investigative time and energy, etc. Such records are also invaluable for lead information in fugitive cases. They are also helpful in alerting police officers to individuals who are subjects of criminal investigations and who have a history of involvement in violent crimes (at least to the extent of being such strong suspects that they were arrested); and this provides some warning of personal danger to the investigating officer.

The sealing of criminal offender records against noncriminal justice agencies is a major public policy question which must be given serious consideration by the Congress. Personally, I agree with the position of the Department of Justice as stated before this Subcommittee in 1972 that:

"A person's criminal history is extremely important in assisting Federal employers to make well informed decisions about whom they hire. If a certain Government agency is attempting to fill a position in its payroll office, we believe that the agency has a right, in fact a duty, to determine if an applicant has been convicted of embezzlement.

"We are also (concerned with the prohibition on) the use of (criminal offender) records for employment screening in certain vital and sensitive industries in the private sector, such as banking and securities. In such industries, the screening of applicants is a proper and necessary procedure designed to maintain the integrity of these institutions, and to preserve the public confidence in them.

". . . Many jurisdictions require a fingerprint check before issuing licenses to purchase firearms or to be a private detective, a pharmacist or an attorney. While we recognize that there can be abuses of this procedure, we do not believe that the public good would be advanced by eliminating the use of these records altogether for licensing purposes. I submit that there are certain categories of individuals that must be thoroughly investigated before a license is issued because of the nature of the activity which the license sanctions. The public deserves this protection and we would be remiss to deny it.

"Therefore, we would prefer to permit a wider dissemination of criminal arrest records (to noncriminal justice agencies, but with restrictions).

". . . (The restrictions detailed require that all noncriminal justice agencies with a valid nonlaw enforcement purpose for using criminal justice information, obtain that information only through a law enforcement agency under provisions of law and approved by the Attorney General by regulation.) By valid non-law enforcement purposes, we have in mind such activities as employment suitability and security within the Federal Government and Federal industries in the private sector."

I suggest, as an example, that Subsection 3 (1) of S. 2964 be changed to read as follows: "Sealing means the closing of a record so that the information contained in the record is available only (1) for direct access by criminal justice agencies solely for criminal justice purposes, (2) in connection with review pursuant to Section 6 by the individual or his attorney, or (3) on the basis of a court order or a specific determination of the Attorney General."

While both S. 2964 and S. 2963 provide for the unsealing of offender records, there appears to have been little consideration given to the mechanics of an identification/record-keeping agency. For example, how are offender records to be sealed? Are records to be sealed against the agency which keeps them, e.g., when a request is made for a record will the record-keeping agency know it has a sealed record? If so, how? If it has a sealed record, how will it respond to the requesting agency? If it responds "No Record" how will the requesting agency know of the existence of a sealed record so that it can petition for unsealing. If the record-keeping agency responds "Sealed," and under implementing regulations the requesting agency cannot support a petition for unsealing, will the knowledge that a sealed record exists (which could contain anything from murder to vagrancy) have any effect on the determination for which the record was sought? Will sealing cover fingerprint cards, and if so, does this mean that an individual's fingerprints will not be available for comparison with prints taken from the scene of a crime even though he is a likely suspect?

These questions do not exhaust those raised by the mechanics of attempting to seal offender records, but they do indicate that there is a substantial practical problem in this area which appears not to have been addressed.

The sealing of criminal offender records presents possible conflicts with other legislation, e.g., (1) various gun registration laws prohibit a convicted felon from possessing a gun; how will a licensing agency be able to determine if a gun applicant is a convicted felon if his record is sealed? (2) In some states a third conviction for the same offense requires a substantially stiffer penalty; if the record of one or two of those convictions is sealed, this would thwart the intent of the state legislatures.

The destruction of records provided for by H.R. 9783 and H.R. 188, presents a more serious problem than the sealing provisions of S. 2964 and S. 2963 in that the arrest information is irretrievably lost. The resultant damage to criminal justice investigation is evident, e.g., fingerprints would be unavailable for comparison with latent prints recovered from crime scenes; records of prior arrests or convictions would be unavailable for documentation of prior criminal activity for impeachment or sentencing purposes at trial, etc.

II. ACCESS LIMITED TO CRIMINAL JUSTICE AGENCIES

Section 201 of S. 2963 limits dissemination of criminal justice information only to criminal justice agencies, except that conviction record information may be disseminated outside criminal justice agencies as expressly authorized by state or Federal statutes. Note that only convictions may be disseminated. Congress should

consider whether noncriminal justice agencies to which it grants access to conviction data should have access to dispositions such as "Not guilty by reason of insanity." Such a disposition of a murder charge would appear to be quite significant. It is questionable whether or not criminal booking information would be available to the press under this provision. If it is not available to the press, I can expect them to complain about 1st Amendment violations and "police state" secret arrests. If booking information is available, then the provisions of this Bill would appear to prevent the police from reporting the ultimate disposition of an arrest, particularly if the individual were acquitted.

Section 202 of S. 2963 states that criminal justice agencies may disseminate information on an individual to another criminal justice agency (1) if the individual has applied for employment at the latter agency and such information is to be issued for the sole purpose of screening that applicant; (2) if the matter to which the arrest record information pertains has been referred to the latter agency for the purpose of commencing or adjudicating criminal proceedings and that agency may use the information only for a purpose relating to that proceeding; and (3) if the latter agency has arrested, detained or commenced criminal proceedings against the individual for a subsequent offense and the arrest record in the possession of the former agency indicates (A) there was a prior arrest, detention or criminal proceeding commenced occurring less than one year prior to date of the request; and (B) that active prosecution is still pending on the prior charge. The indication of all relevant facts concerning the status of the prosecution on the prior arrest, detention or proceeding must be sent to the latter agency and that agency may use the information only for a purpose related to subsequent arrest, detention or proceedings.

Thus, a criminal justice agency may disseminate to another criminal justice agency only conviction record information, except that arrest record data may be given for the purpose of screening an individual's application for employment with that agency. It does not provide for furnishing information concerning a current employee of a criminal justice agency. For example, if a current employee (not an applicant) of the FBI was arrested by the Metropolitan Police Department, the Police Department could not advise the FBI of that arrest.

Subsection 202(b)(3) of S. 2963 provides that if an individual is arrested by a police agency within one year after a prior arrest not resolved, the arrest data on the earlier charge can be furnished to the agency making the second arrest. If the agency making the second arrest learns that the case involving the first arrest is pending, there are no provisions to permit notification to the first arresting agency. For example, a defendant may not appear for trial because he is in jail on a subsequent arrest and the agency having custody of the individual is precluded from advising the earlier jurisdiction of his arrest and custody status.

Section 201 of S. 2963 places unnecessary restrictions on the dissemination of arrest information by police agencies. It is necessary that police agencies be free to exchange records reflecting arrests of any individual in order to develop suspects from persons who have committed similar crimes in the past. It is also necessary for these prior arrests to be made known to judges of the various courts so that they may consider prior conduct when sentencing convicted criminals. This is true whether or not any such records contain dispositions.

Subsection 201(c) of S. 2963 states that a criminal justice agency may disseminate criminal history information on an individual to another criminal justice agency only if this person has applied for employment in the latter agency and that the information is to be used for the sole purpose of screening that application, or if the criminal history information has been referred to the latter agency for commencing or adjudicating criminal proceedings, or for preparing a pretrial or post trial release or presentence report, or only if the requesting agency has arrested, detained or commenced criminal proceedings against the individual. The same objection to Subsection 202(b) applies to Subsection 202(c).

Section 3 of H.R. 9783 limits dissemination of criminal history data only to criminal justice agencies, and severely restricts the use of such data within criminal justice agencies, adding heavy administrative burdens in record keeping as to dissemination, even though this dissemination is limited to criminal justice agencies. The Bill does not allow for state or Federal statute to authorize some degree of dissemination for noncriminal justice purposes.

Similarly, Section 101 of H.R. 188 restricts the exchange of criminal arrest records to law enforcement officers and employees only.

I feel there are many non-law enforcement or criminal justice agencies which have legitimate needs for criminal arrest records in order to fulfill their responsibilities, e.g., for Federal employment purposes, for determining access to classified

and sensitive information, and for certain employment and licensing purposes as authorized by Public Law 92-544.

Subsection 5(b) of S. 2964 restricts direct access to information contained in a criminal justice information system only to authorized officers or employees of a criminal justice agency. It is felt that the term "direct access" should be defined; the provision should be expanded to permit fingerprint cards to be submitted to the manual identification system of the FBI by the Department of Defense, the Civil Service Commission, and certain other agencies which are authorized access to input and to receive criminal offender record information for noncriminal justice purposes.

III. ACCURACY AND COMPLETENESS OF INFORMATION

Both S. 2963 and S. 2964 contain provisions to insure the accuracy and completeness of information contained in criminal justice information systems.

Subsection 7(a) of S. 2964 requires that contributors of criminal offender record information assure the accuracy and completeness of data submitted and develop procedures for updating information previously entered to show subsequent dispositional and other information. Subsection 13(a) of S. 2964 penalizes any criminal justice agency failing to meet the requirements of Subsection 7(a) by stating that such agency may be denied access to criminal justice information systems subject to the Act.

I concur with the intent of Subsection 7(a) of S. 2964, as well as Subsection 8(b) of S. 2964, which states that "No information relating to an arrest may be disseminated without the inclusion of the final disposition of the charges if a disposition has been reported." The question arises—reported to whom? It is recommended that the words "to the disseminating agency" be added to that sentence so as to not place an unreasonable burden on the disseminating agency. Otherwise the Bill could be interpreted as requiring the disseminating agency to update each record requested of it before it disseminates that record. This places the burden on the wrong agency, the disseminating agency, not the contributing agency. Current FBI Identification Division practice directs recipients of offender records to contributing agencies when dispositions are not reflected. The following statement appears on every offender record disseminated by the FBI Identification Division:

"Information shown on this Identification Record represents data furnished FBI by fingerprint contributors. Where final disposition is not shown or further explanation of charge is desired, communicate with agency contributing those fingerprints."

Subsection 8(c) of S. 2964 restricts the dissemination of criminal offender record information for noncriminal justice purposes concerning the arrest of individuals in certain circumstances wherein prosecution has not occurred. The lack of comprehensive legislation and inadequate funding in the past has created a lack of dispositional information. In many cases absence of dispositional data would preclude one from knowing whether an arrest ultimately resulted in prosecution. Subsection 8(c) could require a massive updating of records in order to determine what criminal offender record information concerning arrests might fall within this provision. Therefore, it is suggested that the phrase "the arrest" in Subsection 8(c) be changed to "an arrest occurring after the effective date of this Act" to avoid the necessity for extensive updating of records solely for noncriminal justice purposes.

Subsection 8(c) of S. 2964 is specifically applicable to noncriminal justice information. The stated limitation suggests that information covered by Subsection 8(c) can be used for criminal justice purposes. To remove any ambiguity it is recommended that the first paragraph of Subsection 8(c) should be changed as follows: ". . . may not be disseminated for a noncriminal justice purpose or used for a noncriminal justice purpose."

The provisions pertaining to accuracy and completeness of information set forth in S. 2963 would create an unnecessary administrative burden upon criminal justice agency personnel maintaining and disseminating criminal justice information by imposing upon such personnel the duty of insuring the accuracy and completeness of information in the system prior to disseminating same. The provisions of S. 2963 with regard to accuracy and completeness, set forth in Section 206 of that Bill, would require personnel of criminal justice information systems to be constantly reviewing information contained in their files to determine whether or not records could be disseminated. The FBI favors the policy behind the provisions of Section 206, but believes that this policy can best be implemented by placing strict requirements for accuracy and completeness

of information upon criminal justice agencies contributing information to the system. It should be technically feasible to insure that criminal justice information is accurate at the time it is entered into a criminal justice information system and to create mechanisms for updating such information where appropriate. This approach would insure that the law enforcement requirement for prompt responses to inquiries of criminal justice information systems would be fulfilled and would achieve the policy objectives set forth in Section 206.

Both H.R. 188 and H.R. 9783 address the question of accuracy and completeness of information. Subsection 2(b) of H.R. 9783, provides that criminal data banks provide for periodic updating and systematic outside audit for accuracy of the data contained therein, under such rules as the Attorney General would prescribe. Both H.R. 188 and H.R. 9783 contain provisions permitting inspection of arrest records by individuals who believe themselves to be the subjects of information contained in the criminal data bank. We concur in the policy objectives proposed by the above-cited provisions of H.R. 188 and H.R. 9783. However, we consider that similar provisions in S. 2964 provide even greater safeguards to insure the accuracy and completeness of information contained in criminal justice information systems.

IV. INDIVIDUAL'S ACCESS TO OWN RECORD

Subsection 207(a) of S. 2963 states that any individual who believes that a criminal justice information system or agency maintaining criminal justice information concerning him shall, upon satisfactory verification of his identity, be entitled to review such information and obtain certified copies for the purpose of challenge, correction or the addition of explanatory material. At the present time the Identification Division of the FBI has such provision and any individual may obtain a copy of his FBI identification record. "Certification," however, appears to be unnecessary, since currently provided "true copies" satisfy all stages of criminal justice needs, including court requirements. Certification poses unnecessary administrative burdens. Subsection 207(b)(2) provides that any individual whose record is not purged, sealed, modified, or supplemented, after he has requested it in writing, is entitled to a hearing within 30 days of such request before an official of the agency or information system authorized to do so. It is not specifically set forth in this rule as to which agencies have to purge, seal, modify or supplement; i.e., if an individual challenges his FBI identification record and requests that it be sealed, modified or supplemented under the current system he is referred to the contributing agency and told to make his request through them and that they will in turn notify the FBI. Under the proposed legislation it would appear that an individual could challenge his FBI record by demanding that the FBI either purge, seal, modify or supplement his identification record. Since the FBI is merely a repository for criminal records which actually belong to the various contributors, any challenges should be directed to the contributor, not to the FBI. This provision should be amended to allow the FBI Identification Division to refer an individual challenging his record to the contributing agency and to tell him to make his request through that agency. The contributing agency will, in turn, notify the FBI of any change in the record.

Subsection 207(c) of S. 2963 provides that no individual who obtains criminal justice information regarding himself may be required or requested to show or transfer records of that information to any other person or any other public or private agency or organization. Although an individual may not be required to show or transfer a copy of a criminal offender record concerning himself to another person or agency, it is not inconceivable that the individual may wish to do this after altering the record in his favor. There should be a provision that an individual who has obtained a copy of criminal information regarding himself is prohibited from altering any such copies for any purpose and he should be required to follow procedures for having changes made. Alteration by any individual should be a violation punishable under the legislation.

Subsection 5(d)(2) of S. 2964 permits an individual to obtain access to "particular" criminal offender processing information under court order, Federal or state statute or regulation. "Particular" is not defined. While some criminal offender processing information can readily be made available to an individual without compromising confidentiality, presentence reports, prison records, etc., it may contain information furnished on a confidential basis and, in effect, comprise an investigative record similar to what the Bill defines as criminal intelligence information. On the same basis that criminal intelligence information is not made available to the individual to whom it pertains, criminal offender processing information should not be available.

Subsection 6(a) of S. 2964 provides that an individual may obtain a copy of his criminal offender record "for the purpose of challenge or correction." The FBI currently provides an individual a copy of his criminal offender record upon request, without any restrictions.

V. LOSS OF CONTROL OVER DISSEMINATION OF CRIMINAL JUSTICE INFORMATION WHEN MADE TO FOREIGN CRIMINAL JUSTICE AGENCIES OR INCLUDED IN MULTI-STATE SYSTEMS

The bills under consideration treat the dissemination of criminal justice information among Federal and state criminal justice agencies but not the problem of dissemination to foreign criminal justice agencies. (See S. 2963, Sections 201, 202 and 203; and S. 2964, Sections 8 and 10; and Section 3101 of H.R. 188.)

The dissemination of criminal justice information to foreign criminal justice agencies creates a problem as the foreign agencies would not fall under the control of these bills. Such dissemination is part of the daily exchange between Federal, state and foreign criminal justice agencies. There is a presumption of regularity that this criminal justice information will only be used within the foreign recipient's criminal justice information system but there is no assurance that this will occur other than the disseminating agency's reliance on the recipient's good faith. Consequently, a provision should be included in proposed legislation which would exculpate the disseminating agency or the disseminating employee who acted in good faith when it subsequently develops that there is an unauthorized disclosure of the disseminated criminal justice information by any foreign criminal justice agency.

In a similar vein, where a contributing agency may have more stringent restrictions on dissemination of its criminal justice information than those imposed by a multi-state information system in which that agency participates, it must be understood that that agency cannot impose its more strict standards on the multi-state system. A uniform standard must be applied to all data in the one multi-state system. (See Section 10 of S. 2964.)

VI. CRIMINAL PENALTIES AND CIVIL REMEDIES FOR MISUSE OF JUSTICE INFORMATION

I agree that there must be criminal penalties and civil remedies in order to enforce these acts, however, I would like to make these recommendations regarding the following sections:

Subsection 13(a)(1) of S. 2964 provides for administrative sanctions for use of information in a manner "which violates this Act . . ." It is suggested that the wording be changed to "In a manner contrary to this Act . . ." in order to prevent an admission of "violation" which may subject a person or agency to the civil or criminal panalties set forth in Section 14. The same recommendation applies to the wording in Subsection 13(b) reading "and uses that information in violation of this Act . . ."

Subsection 14(e) of S. 2964 imposes criminal penalties for violations of this Bill. I believe that because of the somewhat complicated controls this Bill imposes on criminal justice information systems, and the new procedures which will be necessary to implement these controls, the element of willful intent be required to subject anyone to criminal penalties. Section 14(e) should be amended to read: "Any person who willfully disseminates. . . ." Note that this element is required in the other three bills under discussion, Section 309 of S. 2964, Subsection 6(a)(1) of H.R. 9783, and Subsection 3107(b) of H.R. 188.

Even if the violation was committed with willful intent, the $10,000 fine provided for in S. 2964 seems excessive for what is essentially a misdemeanor.

The civil cause of action provided for under Subsection 6(a)(2) of H.R. 9783 requires a minimum recovery of $1,000 regardless of whether or not actual damages can be shown. In effect these are punitive damages, or perhaps are intended to cover attorney's costs. If it is deemed necessary to have a mandatory civil punitive damages provision as an added incentive to assure compliance with the Bill, I feel the $100 provision plus litigation costs of Subsection 308(e) of S. 2963 is preferable. This is not intended to be a money-saving recommendation since reasonable litigation costs could exceed $1,000. Rather, I feel the higher figure, without provision for attorney's fees, might encourage frivolous suits without aid of counsel, who could advise that the suit was unfounded, and thus unnecessary litigation could be avoided.

VII. FEDERAL INFORMATION SYSTEMS BOARD

Sections 301 and 304 of S. 2963 provide for the creation of a Federal Information Systems Board and a Federal Information Systems Advisory Committee, the latter to operate in each state. These provisions, together with the regulations contained in the Bill as to the type of individual to serve on these boards, and the responsibility of the Federal Information Systems Board for originating new regulations for the operation or control of information systems generally, lead to the conclusion that the intention of this Bill is to create an independent agency with centralized control over all information systems, not only within the Federal Government, but within the individual states. The Act provides a coordinating mechanism for interrelation of cooperating information systems of all kinds, not just criminal information systems, a concept which should be abhorrent to anyone seeking to protect individual civil liberties.

The National Crime Information Center (NCIC) which now operates some criminal justice information systems is controlled by representatives of the state criminal justice agencies who participate in its operation. The FBI and state criminal justice agencies in developing NCIC have followed the premise that a criminal justice information system can work efficiently and responsibly only if its policies and its procedures are closely coordinated by member criminal justice agencies at the Federal and state levels. This, I feel, is a more workable approach than setting up a separate agency in which the contributing criminal justice agencies will have only a minority of representatives, as provided for in S. 2963. The FBI feels that the NCIC as presently operating is a clear demonstration that criminal justice information systems can operate efficiently at all levels, Federal and state, and at the same time negate any suggestion that the Federal Government is seeking to assume authority in areas within the jurisdiction of the member states.

VIII. COLLECTION AND COMPUTERIZATION OF CRIMINAL INTELLIGENCE INFORMATION

Subsections 2(a)(2) and (3) of H.R. 9783 provide that no criminal data bank shall collect, maintain or disseminate any information unless it is open to public inspection under the laws of the state of its origin, and arises directly from the apprehension, adjudication, confinement, or rehabilitation of a person charged with or convicted of a crime. This prohibits the investigation of crime. Interviews of witnesses, confidential source information, crime scene physical searches, etc. which point to a suspect, and therefore comprise information "identifiable to an individual," cannot be collected because they do not arise directly from his "apprehension, adjudication," etc.

Further, information provided on a confidential basis "identifiable to an individual" could not be collected since there would be none forthcoming if it were "open to public inspection."

If these prohibitions were meant to apply only to computerized data, the Bill misses its mark since in Subsection 1(l) it defined "criminal data bank" as both computerized and manual systems.

If the prohibitions were intended to apply only to computerized data, not to manual systems, then the Bill is, in effect, saying it is permissible to compile the type of information discussed above but it cannot be made easily retrievable or used efficiently.

Section 208 of S. 2963 provides that criminal justice intelligence information shall not be maintained in an automated system. This provision would also prohibit an agency from having in-house computerized files. In effect, this Subsection also says it is permissible to compile and maintain intelligence information, it just cannot be made easily retrievable or efficiently used.

I am opposed to the inclusion of criminal intelligence information in a criminal justice information system if there is direct access to that system by any agency other than the contributor. Such information will contain hearsay and unverified confidential information; and from system to system, the results of investigations which are included may vary in degrees of quality.

Extremely sensitive criminal intelligence information is received from informants. Much of this information is so singular in nature that it would severely jeopardize the source's security if any participating agency could access the computer without demonstrating a need to know such information to the contributor.

As a further example of the dangers of unchecked multi-agency access to computerized intelligence, take the case wherein an informant supplies information that certain law enforcement officials are taking bribes to allow bookmaking in a particular city. If their department has unchecked, direct access to the computer in which this intelligence is stored, this could jeopardize any effective investigation, and the safety of the informant.

Often raw intelligence information is volunteered by complainants or informants that law enforcement is not in a position to authenticate. The unfettered distribution of this type of information, which may be inaccurate or false, could unjustly embarrass individuals and subject law enforcement to well-founded criticism.

A facile and superficial answer to these arguments might be, do not put such information in a multi-agency direct access computer. This raises the more basic question, how does an agency decide what intelligence to put into such a computer? I foresee dissatisfaction with such a system on the part of every agency which feels it is fully contributing intelligence information, but feels that other participating agencies are holding back. This could eventually lead to the situation where only very low level intelligence, of little value to anyone, would be included in such a system.

However, there should be no prohibition on a criminal justice agency utilizing any method of advanced technology to improve its efficiency and effectiveness. I feel any criminal justice agency should be permitted to computerize intelligence information for its own use. This would make that criminal justice agency more effective and more efficient in its own jurisdiction. The agency, with in-house computerized intelligence information, could then disseminate that intelligence information to any other criminal justice agency which demonstrates a need for the specific information requested.

To deny the use of modern technology to criminal justice agencies, while it might provide added protection against misuse of criminal justice information, would also limit that agency's capability in investigating and more importantly, preventing crime.

I think it is misguided to attempt to protect the individual liberties of some by emasculating the criminal justice agencies upon which we rely to protect the individual liberties of all. The risk posed to individual liberties by the misuse of criminal intelligence information kept within each separate criminal justice agency is minimal compared to the risk involved in taking effective measures away from law enforcement.

IX. MISCELLANEOUS

Specific sections of the four bills under discussion today regarding which I have a comment, and which do not readily fall within one of the topical discussions above are as follows:

S. 2964

Subsection 3(a)

The word "all" should be substituted for the word "the" in the second line to insure that a criminal justice information system will not share equipment with systems such as welfare systems, taxation systems, payroll systems, and others which are accessible by name. This merely means that I feel that all criminal justice information systems should be dedicated solely to criminal justice purposes and under the sole control of a criminal justice agency, and never shared with noncriminal justice agencies for noncriminal justice purposes, or under the control of noncriminal justice agencies.

Subsection 3(b)

It is recommended Subsection 3(b) be modified to read "Automated System" means a criminal justice information system, *or part of a system,* that utilizes electronic computer or other automatic data processing equipment, as distinguished from a system, or *part of a system,* in which all operations are performed manually. Some systems are not completely automated. Subsection 9(c)(1) of S. 2964 recognizes that some sealing provisions cannot be applied to manual systems. Subsection 3(b) should be modified to show that it recognizes that a system may be part automatic, and part manual, so that 9(c)(1) will apply to the manual part of a two-part system.

Subsection 3(c)

This Subsection should provide, as part of the definition of "criminal offender record information," the inclusion of information relating to "pardons."

Subsection 3(g)

It is recommended that the definition of "criminal justice" be amended to read: "Criminal justice means any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control or reduce crime or to apprehend criminals, *the background investigations of applicants for employment with criminal justice agencies,* and the activities of prosecutors, courts, correctional, probation, pardon or parole authorities," to assure that background investigations on applicants for employment with criminal justice agencies are considered to be a criminal justice activity.

Subsection 5(f)(1)(B)

This Subsection requires a criminal justice agency to maintain a record of the "nature and purpose" of any request for criminal justice information from a noncriminal justice agency. If a noncriminal justice agency is given access to criminal justice information (via a criminal justice agency), would not the general purpose for giving this access suffice? The requirement of recording, in each case, the specific nature and purpose of the request might be extremely cumbersome, and would certainly involve considerable additional expense and manpower, especially since the "nature and purpose" stated will eventually become pro-forma statements consonant with the overall reasons why the noncriminal justice agency was given access in the first place.

S. 2963

In the preamble of the Bill, emphasis is placed on control of existing criminal justice information systems. The text of the Bill assumes prematurely, I believe, the existence of an efficient, complete operating system. It would appear that more attention should be given to perfecting such a system. In addition, I feel insufficient emphasis has been placed upon facilitating exchange of criminal justice information among criminal justice agencies.

Section 101

Section 101 states that "exchange of this information by Federal agencies is not clearly authorized by existing law." It is noted, however, Title 28, Section 534, of the U.S. Code clearly authorizes the Attorney General to collect and exchange arrest data such as fingerprint cards, etc.

The wording of Section 101 recognizes "the exchange of this information has great potential for increasing the capability of criminal justice agencies to prevent and control crime." The remainder of Section 101 comments that the exchange of inadequate or incomplete records can do irreparable injury to American citizens in that the application of computers and sophisticated information technology has greatly magnified the harm that can occur. However, there are no corrective provisions in support of existing criminal justice systems such as mandatory state legislation for reporting criminal history information. Inadequacy and incompletion of current records is not deliberate but occurs because of the lack of necessary capabilities of all components of the criminal justice community.

Section 102

Identification record information is defined in Subsection 12 as descriptive physical data which does not indicate that the individual in question has been suspected of criminal activity. This definition does not accord with current usage of the term by the law enforcement community for which the "identification record" means a "rap sheet" or historical record of criminal involvement. That physical identification information has been entered in a criminal justice information system gives such data a criminal connotation. Thus we believe the definition of "Identification record information" set forth in Subsection 12 of Section 102 should be amended to include physical descriptive information indicative of criminal activity.

Section 203

Section 203 would preclude dissemination of wanted persons information except for the purpose of apprehending the subject. This prohibition would prevent the criminal justice system from verifying the accuracy of wanted persons information previously entered in the system. Such verification is most efficiently accomplished by periodically disseminating wanted persons information in the system to contributing criminal justice agencies so that they might confirm its continued validity. Therefore, Section 203 should be modified to permit dissemination of wanted persons information for purposes of periodic verification of accuracy of information in the system.

Section 205

This Section prohibits the query of criminal offender records, including the computerized criminal history file, by other than positive identification data. For example, it would prohibit searching, by description of crime category, a computer to obtain a list of potential suspects unless a class warrant was obtained from a judge. While few such searches have been conducted to date because of the limitations on the size of the computerized criminal history file, it should be expected that because of the future growth of this file this promising investigative technique will be used more frequently and will prove to be extremely valuable.

Senator ERVIN. You are opposed to the prohibition upon the computerization of what is called intelligence information as counterdistinguished from what is called criminal history.

What amendment would you have to take care of that situation, because these intelligence-gathering actions I have seen—as chairman of the subcommittee, I have received FBI files with the raw information on them; and it left me with the opinion that the information in many cases was unreliable, and not verified. It is collected from people who apparently in many cases are quite obviously envious of the person concerned and so on.

And that is the reason I think the FBI consistently refuses to evaluate even its own raw collection.

Is that not very reliable evidence, generally speaking?

Mr. KELLEY. There is from time to time information that goes into intelligence files that is not capable of validation. For that reason I would recommend that there only be in-house computerization, and that before there be any access an intermediary position be established.

This intermediary would be someone in an official capacity who can pass on the need to know as to access.

Senator ERVIN. As I construe your statement, you favor the computerization of intelligence information, but would restrict its access to it, generally speaking, to the agency which gathered and computerized it. You would not disseminate it in the first instance to other law enforcement agencies, is that correct?

Mr. KELLEY. That is correct.

Senator ERVIN. Then you would provide that the agency which had gathered and computerized the intelligence information would have the power to make it available to other law enforcement agencies which showed to the satisfaction of the gathering and the computerizing agency a legitimate need for it.

Mr. KELLEY. That is correct.

May I point out a personal policy? I was chief of police in Kansas City for 12 years. There we had some intelligence files and an intelligence unit. There we had a restriction that even within the department officers who might possibly make an inquiry about an individual would not be able to get into the intelligence files until they had shown a need to know.

Intelligence files are a reservoir of information, much of which is unvalidated, some of which is rumor. It is a dangerous thing to have this type of information with free access; on the contrary, there should be controlled access.

Senator ERVIN. You stated that you oppose the sealing of criminal histories after the expiration of a specified period of time. You are fundamentally opposed to any sealing?

Mr. KELLEY. I am.

Senator ERVIN. Would it not be possible to adopt a reasonable provision that authorized sealing except in reference to serious crimes?

Mr. KELLEY. Senator, I do not feel that there should be any sealing against law enforcement.

Senator ERVIN. No matter how insignificant the crime is? In other words, you would not favor an amendment that would specify the crimes that you use to show what you consider to be the inadvisability of sealing—for instance, murdering, kidnaping.

Would it not be possible to specify crime, violent crimes? Would it not be possible to specify some crimes that ought to be sealed?

Mr. KELLEY. Senator, I think possibly we are talking about probable cause as opposed to investigative techniques. I do not subscribe to the thought that a previous criminal record should form probable cause to any investigator. However, a review of the previous record can produce investigative leads.

I feel that law enforcement officers, with all of the training that they have been given, with the constant pressure to observe the rights of the individual use these previous records for investigative purposes and for the promotion of better law enforcement—not to delve into private lives, not to invade inalienable rights, but to investigate properly.

I cannot tell you, for example, how a small larceny might aid in a murder, but I can tell you that everything that a man has done in the way of criminal activity might conceivably have a bearing.

I would say why should we put any barrier to that capability?

Senator ERVIN. There is a vote in the Senate. We will have to take a recess so the members of the committee can vote; and we will be back as speedily as possible.

[A brief recess was taken.]

Senator ERVIN. The subcommittee will be in order.

Is there any use for criminal history records after the lapse of 5, 6, 7 years from the time that the convicted party is released from the jurisdiction or supervision of a criminal justice agency except for identification?

Mr. KELLEY. May I have Mr. Thompson respond to that?

Mr. THOMPSON. Senator, from a law enforcement standpoint there definitely is. When this legislation was introduced we took a random sampling of fingerprint cards coming into our identification division. We receive approximately 11,000 criminal arrest cards daily. We checked some of these records to determine the rate of recidivism after the expiration of a 7-year period and a 5-year period.

We found in a sizable number of cases the individual returned to his old ways after more than 7 years; so we feel, from an investigative standpoint and for the safety of the officer, arrest records of any age may be of real value.

I remember when I was supervising kidnaping cases several years ago, we had a case regarding one Michael Joseph Condetti who was kidnaped in this area; he was sexually assaulted and killed. It was only by going back through arrest records of people who had been arrested for that type of crime that we came up with the suspect who was later convicted.

Senator ERVIN. Unless the man were identified, it would be no help to the law enforcement officer if he was dealing with a dangerous man. I could see a use for law enforcement purposes for identification

of criminal history records, but I cannot see any other purpose to be served by it.

The reason I am asking this question is if an amendment of this bill is to provide even after sealing that the head of a criminal justice system, either the Federal FBI or the head of a State, could have access to them for identification purposes.

I think you are coming to identification essentially.

Mr. THOMPSON. I think it depends upon the interpretation of the legislation. I interpret it to mean arrest records would not be available to the law enforcement officer for investigative purposes. If they are sealed, how would the law enforcement officer know that there was a record?

Senator ERVIN. They could open them for that purpose only. In other words, you would have to identify a man before you could determine that he was a recidivist. You would have to identify him. Of course, I could see in cases where you have a certain pattern of crime, and you have a new crime that has the same kind of a pattern where the old record might be useful for identifying the party.

Mr. THOMPSON. Or for establishing a modus operandi—persons that have been arrested and convicted previously for that same type of crime.

Senator ERVIN. That would be identification essentially.

Mr. THOMPSON. Identification of possible suspects, yes, sir.

Senator ERVIN. What you are identifying in those cases is the fact that you have a crime committed in this certain fashion.

Mr. THOMPSON. Yes, sir; and that certain already identified suspects have arrest records for similar offenses.

Senator ERVIN. It would be useful to determine the identity of the party who has been convicted of a similar crime in the past and to identify him as the perpetrator of a new crime.

Mr. THOMPSON. Yes, sir. That is one of the uses; and if the subject has a propensity for violence the protection of the officer is another.

Senator ERVIN. That would be identification.

Mr. THOMPSON. Yes, sir. That is right, sir.

Senator ERVIN. You could not know he is dangerous unless you have a record and identified him first.

Mr. THOMPSON. That is right, at least as a tentative suspect.

Senator ERVIN. I have a little trouble with the statement you quoted from the Department of Justice. I did not see much in the statement on the part of Justice that showed much concern for one of the interests of society—that is, the interest of society in protecting the individual against harmful effects where the individual is the subject of incorrect or improper Government records. I could see a whole lot of concern for one of the objectives; that is, the law enforcement objective. And of course, we are all interested in the same thing. We all recognize that in this field that society has two legitimate and proper interests. One is the interest in the protection of society against crime; and the other is the interest of society in avoiding unnecessary injuries to the privacy of individuals.

And it is very difficult to define the proper balance. That is what I think you are trying to find; and I know that is what the committee is trying to find. I did not see much indication or much concern in the Department of Justice statement in the last one of those interests.

I am also concerned with the idea of centralizing the control. I am a great admirer of the FBI. I think the FBI has done a magnificent job, and I think it is the finest investigative agency in the world. And I was a great admirer of your predecessor, J. Edgar Hoover, and the fine work that you have done as chief of police of Kansas City, and also since you have taken over the Bureau.

But these bills grow out of a concern which you and I both favor. We have to recognize that in a society like the United States where we have such a mobile population, that the interest of law enforcement requires that we have an integrated system for collecting and disseminating criminal justice information. But up until the present time, in the absence of these laws, the FBI has been charged essentially with the responsibility for investigating Federal crimes, its primary responsibility is at the Federal level.

If this bill is passed and we do create a truly integrated system, we have to put into that integrated system the criminal justice systems of 50 States. And since the States historically have had the major portion of law enforcement responsibility under our system, the States have a very proper concern with this whole problem.

For that reason I favor a board approach, rather than putting them under one name. Thomas Hobbes once said that "freedom is political power divided in small fragments." And whenever you concentrate political power at one point, no matter how well motivated those at that point are, you endanger freedom to some extent.

Woodrow Wilson, who was a great student of American government said that "when we resist the concentration of power, we are resisting the processes of death; because concentration of power always precedes the destruction of human liberty." For that reason, I cannot accept the theory that all the gathering and dissemination of criminal justice data should be concentrated, that the power of it should be concentrated in one individual, no matter how good a man he might be.

I would be glad to have any further observations from you on that point.

Mr. KELLEY. I, too, have given this a great deal of thought; and I do have some thoughts that I would like to read to you which I think bears on this very well.

First, let me by preliminary explanation say that the underlying principle is that there be a concentration of custody but not control; that the accumulation of information be reliable; and that there be also accountability, accountability so that there is a central custodian who exercises control, fortified by some sort of a governing body which can, for example, in the event of an infraction, invoke appropriate punishment; and that this principle be statutorily defined.

I feel, as you do, unquestionably, that in the pursuit of States' rights it might be better, in principle, that there be individual banks of data. However, the overall necessities of law enforcement require that there be one agency with responsibility for management control of the central data bank.

The problem is how to properly control this data bank.

The question as to what the national policy should be regarding the development of computerized criminal history information systems, raised and resolved in 1970, has again been raised in the General

Accounting Office report of March 1, 1974. I would like to discuss with you what I consider to be the overriding issue raised in that report, namely how a computerized criminal history (CCH) program is to be developed and implemented.

The FBI was authorized by the Attorney General on December 10, 1970, to implement a program concept which had previously been reviewed and approved by the participating States, the Office of Management and Budget, and the Law Enforcement Assistance Administration.

This authorization followed an OMB report which stated:

The FBI should be designated to operate the Index as a service to the national SEARCH system because: (a) it has a tremendous head start in terms of skills and experience, as well as a computer facility and the required nationwide communication facilities. Each of the other alternatives would, to a large extent, require the time-delaying buildup and duplication of the facilities that already exist in FBI. (b) LEAA is by law and experience regarded essentially as a grant administering and technical assistance organization and ought not to become involved in operational responsibilities, either separately or jointly with another organization. LEAA would, however, continue its funding of SEARCH activities. (c) A State or consortium of States would not provide the kind of national focus that is important to SEARCH's steady implementation which Federal operation of the Central Index could provide. Further, the States seem to prefer a Federally operated Central Index, provided they have a strong voice in controlling SEARCH's development and implementation.

It should be noted that the NCIC Advisory Policy Board assumed this responsibility.

I must frankly tell you that the CCH concept cannot realize success unless decisions are made which provide the FBI with all the management authority necessary to implement the decisions of the NCIC Advisory Policy Board.

I include decisions as to the funding of State efforts, and the necessary communication capabilities essential to the reliability and accountability of the CCH program. Without such management authority, the concept can never be effected.

The success of the CCH program depends primarily upon the efforts of the individual States. These efforts, in turn, are limited by the availability of funds. The granting of Federal funds to the States for this purpose is a function of the LEAA; however, additional restrictions have been imposed by the LEAA without consultation with the States, the NCIC Advisory Policy Board, or the FBI, and without specific approval, to my knowledge, of the Attorney General.

These restrictions have been imposed without regard to the fact that the NCIC Advisory Policy Board has the responsibility for the policy direction of the CCH program; and the FBI has the operational responsibility for the program.

To understand the nature of the NCIC–CCH program, it is essential to understand the nature of the NCIC Advisory Policy Board. The board is basically a States organization. It is composed of 26 members, 6 of whom are appointed representatives from the fields of prosecution, courts, and corrections. The remaining 20 members of the board are elected from the States, and each, by reason of his being the highest ranking law enforcement official in his State or city, is directly responsible to the highest levels of elected State or city officials.

In addition to carrying out the policies of their State Governors, attorneys general, or mayors, these officials are also directly responsible to their locally elected State legislatures or city councils and are, therefore, knowledgeable as to the needs of their community. In my opinion, no more qualified group could be assembled to provide leadership and direction to a CCH program.

As a former member of the NCIC Advisory Policy Board, I can attest to its high degree of professionalism and independence. I can also assure you that the board will continue to play the major role in NCIC–CCH policy decisions.

I firmly believe, as did OMB at the time of its 1970 decision, that the FBI can better provide CCH service than any other agency. No other agency can provide the national fingerprint identification function which is indispensable to the success of any CCH program.

In order to develop and implement a successful and effective CCH program, action is required in two areas: (1) Legislation must be considered to formalize program security requirements and to protect individual rights. (2) Further, it is essential to clearly delineate the role of the funding authority and that of the operational and management authority. The operational agency, once designated, should be afforded the authority as well as the responsibility to carry out its program. The authority of the funding agency must be geared to support the operational agency to be compatible with the needs and requirements of the system.

Gentlemen, I appear before you both as Director of the FBI and as a former manager of a local law enforcement agency. In addition, I am compelled to a decision as to our position by my personal commitment that we should all be governed by the principle that we must be guided solely by what is best for the Nation's good.

Keeping in mind these thoughts, I must honestly state that unless a single operating agency is given full management control and funding support necessary to implement a unified CCH program, I would have no alternative but to recommend that any FBI management responsibility for a CCH program be terminated.

Senator ERVIN. That is a rather strong statement.

Chief, this NCIC Board, as I understand it, has 20 police people connected with police organizations and has 2 prosecutors, 2 people dealing with paroles, and 2 people dealing with corrections.

Mr. KELLEY. Yes, sir.

[Mr. Kelley subsequently added this statement for the record:]

Twenty members of the board are associated with State and local law enforcement agencies; six members, appointed by the FBI, consist of two each from the fields of prosecution, courts, and corrections.

Senator ERVIN. No public members at all. These 26 are appointed by the Federal Government and none of them by the States.

Mr. KELLEY. Six members were appointed by us; but there is no bar to the appointment procedure later being changed.

[Mr. Kelley subsequently added this statement for the record:]

The 20 law enforcement members of the board are elected, according to region, by the users of the NCIC system, and are all associated with State or local law enforcement agencies.

Senator ERVIN. None are appointed by the Governors of the States. I would venture the assertion that the States are probably concerned with 95 percent of the criminal offenses committed in this country, are they not, because their law enforcement duties, and responsibilities, and powers are much broader than the Federal Government's.

Mr. KELLEY. Yes.

Senator ERVIN. Here we would have one man, a Federal official, having complete management of a system which includes the crime data assembled by the States as well as that assembled by the Federal Government. And that might be more efficient, but this country was not based on the idea of efficiency so much. It was based on the idea that the powers of a government should be diffused.

Despite my high respect for your arguments, I just cannot buy them because I do not believe in concentrating all the power of criminal data justice information systems in one man.

Mr. KELLEY. I agree that it should not be. I will say that if there is some criticism of the composition of the board or about the way the members should be chosen that is something that can be worked out.

Senator ERVIN. The board is an advisory body. They can do like the old lady that came in to consult me when I was practicing law in my early days and asked for my legal advice. So I took my law books and studied them and gave the lady advice. And she got up and started to go, I said wait a minute, you owe me $5. She said what for. I said for my advice, and she said well, I ain't going to take it.

You state that you favor giving an individual access to his criminal record and opportunity to have a review board to claim that it is inaccurate and ought to be corrected. But you say that that ought to be invoked by him at the originating agency.

Mr. KELLEY. Yes, sir.

Senator ERVIN. The man, if his record is incorrect, would be hurt far more by the dissemination of that record at the hands of the Federal Government, the agencies of the Federal Government, than the dissemination of the record by the State of North Carolina or the State of North Dakota. It is the dissemination of the record that hurts the man rather than the collection. It seems to me that he ought to have a remedy against getting it corrected in the hands of anyone who is in a position to know that and is disseminating it. Otherwise, he has no axe to grind.

That is just a question of procedure rather than a matter of philosophy. What are your views in respect to the collection and dissemination of arrest records where there is nothing collected to show what happened as a result subsequent to the arrest?

Mr. THOMPSON. Senator, since 1924, the FBI Identification Division, set up at the request of the International Association of Chiefs of Police, has been the central repository for fingerprint information. We receive arrest fingerprint cards now at the rate of about 11,000 a day.

As a central repository of this information, we have tried to make the records as complete and accurate as possible, but we are dependent upon the contributing agencies to furnish us that information. We have never placed any restriction on the dissemination of this information to law enforcement and other qualified agencies, whether or not there was a conviction or other disposition. We have encouraged the submission of dispositions. While our records are not as complete in that regard as we would like them to be—and we would certainly welcome any legislation that would require agencies to submit dispositions—our records are much better than they were. We are receiving approximately 8,700 dispositions per day as against 11,000

incoming arrest fingerprint cards per day. In addition, some of the fingerprint cards already have the dispositions shown.

So we are getting a good percentage, but it is not as high as we would like it to be. We would like our records to be 100 percent complete and accurate.

In answer to your specific question, we do not screen them. We give back to a requesting agency the information that has been given to us, even though there may be no disposition.

Senator ERVIN. You disseminate arrest records?

Mr. THOMPSON. Yes; however, there is a caveat on the record—the rap sheet as it is commonly referred to by which we refer the requesting agency to the responsible agency for the arrest entry to get disposition not shown, or other explanatory information.

Senator ERVIN. I am curious. A few years ago we had quite a demonstration in Washington. The Washington Police Force arrested thousands and thousands and thousands of students, and I did not object to that because those that had arranged that demonstration announced in advance that they were going to disrupt the processes of Government, which, of course, is an offense.

A lot of them were just kids from college that came here out of a sense of curiousity.

Did all of them go into the FBI records, do you know?

Mr. THOMPSON. There were nearly 9,000 arrested and their fingerprint cards were submitted to us. They were kept in a separate compartment and by court order all of those prints were returned, just a few months later, to the Metropolitan Police Department. They were never incorporated in our files. Those arrests could not be included in any information that we disseminate.

Senator ERVIN. I had a very tragic situation brought to my attention by an individual about dissemination of arrest records. This was an employment record. He said that when he was a teenager he was arrested. There was a theft from a locker in a school, high school gymnasium that he was attending. He was arrested, carried to the police station, booked, fingerprinted, and then in their investigation the police were unable to connect him with the offense and he was released and never prosecuted. He entered the military service and served honorably for more than 20 years, and then retired, and then applied for a job in the defense industry where one of his friends was employed. And he had all the experience to fit the job, and they would not employ him, would not give him any reason why they would not employ him. But his friend wrangled out of the personnel officer, the only reason he was not employed was because of the arrest record 25 years before.

That to my mind illustrates the danger of disseminating arrest records. I have been fussing and fighting with the FBI over several years for giving arrest records to financial institutions. I think that is very dangerous.

In North Carolina we have a rule of evidence, if a man is on trial for a criminal offense you can ask him about his convictions and his pleas of guilty for the purpose of impeaching him, but you cannot ask him about a mere charge being filed against him. That is recognition of those that fashioned the rules of evidence that the use of arrest records would be very injurious.

Mr. THOMPSON. As you know, Senator, all FBI dissemination of arrest records is governed by Federal statute. We do not disseminate to anyone who is not entitled to them.

Senator ERVIN. Until lately there was no statute. When I tried to put it in, the FBI was giving mere arrest records to financial institutions insured by the Federal Government and at that time I could not find any law that gave any authority at all to the FBI to do that.

Mr. THOMPSON. I could cite it for you, Senator.

Senator ERVIN. I would like to see it. I am always glad to extend my legal horizons. I have not been able to expand it far enough to find that statute.

[Mr. Thompson subsequently added the following statement for the record:]

Prior to July 22, 1971, the FBI furnished Identification records to financial institutions under the authority of 28 C.F.R. 0.85(b):

Conduct the acquisition, collection, exchange, classification, and preservation of identification records, including personal fingerprints voluntarily submitted, on a mutually beneficial basis from law enforcement and other governmental agencies, railroad police, national banks, member banks of the Federal Reserve System, FDIC-Reserve-Insured Banks, and banking institutions insured by the Federal Savings and Loan Insurance Corporation; provide expert testimony in Federal or local courts as to fingerprint examinations; and provide identification assistance in disasters and in missing-persons type cases, including those from insurance companies.

28 C.F.R. 0.85(b) was issued by the Attorney General to implement his responsibilities under 28 U.S.C. 534 which states:

(a) The Attorney General shall—

(1) acquire, collect, classify, and preserve identification, criminal identification, crime, and other records; and

(2) exchange these records with, and for the official use of, authorized officials of the Federal Government, the States, cities, and penal and other institutions.

(b) The exchange of records authorized by subsection (a) (2) of this section is subject to cancellation if dissemination is made outside the receiving departments or related agencies.

(c) The Attorney General may appoint officials to perform the functions authorized by this section.

Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 616.

The furnishing of records to financial institutions was discontinued as a result of MENARD v. MITCHELL decision, 328 F. Supp. 718 (D.D.C. 1971).

The furnishing of identification records to banks and other financial institutions was reinstituted by the FBI on January 20, 1972, as a result of the enactment of Public Law 92–184 (85 Stat. 642) and has continued under the provisions of Title II of Public Law 92–544 (86 Stat. 1115) which states, "The funds provided for Salaries and Expenses, Federal Bureau of Investigation, may be used hereafter, in addition to those uses authorized thereunder, for the exchange of identification records with officials or federally chartered or insured banking institutions to promote or maintain the security of those institutions, . . .[1]"

Senator ERVIN. Senator Gurney?

Senator GURNEY. Mr. Kelley, pursuing this advisory board a little further, I notice here in the statement you said that the concept was akin to a civilian review board which has been tried I guess in some city police departments recently.

But do we not have that concept in the Federal government in other areas?

For example, in the Defense Department. We have always viewed our system in this country as one where we indeed should have civilian control over the armed services and very strict civilian control. I mean by that that they are the people really in control.

[1] See testimony of Mathew Hale on behalf of the American Bankers Association at p. 161 for a more detailed discussion of the FBI's authority to disseminate arrest records to federally insured banks.

Is there a difference in that concept and in criminal information data?

Mr. KELLEY. Senator, let me ask Mr. Campbell, who has gone over this on many occasions, to answer that question.

Mr. CAMPBELL. Senator, the answer is that law enforcement does not consider itself to be even paramilitary. We are very much civilian.

Senator GURNEY. I am not making that point. I am strictly using the Director's words here. The board concept seems to be akin to a civilian review board.

Mr. CAMPBELL. I believe he is talking about the proposed Federal board, not the advisory board, which is now in existence.

Senator GURNEY. So am I. I am talking about that, too. I am simply saying, is not the concept somewhat similar to civilian control over the Armed Forces?

Mr. CAMPBELL. The traditional concept is, of course, that there should be civilian control of the military. But I say again, we consider ourselves very much civilian and therefore not in the category that would require civilian control.

Senator GURNEY. I guess you do not understand my point.

Mr. KELLEY. Let me address myself to that. In my analogy I referred to the sort of civilian review board that is resisted so strongly by local police. This resistance arose because local police felt there was usually so little understanding about what happens in those arrest situations which occasion the need for review. It appears to me that most of the problems in this area arise over a lack of recognition of the element of violence and how different people react to violence. Some law enforcement officers, fearing violence might result in a particular situation, take some action which one unfamiliar with law enforcement cannot understand; and, many times public judgments are made without a real recognition of what the problems were.

For example, there are some occasions when it is necessary to take quick and aggressive action in order to keep down a problem. A bystander looking on might say, this is brutality. It is not brutality, it is quick aggressive action to keep down perhaps what could be a violent situation.

In this connection a board which is comprised of people who are not familiar with the law enforcement field might well make some decisions that are not in the best interests of the public.

Now, Senator, I cannot deny that we could find people who could make a proper evaluation of criminal offender record information needs, even though they are not law enforcement oriented; and I would be less than honest if I were to say that we could not live with this. We could. I would say, however, let us in all instances have enough on the board who are police or law enforcement oriented so that they at least can adequately present law enforcement needs and requirements to the other members.

I have no objection personally. Maybe some of my associates might say we are giving in too much. I do not think that this is giving in too much so long as we maintain the proposition that you have got to have law enforcement represented in a meaningful way, not just a token representation, but in a meaningful way.

Senator GURNEY. That is really what I wanted to get at. I am pleased that that is your reaction. Actually, the one bill here that provides it, Senator Ervin's bill, does have people who are oriented in that

direction. As I recall here, the Attorney General is a member. Two other members are designated by the President as representatives of other agencies outside of the province of Justice. That may not fall within your purview of the expertise. Three would be directors of statewide criminal justice information systems, so they obviously would be within the law enforcement field and know what was needed. The private citizens, the three others here in this bill, should be as the bill says well versed in the law of privacy, constitutional law and information systems technology.

I think I tend to agree with you that I do think we ought to have people who know something about law enforcement and know the problems of law enforcement and know the importance of gathering and disseminating information. But I do think that there is some merit in an advisory board in an area that is this sensitive.

I can remember my own limited experience with law enforcement as a mayor. I recall the times when it was indeed good for the city that we had, shall we say, a civilian board of mayors and commissioners who were reviewing some of the activities of our police department. If we had not had that we would have been in serious trouble.

That is really all I am saying, that I think in an area this sensitive we perhaps ought to be looking at this sort of a board, or perhaps you could make some suggestions on that, differing perhaps from what are in these bills that might be helpful?

Mr. KELLEY. I would be happy to join in such a consideration. I am impelled toward my feeling because I worked for a police department which was under State control. It had no responsibility to the city other than to give good service and to accept the budget from the city. And the policymaking board consisted of four citizens of the city. I worked with them, three groups of them in the 12 years I was there. I had no difficulty whatsoever. Reasonable people can reason together, and I agree with that.

Senator GURNEY. Let me ask a question about your criminal intelligence file that is within the FBI.

What is the policy of access to information in those files to law enforcement agencies now?

I am talking about police departments who would want that information and make use of it.

What is your policy there?

Mr. KELLEY. Are you speaking of computerized files?

Senator GURNEY. I am really talking about both. I was going to ask about the computerized after that.

Mr. KELLEY. The policy regarding access is on a need to know basis. We may have information about a murder or about some city or State official, where we have no jurisdiction, or which will lead to and assist a pending State prosecution. It is incumbent upon us to supply that information to local authorities who have jurisdiction.

With regard to computerized criminal intelligence information, there should be only in-house access.

Senator GURNEY. How is that used as far as inquiries from other police departments are concerned?

Mr. CAMPBELL. Senator, we have no computerized criminal intelligence on direct line access. As a matter of fact, the NCIC/CCH has no intelligence applications.

Senator GURNEY. I see.

Mr. CAMPBELL. All the information in the NCIC/CCH is documented information. There can be in CCH only records which involve arrests that were followed by fingerprinting.

The NCIC wanted persons file includes only persons from whom there is an outstanding warrant charging a felony or a serious misdemeanor. There are no suspects, no persons wanted for interview or any such thing. All information is documented.

Senator GURNEY. Criminal intelligence would be a direct call from a police chief of a city to the FBI to find out if there was any intelligence, is that right?

Mr. CAMPBELL. That would be one way. We often take the initiative where information about some event is developed that is of interest to the jurisdiction where the event is about to take place. We feel an obligation to disseminate that without delay.

Senator GURNEY. What about information that is developed in grand jury proceedings, Federal grand jury proceedings?

I am not talking about the FBI inquiries. Obviously, those are kept in your files. I am talking about information that is obtained other than that by Federal grand juries.

How do you keep that information in the FBI, or do you?

Mr. KELLEY. I do not know exactly what you mean. Do you mean the deliberations of the grand jury?

Senator GURNEY. I am talking about the testimony, the evidence and the facts that are induced in the grand jury proceeding, a Federal grand jury proceeding by the prosecutors bringing them in and interrogating them. Often the information is a good deal akin to the kind of information that is developed by your own FBI when it investigates.

Mr. KELLEY. We do not have available to us the grand jury deliberations. Now, on the other hand, if we have interviewed a witness who subsequently appears before the grand jury, we can by virtue of his previous interview, know substantially what he is going to report. Other than that, we have nothing.

Senator GURNEY. That is what I wanted to know. Of course, I am familiar with your interrogation of witnesses, which you often do before they go before the grand jury. I was talking other than that, you do not keep any information or receive any.

Mr. KELLEY. No, sir.

Senator GURNEY. This business about sealing, I certainly can understand the reluctance of sealing up information which you think would or might be important in criminal cases. And yet, of course, there would certainly be examples where it probably should not be done.

But let us take an example. Suppose you had an arrest, and it was later proven that it was a false identity. The wrong man was arrested.

What happens to an arrest record like that as far as the FBI files are concerned?

Mr. KELLEY. We maintain the arrest record; purging, in the majority of cases, is initiated through the contributor. When an individual requests us to purge his record, we refer him to the contributor.

I am sure that most departments now will act on legitimate requests for purging. I do not know, Senator, that every department will do this, but, I think most of them do.

Mr. THOMPSON. Senator, if I might add to that, we had over 18,000 expunctions from our files last year at the request of the local con-

tributor or as a result of local court order. Our policy on that is that after we expunge an arrest record we furnish a copy of the revised rap sheet to every agency to which that arrest record had been disseminated.

So everybody to whom we have disseminated the record which has been expunged gets a current, up-to-date rap sheet showing the expunction of that arrest.

Senator GURNEY. Let us take this case. Suppose you had an arrest and an indictment, and then a trial, and the judge throws the case out—no evidence, no case made.

What would happen to the record of this man as far as the FBI is concerned?

Mr. THOMPSON. On the request of the contributor or a letter showing a court order we would expunge that record and return it to the contributing agency. That is what we did in over 18,000 cases last year.

Senator GURNEY. When you say contributing agency in this event, what would that mean?

Mr. THOMPSON. It would be the agency submitting the fingerprints, for example, the police department, the sheriff's office, the State police or whoever arrested the individual, or incarcerated him.

Senator GURNEY. What about the individual himself?

Mr. THOMPSON. We do not expunge on the request of the individual alone.

Senator GURNEY. He could not get that information expunged without going to the police department who made the arrest in the first place?

Mr. THOMPSON. Correct, or by going to a local court; but not by coming directly to us. We are only the custodian of the records. We do not feel that on a request of an individual, who may or may not be telling the truth, we should expunge without the authority of the local court or of the local fingerprint contributor.

Senator GURNEY. Let us pursue this a little further first, and we are in a field that I know nothing about at all.

Suppose you have a jurisdiction that will not do anything about it, even though the man is found not guilty or the case is so flimsy it is thrown out?

I really want to make that a case. The indictment probably should not have brought about in the first place.

Suppose you have a jurisdiction where there is no machinery to expunge that, so that the contributor cannot do it?

As I understand what you are saying, you would not be able to do it either, the expunging from your records.

Is that correct?

Mr. THOMPSON. Yes, sir; we do not take unilateral action without authority from the contributor or a local court.

Senator GURNEY. I understand that. I am simply saying that he would not furnish it. That is the policy of that particular local police department, so that his record still remains here. That is all I am asking.

Mr. THOMPSON. That is correct, however, I personally have not heard of any case of that type.

Senator GURNEY. I do not know of a case that it did not exist. I was saying I was on unfamiliar ground that I did not know.

Mr. THOMPSON. I could see where it could occur, but I think a court order would be a remedy.

Senator GURNEY. Thank you, Mr. Chairman.

Senator ERVIN. It is about lunchtime. I do not know whether you gentlemen would rather for us to finish before we—until we come back, or if you would like to adjourn for lunch. I will leave it to you.

Mr. KELLEY. We will stay.

Senator ERVIN. Senator Tunney?

Senator TUNNEY. Thank you, Mr. Chairman.

Mr. Kelley, I was interested in your remarks here for the record with respect to intelligence information that you felt that any criminal justice agency should be permitted to computerize intelligence information for its own use. As you know, the chairman's bill prohibits intelligence information from being computerized, and I am wondering why you feel that it is necessary to have that intelligence information on a computer-wide basis.

Would it be valuable as background material that you have in your written files which then could be gotten to as the case would arise, but which information because of its delicate nature, because it is uncorroborated, unverified, ought to not be placed on a computer where there is a greater danger of its being disseminated in an unauthorized fashion?

Mr. KELLEY. Senator, I feel that just by indicating, for example, that a man is the subject of a criminal intelligence file you have put him separate and apart as a little bit more dangerous, a little bit more active in the field of crime, and when you then circulate without very stringent controls, the information that is in most raw files you are placing the man in peril of unnecessary exposure which would be in violation of his rights, because some of it is rumor, some of it is informant information that cannot be validated. It is in essence just raw material. To protect individual rights necessitates close control.

Senator TUNNEY. Yes; I agree with you.

Why not have even closer controls and maintain those files in the FBI for other law enforcement agencies in paper form, rather than placing that information on a computer where there is a greater danger of having that information disseminated?

As I understand the chairman's bill, of which I am a cosponsor, it prohibits intelligence information being placed in a computer file. It would allow that information to be retained in files of the FBI, but in a format that would make it less likely that it would be disseminated to say, law enforcement agencies or to other governmental agencies in an unauthorized fashion.

Mr. KELLEY. I do not know if I quite understand your question. In the first place, the various members of the police community feel that they should have the right to have their own intelligence files, and further, the right to in-house computerize that intelligence. Now, there are some who may feel otherwise about computerized in-house criminal intelligence information. This question came up during the time of my confirmation, and I would like to repeat my statement in this regard.

We had a criminal intelligence unit in Kansas City. It did not computerize its intelligence information, but it did have a stop put in

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the computer so that whenever an officer had contact with, issued a summons to or in some other manner had traffic with the subject of one of these files, and queried the computer, an automatic notice was given to the intelligence unit that such a contact had been made. The requesting officer did not have direct access to the intelligence units information, and this avoided the possibility that the officer might have made an arrest just because this man was an intelligence file subject.

If a State feels that it should have computerized intelligence files, they are properly controlled, and there is a need to know evaluation prior to dissemination, I feel this would be all right.

Mr. CAMPBELL. Senator, you no doubt found in drafting this bill that criminal intelligence is difficult to define. A total ban on computerization of criminal intelligence might, for example, include a ban on certain modus operandi applications. For example, a department may have a bank robbery this morning involving a male, white, 6′3″, with a jagged scar on his left cheek, and it might wish to put that in the computer to see what possibilities turn up for identifying the robber. Under perhaps most interpretations, that might be banned by the criminal intelligence provision in the bill.

Senator TUNNEY. Could that not be refined so as to allow physical descriptions to be located in the computer files but to prevent the worst kinds of innuendo from appearing on such a computerized intelligence file?

I think all of us at one time or another have been privileged to see some raw FBI files, and I would have the feeling myself that those files should be kept under the strictest security and that they are difficult to get to and that the feeling that they would not be put onto a computer and thereby be subject to abuse. I am talking about the kinds of comments that are made by informants who may or may not have an ax to grind.

I am concerned by the problem of definition, as you are, but can we not, through refined language, take care of the example that you gave, at the same time prevent the worst type of innuendo and opinion from appearing on the computer files?

Mr. CAMPBELL. It may be helpful to know in this regard that no FBI investigative files are computerized.

Senator TUNNEY. Good. I am glad to hear that.

Do you not think that that ought to be the rule for the future, insofar as intelligence is concerned and this unverified raw data that is fed in from informants?

Do you disagree with that?

Mr. CAMPBELL. I hestitate to commit myself for the entire future.

Senator TUNNEY. Of course, the bill does commit itself to the future, and I certainly, for one, do not feel that physical descriptions fall into the category of intelligence that I am talking about.

Mr. CAMPBELL. To my knowledge, the FBI has no plans for computerizing its investigative files.

Senator TUNNEY. Would you object to the prohibition, if it were written into the legislation in this regard?

Mr. KELLEY. Probably. Senator, when you are speaking about investigate files, I can see where, for example, in a large kidnaping case, you might want to computerize excerpts and synopses of reports,

so that in the process of a very complex investigation, you could get a quick analysis of what has transpired.

Insofar as computerizing in general what I think probably we are both talking about is organized crime, I do not foresee any great need for a whole lot of that. There may be some. For example, there could be a task force case wherein it is used in that manner. One of the problems is the definition of criminal intelligence.

Senator TUNNEY. I understand that. I think it is a problem. Certainly, I do not know enough about it at this time to be able to draft any language.

The only thing that I do sincerely believe is that when you have information on a computer, there is a far greater opportunity for that information to be disseminated than if it is in a paper file, located in a vault somewhere, and the FBI or some other law enforcement agency goes in. I am simply suggesting that that type of intelligence information which we are all familiar with, which contains innuendo and opinions by informants, ought to be not on those computer files.

I do want to go on to another issue. That is, when you testified, Mr. Kelley, before our Judiciary Committee last year on your confirmation, you indicated to me that you supported, in principle, a number of recommendations and projects. And one of these recommendations was the updating of arrest records to make sure that they are accurate.

What are you doing since you have taken over to make sure that this updating takes place and that this is placed into the appropriate files and on the computer?

Mr. THOMPSON. Senator, we have had several meetings in which we have discussed this. One of the very fine things that Mr. Kelley and all of us in the FBI think can come out of this legislation is some requirement on the contributors that the records be updated and made current and accurate.

Through the years, we have urged agencies to update their records, but there has been no penalty for not doing it. As I indicated earlier, our records are more complete than they have ever been, but they are not as complete as we would like them to be.

Also, we would like to see some penalty for the misuse of these records by the agencies to which they are disseminated. We have always had a caveat on the rap sheets, with which you are familiar, Senator, that if the record is used for anything other than official purposes, our services to that agency will be cutoff. That is the only penalty that we have had.

Through the years, we have had very little abuse of these records. We have had instances where we terminated our services to a police department; however, I am happy to say that as of right now, there is no law enforcement agency in this country that is not entitled to receive our services.

Senator TUNNEY. I gather from your answer, then, that you have not been able yet to update all the records that you are presently the custodian of?

Mr. THOMPSON. No, sir, we have not.

Senator TUNNEY. Have you made significant efforts to try to do that?

Mr. THOMPSON. Yes, sir, we have, in letters to all of our contributors in police conferences throughout 59 field divisions and in meetings

with police chiefs throughout the country. Again, the only thing that we are permitted to do is to urge; and that is what we are doing, and that is the reason that I think legislation could help us.

Senator TUNNEY. In the case of the CCH computerized files, you do have arrest records there, do you not?

Mr. THOMPSON. Yes, sir; we do.

Senator TUNNEY. Are all of those arrest records updated yet?

Mr. THOMPSON. No, sir; they are essentially the same as we had in our manual system. Only 2 percent of our records are in the computerized criminal history system, and we are continuing our manual system.

Senator TUNNEY. How long do you think that it would take to complete that updating?

Mr. THOMPSON. That would depend upon the cooperation of the contributors. It will be a gradual process when any law requiring submission of dispositions goes into effect. I do not imagine that it will be retroactive, but it will start as of that time.

Senator TUNNEY. Could you not do that right now, require an updating from now on in all the arrest records?

Can you just not say that from now on we will issue a requirement that all arrest records will have to be updated?

Mr. THOMPSON. Who would issue that, Senator?

Senator TUNNEY. The Director.

Could he just not say that if the local law enforcement agencies want to participate in NCIC and have access to CCH material, from now on they will have to update all arrest records?

Mr. THOMPSON. I think we are certainly encouraging that, yes, sir.

Senator TUNNEY. Could you not just write a letter to them and just say, from now on, you are going to have to do it as a part of the requirement?

Mr. CAMPBELL. To back up a bit, Senator, you are speaking basically of dispositions?

Senator TUNNEY. Yes.

Mr. CAMPBELL. We feel that with the added participation of the other segments of the criminal justice community, namely, the prosecutors, the courts and the corrections segments, the disposition problem will diminish very rapidly. We are making a concerted effort to obtain the added participation of those other three segments.

Traditionally, even dispositions have, by and large, been submitted by the law enforcement community. But when the responsibility is fixed on any one of the other three segments, we feel that they will certainly discharge that responsibility and the dispositions will be forthcoming.

Senator ERVIN. If Senator Tunney will pardon me for interjecting myself, could not Congress get the records updated by putting a provision in the bill saying that no law enforcement agency would disseminate a mere arrest record that was more than a year old without having it updated?

Mr. CAMPBELL. I would say Congress has the power to do that.

Senator ERVIN. Would that not be an effective way to accomplish this purpose?

Mr. CAMPBELL. I could not disagree with the effectiveness. It could be quite traumatic.

Senator ERVIN. It might be very wise, however.

Senator TUNNEY. In the absence of legislation—I think probably this is important as a means to achieve the result. In the absence of that, I would hope that the FBI on its own would put pressure on local law enforcement agencies and courts and others for the purpose of achieving that result, because I think that it is highly prejudicial and unfair to be disseminating arrest records without updating them and finding the disposition of that arrest record.

Mr. THOMPSON. I can assure you that we are committed to that goal, Senator Tunney.

Senator TUNNEY. Just two final areas.

We talked at the time of your confirmation about the problem of having certain files in computers being turned over to credit bureaus and other nongovernmental instrumentalities, even the press.

I wonder what you have done, Mr. Kelley, since you have been Director, to protect against that type of dissemination of information.

Mr. CAMPBELL. Senator, we disseminate in strict accordance with applicable law or executive order, and we have made no dissemination in the areas that you described, except to certain banks and others in accordance with applicable Federal statutes.

Senator TUNNEY. But I am thinking now of that information as being disseminated by perhaps local law enforcement agencies who participate in the NCIC system. Are you taking any kind of action in monitoring the program at the local level to prevent this type of dissemination of information, or are you just relying on the good will of the local law enforcement agency without any guidance whatsoever?

Mr. THOMPSON. There is a prohibition against using the FBI identification record for anything other than official purposes. As it is now, there is no criminal penalty for misusing that record. As I indicated, the only thing that we can do is cut off our services. We have done that on occasion. But it is significant that there has been such little abuse. As I say, there is no law enforcement agency that is not now receiving our services.

Senator TUNNEY. You monitor the system to make sure that they do not use this for unauthorized persons?

Mr. THOMPSON. All allegations of abuse of criminal identification records are promptly investigated.

Senator TUNNEY. One last point.

There was a story on February 3, 1974, in the Los Angeles Times which appeared in a number of other newspapers.

Mr. Chairman, I would ask that these stories be incorporated in the record at this point.

Senator ERVIN. That will be done if there is no objection.

[The information referred to follows:]

[From the Los Angeles Times, Sunday, Feb. 3, 1974]

U.S. FACING DEMANDS TO CURB COMPUTER DATA ON INDIVIDUALS

FEDERAL AGENCIES CLASHING OVER WHICH WILL HAVE ACCESS TO INFORMATION; PUBLIC FEARS ABUSES THAT COULD RUIN LIVES

(By Robert A. Jones, *Times* Staff Writer)

WASHINGTON.—Two weeks ago a suburban newspaper publisher in Southern California returned from lunch to find two FBI agents waiting in his office. The agents introduced themselves and explained that they had come to discuss an article the newspaper had published recently.

The article, actually a syndicated column carried on the editorial page, had criticized the FBI's new computer background file on criminals and suspected criminals. The column called it "the FBI's great electronic brain" and raised the specter of the computer becoming "the dawn of Big Brother."

For more than an hour the agents attempted to convince the editors of the paper, the Anaheim Bulletin, that the column was mistaken. "They said no intimidation was involved but the whole point was to convince us not to print stories like that anymore," said Kenneth Grubbs, the paper's editorial page editor. The Editors were unconvinced and the agents departed.

FBI agents have made at least one other visit to persons who publicly criticized their computer files. The second case involved a Massachusetts resident who wrote to Gov. Francis W. Sargent complaining of what he believed were several abuses.

FBI officials deny that the actions are intended to squelch such criticism, but the incidents do disclose the seriousness with which the FBI and other federal agencies regard the public attitude toward a growing demand that controls be placed over the government's store of background information on individual citizens.

Such fears may be difficult to assuage. Relatively minor abuses of data systems can ruin lives as when the computer wrongfully claims that innocent persons have committed crimes or, almost as bad, when the machines are fed vague suggestions that certain persons are less than worthy citizens.

Increasingly, computer records are being criticized for more subtle reasons, perhaps best expressed by author Donald G. MacRae:

"In all societies . . . men have lived in the interstices of their institutions. They have counted on the mercy of error, ignorance and forgetfulness in their dealings with their fellows and their state. But in a world of computers this mercy may not long exist. All our failings and achievements, our creditworth and our petty delinquencies, our obedience and our defiance, can live in the constant present of the machine."

In Washington a recent count showed that there were at least 750 computer data systems under government control collecting every kind of personal information from mental illness, drug use and juvenile delinquency to credit status and criminal activity. The number of data systems outside the Capitol is so large that no one has tried to count them.

With the notable exception of Massachusetts, these systems have grown without regard to state or federal regulation. In large part agencies are free to place whatever information they please in the data banks and to share that information with whomever they see fit.

All of that may soon change. In his State of the Union message, President Nixon said that "the problem is not simply one of setting effective curbs on invasions of privacy (by automated data systems) but * * * of limiting the uses to which essentially private information is put and of recognizing the basic proprietary right each individual has in information concerning himself."

On Tuesday the Administration will follow up the President's message—by submitting to Congress extensive legislation aimed primarily at the network of state and federal criminal data banks called the National Crime Information Center, currently under control of the FBI.

The bill is the product of several disputes between the Justice Department and other federal agencies, and eventually was released with the proviso that the other agencies, principally the Department of Defense, the Small Business Administration, and the Civil Service Commission would have the right to oppose certain features of the legislation in Congress.

These agencies objected to their exclusion—along with all other non criminal agencies—from access to the information stored in the data banks. The bill specifies that only law enforcement groups will be given access unless federal or state statute specifically grants such access to other agencies.

If passed, the legislation would also overrule the controversial "Bible rider," named after Sen. Alan Bible (D-Nev.), that in 1972 granted the FBI permission to share its information with federally chartered or insured banks and many other civil agencies on the state and local level. Thus, opposition to the measure is likely to be widespread.

Nonetheless, heightened interest in the legislation reflects the general feeling by the Administration and in Congress that the time has arrived for comprehensive controls on all forms of automated data systems.

The Justice Department bill, sponsored by Sen. Roman L. Hruska (R-Neb.) will be joined by far stricter legislation offered by Sen. Sam J. Ervin, Jr. (D-N.C.) and yet a third approach in the House by Rep. Don Edwards (D-Calif.).

The Justice Department and Ervin bills, however, are seen as the most comprehensive measures. The details are complex but both attempt to deal with the most troubling aspects of automated data systems. Here are the key issues:

—Who will ultimately control all of the computer information collected by the nation's police agencies? The Justice Department would leave such control to the police agencies, where it now rests. The Ervin bill would place control in a new civilian agency called the Federal Information Systems Board. Such a board would enforce the new law and regularly audit the data banks.

—Who will have access to the criminal information? Current criticism of computer systems often centers on their vulnerability to abuse by a wide array of civilian and private groups, from school boards to credit companies.

The Justice Department would limit access to police agencies with several exceptions: The attorney general could allow civilian use of criminal information when he believes it necessary for the national defense or foreign policy; the information also would be available for investigations of potential presidential appointees of high rank; finally, the President could order extraordinary use of it at any time.

—Both bills also would ensure that citizens could check information about themselves in police computers and correct mistakes. In addition, the Ervin bill would prohibit the inclusion of "criminal intelligence" in any automated system. Criminal intelligence includes information provided by informants, speculations of officers, rumors, political beliefs and the like.

The Ervin version would allow access by noncriminal agencies only under specific federal or state mandate. Such access would be limited to records of convicted persons.

—Records of arrest, without convictions. The inclusion of this information in most criminal data banks has been severely criticized, since thousands of persons every year are arrested for crimes and found innocent in the courts. In some agencies, later information that the arrested person was found to be innocent is never entered into the computer, and the stigma of arrest remains.

In New York, for example, law enforcement agencies claim they do not have the capability to update their arrest records. Both bills would require updating and would limit exchange of arrest records but the Ervin restrictions are far more strict.

Sen. Hruska, sponsor of the Justice Department bill, and Sen. Ervin have agreed to cosponsor each other's proposals, an indication that the two plan to work together in the Senate Judiciary Committee to produce a compromise measure.

However, the lack of full Administration support behind the bill will, according to some congressional sources, considerably weaken the White House's leverage in lobbying for its passage. Some federal departments may fight for the bill while others fight against it.

The Department of Defense, Small Business Administration and Civil Service Commission almost certainly will push for dilutions to sections limiting their access to information, while the FBI and other police agencies will vigorously oppose any new agency that would separate them from control of the system.

An array of private interests will appeal for access to at least some of the information. Many public school systems consider criminal background information to be vital in screening applications for teaching positions, especially when young children are involved.

The media also may raise objections. The strictures against dissemination of material will cramp the style of many newspapers, radio and television stations that are traditionally given background histories of suspects by friendly police officials.

[From the Boston Evening Globe, Wednesday, Feb. 20, 1974]

An FBI Visit to a Newsman

(By Lowell Ponte)

Los Angeles—Two FBI agents were sitting in the newspaper publisher's office when we returned from lunch. As he introduced me, both seemed surprised and a bit nervous.

"We hope you won't misconstrue the purpose of this visit," said Special Agent John Morrison. He had driven 40 miles from Los Angeles to the Anaheim Bulletin office, and with fellow agent William Carroll was devoting a workday, at tax-

payer expense, to explain to a small suburban newspaper publisher "what the FBI computer system is really like."

The day before, Bulletin publisher Dick Wallace had received a call from the FBI requesting this meeting to discuss "false impressions" in my column printed by the paper in mid-January. The column congratulated FBI Director Clarence Kelley for offering each of us a chance to review our own "Computerized Criminal History," but, I noted, many other records were kept in the FBI computer network.

My examples ranged from surveillance of potential subversives and journalists to a Justice Dept.-funded program in California to establish "precriminal" computer records for children who teachers believe "show a propensity to riot or commit criminal acts." The column concluded: "The FBI's opening of some computer records . . . is to be applauded. We can hope more such access will come soon."

From the outset, the agents' visit was intimidating. They had made no effort to notify me it was to take place. By coincidence the publisher was a friend and asked me to be present, but few publishers of small daily papers have ever met the syndicated columnists they use. Why, too, had the agents specified a meeting with the publisher, whose job is to hold the pursestrings of his newspaper and decide which syndicated features will be bought or dropped, rather than with an editor responsible for opinion columns?

My column is distributed by a newspaper syndicate in New York City and runs with its copyright. Apparently the agents expected that during their visit I would be 2,500 miles away unable to respond to what they said. After a year of shadows, like the discovery that the White House kept a list of "enemies," such a visit by FBI agents could reasonably be called "chilling."

I turned on my tape recorder. Agent Morrison said FBI rules forbade the meeting being tape recorded. (A lie, I later learned during a telephone interview with Agent Tom Harrington of the FBI press office in Washington; rules forbid taping only during criminal investigations.) Why were the agents reluctant to be recorded?

For more than an hour the agents talked about the FBI computer network, and in the process attacked every assertion in my column. I countered with documents. For example, my column cited a case of an Indiana policeman who, one boring night on radio dispatcher duty last year, tapped into the FBI computer hookup and asked about 14 of his closest relatives. Eleven were in the computer, some for "crimes" no bigger than breaking a neighbor's window while playing childhood baseball.

After the agents called this impossible, I produced a Los Angeles Times article. It quoted a release from Massachusetts Gov. Francis Sargent, telling of a near identical case in his state, a deputy sheriff who asked the FBI computers about 11 family members and found 10 of them on file. His mother, the deputy learned, was listed for being at a sorority party at age 18 when neighbors complained of too much noise. The agents told me this, too, was impossible.

Had they intended to intimidate this publisher or jeopardize my presence on this editorial page? "Of course not," said Agent Carroll, a graying veteran of J. Edgar Hoover days. "If we'd wanted to intimidate anybody, we'd have dropped in unannounced."

In the end, the agents had spent a lot of taxpayer money to say things better said in a letter to the editor. But what effect might they have had in my absence, two agents against a publisher unable to defend my assertions?

Apparently Anaheim was the only paper to get an FBI visit about my column. Reporters have tried to ask Director Kelley about the incident, but he has refused comment. Perhaps now that President Nixon seeks new dimensions of personal privacy and freedom from intimidation, Kelley will tell us whether he approves or disapproves such vigilante tactics by FBI agents.

[From the Anaheim Bulletin, Thursday, January 10, 1974]

Are You on the FBI Computer File?

(By Lowell Ponte)

Los Angeles—One quiet night last year a policeman radio dispatcher in Indiana was bored. To amuse himself, he tapped into the FBI's central computer and asked the great electronic brain what it knew about fourteen of his closest relatives.

He was shocked, he later told a reporter, to discover that eleven of the fourteen were in the computer file, some for "crimes" no bigger than breaking a neighbor's window while playing childhood baseball games.

Are you in the Federal Bureau of Investigation's "Computerized Criminal History?" Last week FBI Director Clarence Kelley said you can find out. Every agency with access to the computer, he wrote, has "agreed to the principle that an individual has the right to see and challenge the contents of his CCH record." Perhaps you should inquire at your local police department office.

Do not be surprised, however, if they report you unlisted. And do not feel relieved. Director Kelley's words applied only to one computerized FBI system, the one monitoring "serious" crimes. The files on juvenile offenses, or on persons marked as under "suspicion" or "under investigation," or on minor crimes or national security matters will remain hidden from public eyes. The new public access applies only to a "criminal history" bank of 431,000 names in a much bigger computer.

But what could be in the other computer banks? Some of the eight million Americans branded as "potential subversives" by the intelligence branch of the U.S. Army during the 1970s? Congress ordered the Army to destroy those computer records, and Army officials said they would do so, but we have no way of knowing if some or all of the Army records found their way into the FBI computer.

National security is invoked to keep us from learning who the computer is keeping under surveillance. Only by courtroom revelation late last year, for example, did we learn that the American Telephone & Telegraph company routinely turns over to the FBI monitoring logs of all telephone conversations by certain syndicated columnists and investigative reporters, Jack Anderson among them. Of interest to fans of the First Amendment was the court ruling, in this case, that AT&T's routine disclosures were perfectly legal.

And, as this column documented last year, FBI money channelled through the Law Enforcement Assistance Administration is now being used in California to build up computer records of "pre-criminals," children who, from kindergarten age or older, "show a tendency to riot or commit criminal acts." This program is justified as an ounce of prevention that could save a pound of cure in the future; children marked for their pre-delinquency can be singled out for special treatment to remedy their anti-social tendencies.

Many Americans might look at our skyrocketing crime rate and be thankful for such efforts. Others see the dawn of Big Brother in such behavior-modifying technologies. It seems certain that computer records will single many of us out for "special treatment," from surveillance to psychosurgery.

More frightening, such special treatment may turn the FBI computer into an oracle with self-fulfilling prophecy. Police will watch the "potential criminal" more, and arrest him on the slightest pretext. Teachers will mark down every deviation on the record of "pre-delinquents," thereby putting a computerized millstone around their necks for a lifetime. As Marshall McLuhan says, the electronic god never forgets or forgives; there is "no redemption, no erasure. . . ."

Police, naturally, want to use every tool technology can offer in fighting crime. Maintaining the delicate balance between order and liberty is difficult. The FBI's opening of some computer records, like that of credit reporting agencies in recent years, is to be applauded. We can hope more such access will come soon.

[From the Anaheim Bulletin, Wednesday, Jan. 30, 1974]

Is This a Case of FBI Intimidation of Media?

(By Lowell Ponte)

Los Angeles—Writing a syndicated column usually resembles sitting by a stream and tossing pebbles. Thrown out into a great fluid body of readers, each column splashes, stirs a few letter-to-editor ripples, then sinks from sight. My column last Jan. 10 was different. It started an adventure, and led to what some journalists call a case of government intimidation of media.

The column congratulated FBI Director Clarence Kelley for offering you and me a chance to see our "Computerized Criminal History" file in the FBI's great electronic brain. But it added that the CCH records were only a tiny part of the FBI's computer records, which also kept tabs on "potential subversives," journalists, and in California even "pre-criminals," school children of kindergarten age or older who showed what teachers judged "the propensity to riot or commit

criminal acts." I concluded, "The FBI's opening of some computer records ... is to be applauded. We can hope more such access will come soon."

One week after newspapers around the country carried this column, Dick Wallace, publisher of the Anaheim Bulletin in Orange County, California, received a telephone call from an FBI special agent, mentioning the column and asking for a meeting at Wallace's office on the next afternoon to discuss it.

A note about newspapers: the publisher handles business affairs, usually not what goes onto the editorial page on a daily basis, but he may decide which syndicated features, like columns and cartoons, his newspaper purchases. Thus it is interesting that this agent would ask to meet only with the publisher, not with appropriate editors. Worth noting too: only rarely will smalltown editors or publishers have met the nationally syndicated columnists their paper carries.

Thus what could have occurred was a meeting between a publisher, unable to support what an unknown columnist had said, with an FBI agent calling the columnist inaccurate. The FBI made no effort to contact me or invite me to this meeting. Nor had they reason to believe I would be present, for my column is distributed by a syndicate in New York City.

As fate had it, however, I knew the publisher and he invited me to attend. We returned from lunch to find Orange County Senior Resident FBI agent William C. Carroll and Special Agent John F. Morrison, come from the Los Angeles office forty miles away, waiting. When I was introduced, both agents seemed tonguetied, but expressed the hope we would "not misconstrue the purpose of their visit," which was merely to "explain what the FBI computer system was really like."

At that I pulled out my cassette tape recorder and turned it on, saying if I was to write a corrective column I wanted to be able to quote them accurately. Both agents fell silent. A moment later Mr. Morrison said regulations forbade agents from being tape recorded, he insisted I turn the machine off, so I complied, content that an editor and the publisher were in the room as witnesses. In a subsequent telephone interview with Mr. Tom Harrington of the FBI press office in Washington, D.C., I learned that FBI rules preclude an agent being taped only when he is conducting a criminal investigation; in public information meetings, as this purportedly was, agents are free to use their discretion. When I asked Morrison about this the following Monday at the FBI office in Los Angeles, he dismissed the query thus: "Then you could say I used my discretion and just used rules to cover it."

What transpired in Anaheim was an hour of explanation and assertion by the two agents that the bulk of my column was inaccurate. For instance, I reported an incident wherein a police radio dispatcher in Indiana one quiet night last year tapped into the FBI central computer and asked it about fourteen of his closest relatives. He was shocked to learn that eleven of them were on file, some for "crimes" no bigger than breaking a neighbor's window while playing childhood baseball. This, the agents assured me, was impossible.

I produced an article by Robert Jones from last August 17th's Los Angeles Times quoting Massachusetts Gov. Francis Sargent, who on grounds that it threatened the privacy of state computer records had kept Massachusetts out of the new FBI central information program. One of Sargent's constituents was quoted, in a release from the Governor, as telling: "A relative of mine got a job as deputy sheriff. One bored night, on dispatcher duty, he ran his family through the National Crime Information Center. Ten out of 11 of us were listed. His mother was listed because when she was 18, neighbors complained of a noisy sorority party. (No arrests.) His stepfather, a respected businessman, was listed because he complained to the police that he had received a bad check. Ten out of 11 of us! No criminal conduct. No criminal record. But we are on the files of NCIC." The agents said this case, parallel to the one I discovered, was also impossible. The Massachusetts Governor was in error.

Why impossible? "Because our computers have safeguards," the agents said. But they did not explain these safeguards in any detail, despite questions by the editors and myself about how anyone knowing the electronic access codes could tap into them. After an hour of matching my documents against their blank assertions that FBI records were secure, I changed the subject.

Many journalists, I said, would consider a visit by two FBI agents, at great expense in gasoline and time to the taxpayer, most strange if a simple letter to the editor or correction notice on FBI stationery could set facts straight. By coming in expectation of a meeting, one publisher with two agents, did they think their presence might have an intimidating or "chilling" effect, might put my place on the editorial page of the paper in jeopardy?

Without batting an eye, Agent Carroll replied, "Of course not. If we'd wanted to intimidate anybody, we'd have dropped in unannounced." Perhaps. But at most newspapers those who drop in unannounced will find the publisher away at civic luncheons or breakfasts or ship christenings. Two minutes later the two agents departed.

Apparently the Anaheim Bulletin was the only paper in the nation visited by FBI agents because of this column. It was an isolated instance, perhaps the brainchild, as a Washington reporter I spoke with suggests, "of somebody left over from J. Edgar Hoover days, when such things were more common. I doubt," he added, "that Clarence Kelley would approve of this." Fortunately we live in a country where a visit from the national police does not put us in mortal terror. But such visitations are sufficiently chilling to raise a few goosebumps, to remind journalists and publishers that it may be safer to play chicken than watchdog where powerful government agencies are concerned. I await some sign of Mr. Kelley's disapproval, some indication it will not happen again. I look too for some explanation why, contrary to Mr. Kelley's new policy, the agents refused a request by Mr. Wallace and myself that we be given a look at our CCH criminal records in the FBI computer.

Senator TUNNEY. I will just quote the first paragraph. That gives the essence of what the story is about.

> Two weeks ago a suburban newspaper publisher in southern California returned from lunch to find two FBI agents waiting in his office. The agents introduced themselves and explained that they had come to discuss an article that the newspaper had published recently. The article actually a syndicated column carried on the editorial page had criticized the FBI's new computer background file on criminals and suspected criminals. The column called it "the FBI's greatest electronic brain," and raised the specter of the computer becoming "The Dawn of Big Brother."

For more than an hour, the agents attempted to convince the editors of the paper, the Anaheim Bulletin, that the column was mistaken. "They said no intimidation was involved, but the whole point was to convince us not to print stories like that any more," said Kenneth Grubbs, the newspaper's editorial page editor. The editors were unconvinced, and the agents departed.

Do you know what this is all about?

I assume that you do, as much as it appeared in a number of papers throughout the country.

Would you care to comment?

Mr. CAMPBELL. We proceed, of course, on the basis that the news media wish to be responsible in their reporting. This was a repetition of a story that came up during Mr. Kelley's confirmation hearings. I have seen several versions of it. One is that the FBI is funding, through LEAA, if you can imagine that, a computerized program reaching down into kindergarten wherein we observe the development of children as they grow.

We have seen it so many times, and it is so absolutely without basis, that we thought that we would be performing a service by telling the news media people involved, telling them again, that it is without basis.

Senator TUNNEY. I see.

So this was something that was authorized by the Director's Office here in Washington, and something that was, in fact, informative and not an attempt to control the free press from publishing the facts?

Mr. CAMPBELL. Absolutely not. I would like to think that we would be the last ones to infringe on First Amendment rights.

Senator TUNNEY. Thank you, Mr. Chairman.

I would like to say that as a person who participated in the confirmation hearings on Mr. Kelley at a time when we all realized that it was a difficult time for the FBI, I for one, as an American and member of this committee, am very proud of the work that he has done to restore the morale of the FBI and to develop once again the image of the FBI as a great law enforcement agency.

Mr. KELLEY. Thank you.

Senator ERVIN. In that connection, if Senator Hruska will pardon me—and I will subside after this—I was given a record of information received by an individual, the contributor being the Bay Area Rapid Transit System in California. This individual, who, as far as I know, was a law-abiding man who has never been accused of anything in his life—he goes up and asks Mr. Brinegar, Secretary Brinegar, whether he did not think the President ought to be impeached, a question which has been asked by many Americans, including some in Congress. And he was arrested.

The police reported it to the FBI, and here is the information which the FBI furnished to the State board of education out there and the man who is a teacher is now having his teaching credentials reviewed. It says, "May 15, 1973. Charge: The man was arrested, charged with violating 240 Penal Code, assault; 148 Penal Code, interfering with an officer."

And on November 14, 1973, at the Civil Service Commission, when he applied for a job there, there was a nonarrest entry including these other things, apparently.

This can do tremendous harm to this man. It did in this case.

I will put this in the record.

[The information referred to follows:]

U.S. DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, IDENTIFICATION DIVISION

Contributor of fingerprints	Arrested or received	Charge
Bay Area Rapid Transit Section, Oakland, Calif.	May 15, 1973	240 penal code, assault; 148 penal code, interfering with officer.
Civil Service Commission	Nov. 14, 1973	Nonarrest entry.

Senator ERVIN. The case was thrown out of court on the grounds that there was no evidence for which he was arrested.

Mr. CAMPBELL. We are presuming the facts as told by the person that was arrested?

Senator ERVIN. The court discharged it for lack of evidence. He did not violate any laws. That is pretty strong corroborative evidence of what the man gave us, as it was reported in the press.

Mr. THOMPSON. That sounds like one of the many records that should be purged, and we would do it if it were authorized.

Senator ERVIN. Senator Hurska.

Senator HRUSKA. Mr. Kelley, on the bottom of page 14 of the addendum to your statement, you express your concern that the disseminating agencies cannot be responsible for assuring that records are complete.

S. 2963 places the burden equally on the contributing agency, the originating agency, and the disseminating agency.

Now, Project SEARCH, in its report No. 2, states: "Systematic audits should be conducted to show that files have been accurately and regularly updated." The standard in the commission went into that and suggested that whoever has the files should be responsible for the data accuracy and updating.

Now, your concern seems to be that FBI, which maintains, for example, Arizona's files in its files should not be responsible for inaccurate information that it distributes through NCIC to another State emanating from Arizona, and that the burden should only be on Arizona, because they originated the information and have responsibility for keeping it up to date and qualified for further dissemination.

Then that is your objection, that is your observation?

Mr. KELLEY. Yes, sir.

Senator HRUSKA. Would this problem not be obviated if Arizona kept its own files in Arizona, as Project SEARCH had originally contemplated that it be done, and that all the FBI would be doing is maintaining an index of names in a pointer system.

In other words, the FBI would not be running afoul of such a requirement, because the FBI would not be disseminating inaccurate or incomplete records. It would simply be a reference of the matter. In other words, it would be what they call the transparent system.

Would that not solve that difficulty?

Mr. KELLEY. Actually, Senator, it might, in most cases. However, in the dissemination of information throughout the country, there should be, in order to be assured of reliability and accountability, a centralized point from which this type of information can emanate.

I could discuss this at some length without really adding much to this except that in the dissemination of arrest information, two factors should be paramount: one, the protection of rights; and, two, the furtherance of the technology and capability of law enforcement. If it is fragmented into individual State repositories, I do not think these are achieved to the maximum extent, particularly in the matter of accountability. As each is brought on line, it becomes an entity unto itself.

It appears to me that for better operation and accountability, it would be advisable, rather than having the pointer system or the transparent system, to have a central repository.

Senator HRUSKA. How can there be accountability if there is a central repository, and you say you are not to blame for what you disseminate, how can there be accountability?

You ask for exemption and immunity from your dissemination of this information insofar as accuracy and completeness are concerned. What becomes of the principle of accountability? There is none.

Would any burden be on the FBI under those circumstances to make ascertainment of accuracy and completeness?

Mr. KELLEY. Any accusation of inaccuracy presupposes a complaint that there is an inaccurate record. And in following that, it would be revealed that the local or State agency had not exercised proper reliability, and the Board of the NCIC would thereupon have as their duty an evaluation of that compromise or mishandling and would penalize the agency, as the Board could, either by removing it from the system or by some other action.

It could be that a State repository could remain without any criticism for quite some time. On the other hand, there could be frequent complaints. It is a matter of management principles, and I personally support the central repository idea.

At one time I thought the pointer concept was superior. Since that time I have come to the conclusion that the central repository is better. It can be argued back and forth, Senator.

Senator HRUSKA. Is it practicable, considering the mountainous proportions of the central repository which would be necessary, to be all-embracing?

Mr. KELLEY. I think it is practical, I think it is workable, and I feel that there will always be State repositories in any system. For example, when the Kansas City, Mo., police department needs an arrest record, in a great majority of cases it will be available from its own computer bank. A relatively small percentage will require access to a multiagency system.

Senator HRUSKA. The breakdown is about 70 percent within a State and 30 percent of multistate facets. Is that not the figure that is usually used?

Mr. KELLEY. Yes, sir.

Senator HRUSKA. Is not the reasoning that the jet propulsion laboratory would tend to go to that division of the system, recognizing that about two and a half times as many items in that field arise, thrive, and live and die within a State, they do not cross State lines at all.

Why would it be necessary to have all of that information in a central repository?

Mr. KELLEY. How does the State, unless it polls the central repository, know whether or not an individual has been arrested elsewhere, convicted elsewhere, confined elsewhere? There has to be a multiagency check.

Senator HRUSKA. Would not that need be satisfied by the measurements of the index, the pointer system?

Mr. THOMPSON. The operation of the pointer system or the single-State/multistate system presupposes a central repository of fingerprints. The central index has to be based on a fingerprint card and not a name card; otherwise the only thing necessary to avoid detection would be use of an alias.

Senator HRUSKA. Fingerprints are the backbone?

Mr. KELLEY. Yes, sir.

Senator HRUSKA. They are the framework?

Mr. KELLEY. Yes, sir.

Senator HRUSKA. We are not dealing with that. We are dealing with computerized criminal history repositories, are we not?

Mr. THOMPSON. The computerized criminal history repository is still based on a fingerprint identification. There is no entry in the computerized criminal history file without that record being supported by fingerprints. So, still, fingerprints are the backbone of the CCH.

Mr. CAMPBELL. If I may comment, Senator. This could be the most important point of the day. The CCH is absolutely dependent upon a fingerprint identification to function. It cannot operate without it.

Senator HRUSKA. I think that is probably right. I thought the Director spelled out pretty well in his direct testimony the reasons for that and the details on it.

When will the jet propulsion lab be ready for its report, do you know?

Mr. CAMPBELL. We are told approximately mid-1974.

Senator HRUSKA. Have they reached any tentative conclusions on their judgment or preliminary information that might be of interest to this subcommittee by now?

Mr. CAMPBELL. The Jet Propulsion Laboratory study, funded by LEAA, has considered five possible network configurations. Two of those involve satellite transmission. One of the satellite possibilities would have a ground station in each State capital. The other satellite application would have a ground station in each of three regions across the country.

The ground station in each State capital at first appears prohibitively expensive. It is predicted that it will cost $39 million during the first 7 years.

Senator HRUSKA. For capital expenses and maintenance?

Mr. CAMPBELL. For a ground station in each State, sir.

There are three terrestrial proposals. One involves what is called packet switching, which is a relatively new development insofar as the civilian area is concerned. I understand it has been used in the military. It is automatic routing by prearranged packets of messages, wherein the vendor's computer chooses the circuits available for the routing of the packets on a random basis.

But control is under the vendor, and from what we know at this point, it would appear to be unacceptable from a security standpoint for CCH transmission.

Another terrestrial configuration which would be the third or fourth possibility, is a single concept with one central point, which is really what the NCIC system is.

The fifth one involves three regional switchers, only one of which would be manned, and the other two would be unmanned. That is a variation of the present NCIC concept.

Senator HRUSKA. Is it contemplated that that satellite and that this system be what is called a transparent system, or would it actually be a system that would store the substance of the criminal history and the records that are involved?

Mr. CAMPBELL. I do not know all the details of it, and it is still in the proposal and discussion stage. There are preliminary propositions that have been made. Basically, I believe it is a transparent switch.

Senator HRUSKA. Mr. Chairman, I wonder if we could consider at a later time to make inquiry as to how completely the jet propulsion laboratory is in possession of fundamental facts that they might be willing to share with us, either in the form of a memorandum or maybe personal testimony?

Senator ERVIN. Yes.

Senator HRUSKA. Mr. Kelley, incidentally, that system would be very comprehensive, would it not? You would have tremendous capacity with it, would you not?

Mr. CAMPBELL. Yes, sir, much, much beyond our present needs.

Senator HRUSKA. It would get into video?

And it could get into voice transmission, could it not?

Mr. CAMPBELL. At the outset of the study, video and voice were ruled out. They were later added to the study for consideration.

Senator HRUSKA. For consideration?

Mr. CAMPBELL. Yes.

Senator HRUSKA. Now, an application was taken—I do not know whether that was before your time as Director or not—of the Attorney General to get into the NLETS business. And for the record, NLETS is National Law Enforcement Telephone System. I will put that in there for reference. There was a renewal of that in January of this year, if I understand it.

Am I correct?

Mr. CAMPBELL. It might be described as a followup.

Senator HRUSKA. Of the original application?

Mr. CAMPBELL. We had not had any direct response.

Senator HRUSKA. Is the application for funds or for authority?

Mr. CAMPBELL. Authority only; no request for funds was involved.

Senator HRUSKA. There would be in-house funds, presumably, available, and if not, a request would be made for additional funds if that were necessary, if the authority was granted?

Mr. CAMPBELL. Yes, sir.

As a matter of information, we feel that, at the outset anyway, very little funding would be required to enable the NCIC network that now exists to handle the problem at hand.

Senator HRUSKA. What would happen to NLETS?

Would it become superfluous?

Would it be surplus from then on in?

Mr. CAMPBELL. There are two areas of message traffic here. One involves traffic arising from NCIC/CCH-oriented matters, which, incidentally, comprises the overwhelming majority of the total traffic. And the other category is straight administrative messages that police need to send.

Senator HRUSKA. Switching operations?

Mr. CAMPBELL. The NCIC network does have now, and will have as the need increases, the capacity to handle all of that traffic. However, it remains the decision, at this moment, of the Attorney General as to whether it is desired that the NCIC network handle the entire traffic load.

Senator HRUSKA. We get into pretty close contact there by the FBI as central office of central operation with the routine operation of the police forces, the sheriffs' forces they control, and the courts, corrections, and the whole works.

Is that not in the concept?

You would be in charge, the FBI would be in charge of that whole situation?

Mr. CAMPBELL. For decades, of course, as I am sure you appreciate, Senator, we have been in very close contact with those law enforcement elements that you listed.

Senator HRUSKA. There has been some fear expressed that if the FBI is going to run the system, they are going to be saying what can go in and what has to stay out and what may come in.

Mr. CAMPBELL. I think that we should understand that the NCIC communications network does not involve storage. Of course, we have storage capacity, but the message switching service which we have offered does not involve storage of any of those police communications.

Senator HRUSKA. Not as far as the switching operation is concerned, but the computerized criminal histories would, would they not?

Mr. CAMPBELL. Yes; we store those now as a service, and they are accessible to police agencies who have complied with the security requirements for access. And, incidentally, the security requirements for access to CCH are much more stringent than they are for access to the straight stolen property and wanted persons file of NCIC.

Senator HRUSKA. It has been observed, and I think probably statistically it is fairly accurate, that about 95 percent of the law enforcement activities in America are State and local in character and the balance are Federal. There have been expressions made to me that it seems a little out of balance with all the need and all the raw material and with all the substance of that law enforcement picture residing so overwhelmingly in State and local authority to have a national agency, like the FBI, to hold such a key position which relates so closely to the routine operations on the control and the regulation of the local and State activities.

What comment would you have on that type of objection?

This is a large, conceptual objection rather than a nitpicking question.

Mr. CAMPBELL. For many, many years the FBI has been entrusted with millions of identification records, and we are now beginning to convert some of them to CCH. I believe that we have discharged that trust with honor. There is not anything sensitive in these police messages, at least the administrative ones. They are talking about when they can come up and pick up persons to be extradited and so forth.

It may be helpful to note that there will be thousands of messages going through each hour. It would take a building full of people to try to monitor, in a meaningful way, that volume of traffic.

Our only stake in this entire matter is to provide service to the law enforcement community at the lowest cost to the taxpayer.

Senator HRUSKA. Of course, there is an existing organization, and they are doing pretty well.

Mr. CAMPBELL. Are you talking about NLETS, sir?

Senator HRUSKA. Yes; they are a self-made outfit. They are a cooperative.

Mr. CAMPBELL. A private corporation?

Senator HRUSKA. Nonprofit corporation.

Mr. CAMPBELL. The intention that the FBI provide the message switching service was first announced in April 1973, and reiterated in May of 1973. We did not have a permanent Director at that time. With regard to our desire to go to the Attorney General for his concurrence in our conclusion that we have the authority for message switching one of the interim Acting Directors advised that he did not wish to make policy decisions of long-range import. Therefore, the actual request to the Attorney General was not dispatched until July 11 of last year.

You may recall that Mr. Kelley was sworn in in Kansas City on July 9. He arrived in Washington on July 10, and the letter to the Attorney General on message-switching went to the Attorney General on July 11, because he supported it.

Senator HRUSKA. That was supplemented by the January addendum?

Mr. CAMPBELL. Yes, sir.

The response that we had from the Attorney General at the time was not direct, but was in the form of a memorandum from his legal counsel to him with a copy to us, and it did not resolve the issue. As of January 1974, we still had not received any answer to our request or resolution of the issue, so we felt it was necessary to give the new Attorney General a résumé of our request.

Senator HRUSKA. Could you submit that for our record, assuming the chairman agrees that unanimous consent could be obtained, a copy of that July application and the addendum of January 15, and any preliminary studies to date from the jet propulsion laboratory?

Mr. CAMPBELL. I would be pleased to do that. I believe committee staff has already in hand the first two communications.

[Memoranda on message switching for NCIC appear in the appendix, Volume II.]

Senator HRUSKA. If that is true, I do not want to duplicate it. If they do not have it, and then this other material would be helpful.

Mr. CAMPBELL. With regard to the Jet Propulsion Lab study—I am a member of the steering committee which is assisting in this study—and very soon we will have access to the report that you desire.

Senator HRUSKA. I wonder if staff again could work with you to determine where the request would go, if a more formal request is necessary, and how it would be obtained.

Senator ERVIN. We will print all those documents as part of the record.

[See appendix, Volume II, Jet Propulsion Lab study.]

Senator HRUSKA. Mr. Chairman, that is all I would like to submit now. Maybe later on, as we get on with this work, it might be considered desirable to address certain inquiries to any one of the three witnesses that are at the table now and to get elaboration on points that might arise.

I have no further oral questions at this time.

Senator ERVIN. In order for a State or local law enforcement agency to get advantage of the records maintained by the FBI, it is necessary for them to be able to furnish a fingerprint comparison, is it not?

Mr. CAMPBELL. Or a prior arrest number, which can be identified.

[Mr. Campbell subsequently added this statement for the record:]

Police departments can also obtain arrest records, for investigative lead purposes, by submitting a name and some identifying data. The record of someone who appears to be identical to the person about whom the request is made will be sent to the police department; however, fingerprints of the suspect or a positive identifying number are essential to positive identification of that subject with a pre-existing record.

Senator ERVIN. Prior arrest number?

Mr. CAMPBELL. Yes, sir; and name.

Senator ERVIN. It is quite practical, is it not, to maintain a fingerprint record apart from documentary records relating to the criminal history?

Mr. CAMPBELL. As I previously indicated, Senator, the criminal history is directly dependent on the fingerprint backup, the fingerprint identification, if I understand your question.

Senator ERVIN. After the man is identified by fingerprint or an arrest record, it would go into the criminal history?

Mr. CAMPBELL. You appreciate that the history is a continuing document. Each time that there is an arrest, there is an addition to the history, based on the fingerprint card.

Senator ERVIN. After you get to the identification, it would be practical to have a separation of the criminal history and the fingerprints?

Mr. THOMPSON. We do, in fact, even in our own division, Senator. If a person has been arrested more than once, we keep only one fingerprint card in the searching file for comparison purposes. Each individual in file is assigned an FBI number, and his complete criminal history and all fingerprint cards pertaining to him are kept in a jacket under that number.

Senator ERVIN. I have trouble with computerized information. I am not an expert in it. I have two misgivings about computerizing intelligence information, as distinguished from criminal history.

The first is, as a rule, the criminal information is unverified. And then when it is stored in the computer, it is not stored there in full; it is stored in rather abbreviated and often cryptic form.

Mr. CAMPBELL. Mr. Kelley has testified as to the FBI position on criminal intelligence information in computer banks.

Senator ERVIN. I do think that it would be very difficult for most people to understand what is in the computer, and the computers have no more reliable information than what is put in when it is unverified.

A lot of people have suspicions of all computerized information. Like I found out when I practiced law, the juries had it on bloodhounds. I do not have as much faith in computers as a lot of people, because when I became eligible to draw social security, notwithstanding the fact that I am still working, they sent me a check for $754.24, I believe it was, accompanied by a statement to the effect that they had judged that I was entitled to a lump sum death benefit. I sent the check back to them with the information to the effect that I was happy to report that any information their computer had that I had passed into the great beyond was slightly exaggerated.

One other question.

Mr. CAMPBELL. If I may add just a comment there, Senator, I would certainly agree with you that much misinformation about computers has been broadcast.

Senator ERVIN. I do want to find something out about the criminal history records and the extent of them.

Does the FBI get the records from the local authorities about minor traffic charges and convictions?

Mr. CAMPBELL. No, sir. The NCIC Advisory Policy Board guidelines provide that the CCH files contain only those histories involving serious offenses; traffic offenses are to be specifically excluded, other than those involving manslaughter or driving under the influence.

Mr. THOMPSON. I might add that the same policy is followed with reference to our manual file.

Senator ERVIN. Counsel would like to ask one question.

Mr. GITENSTEIN. First, I would like to ask a question which relates to Senator Ervin's points about the possibility of separating out the identification records or the fingerprints, from the rap sheet. And I think this also relates to Senator Hruska's point.

Would it not be possible, or feasible, to have the fingerprint identification records—I mean, the fingerprints themselves as the means that

you positively identify the record that you are after, separate and on an index or a pointer system in Washington, with the actual records decentralized on a local level, as SEARCH suggested?

Would that not be feasible?

Mr. THOMPSON. Feasible yes, practical no. The concept of NCIC/CCH is that upon receipt of an inquiry for the record of an individual, all of whose arrests occurred in one State, the CCH system would refer the inquirer to the single State where the record is located. If the individual had been arrested in more than one State, rather than refer the inquirer to six or seven States, the CCH system, under the multi-State concept, would keep the detailed records on file here. But the detailed records of the 70 percent that we referred to earlier as single State offenders would be kept in the individual States.

Mr. GITENSTEIN. Your system and the system SEARCH proposed is different in several important respects. One, many States do not have the computer capabilities, so that you have to store many of their records in Washington.

Is that not correct?

Mr. THOMPSON. Yes, sir.

Mr. GITENSTEIN. That is the major problem?

Mr. THOMPSON. The major problem of any interstate CCH program is that each State must have the necessary resources, namely, an identification bureau and computer capability. In the meantime, we have to keep up the service.

Mr. GITENSTEIN. The ultimate SEARCH concept is possible and would be preferable. It is just that the States do not have the money or the capability to do it.

Is that not correct?

Mr. THOMPSON. It is possible, yes. But I believe the NCIC advisory policy board's concept is more practical and therefore preferable.

Mr. GITENSTEIN. It would be less expensive to do it your way probably?

Mr. THOMPSON. Yes.

[Mr. Thompson subsequently added this statement for the record:]

Economy is not the primary factor in preferring the single state/multi-state concept over the pointer concept. The primary considerations are which concept can best provide service to law enforcement, system security, security of information, and protect the privacy rights of individuals.

Mr. GITENSTEIN. Congress can decide otherwise in terms of protecting States' rights and personal privacy to do it the more expensive way?

Mr. THOMPSON. Yes, sir.

Mr. CAMPBELL. I do not quite see the personal privacy aspect as an issue in choosing between the single State/multi-State and the pointer concept.

Mr. GITENSTEIN. In the sense that a State like Massachusetts could better control access to its own records if it had a strict privacy policy and if it maintained its records itself in Massachusetts, rather than if they were all here in Washington, where the records are a bit out of their control. I understand that is the essence of the Massachusetts controversy.

Mr. CAMPBELL. That is part of it, yes.

Mr. GITENSTEIN. It seems to me that the genius of the fingerprint system is that the fingerprint itself is a positive means of identification, so that in order to enter a record, you have to submit a fingerprint.

Is that not correct?

Mr. THOMPSON. Yes.

Mr. GITENSTEIN. In order for a person to see his own record, he has to send a set of fingerprints, right?

Mr. THOMPSON. Right.

Mr. GITENSTEIN. In order for a police department to find out if somebody has a record, they have to submit a set of fingerprints.

Is that not correct?

Mr. THOMPSON. Yes, or a name and a positive identifying number such as FBI or local police department number.

Mr. GITENSTEIN. That is the way that you are absolutely sure that the police are asking for the right record?

Mr. THOMPSON. Yes.

[Mr. Thompson subsequently added this statement for the record:]

Police departments can also obtain arrest records, for investigative lead purposes, by submitting a name and some identifying data. The record of someone who appears to be identical to the person about whom the request is made will be sent to the police department; however, fingerprints of the suspect or a positive identifying number are essential to positive identification of that subject with a pre-existing record.

Mr. GITENSTEIN. In order for the system to work, the fingerprints are generally taken at arrest.

Is that not correct?

Mr. THOMPSON. Excuse me, sir?

Mr. GITENSTEIN. The fingerprints are taken at arrest, are made when the police department is arresting?

Mr. THOMPSON. At arrest or at the time that he is booked.

Mr. GITENSTEIN. Does that not suggest that Senator Ervin's proposal that the criminal history records and arrest records themselves only be disseminated after arrest is no different than present practice? In other words, it's a practical solution to the problem, of preventing the dissemination of incomplete information on a person getting to the police before a subsequent arrest and thereby preventing a subsequent incorrect arrest?

Mr. THOMPSON. Arrest records serve a vital law enforcement function, both before and after arrest.

Mr. GITENSTEIN. My point is, it is Senator Ervin's proposal that a wrong arrest and a criminal history record that indicates something less than a conviction could be disseminated to a police office or a police department only after arrest. That is essentially the way the fingerprint operation works, is it not?

Mr. CAMPBELL. May I just add, that concept, of course, denies to the law enforcement community the use of that record before the arrest, which would be taking away from law enforcement a very important tool.

Mr. GITENSTEIN. But I understand that they do not use it for investigative purposes, or at least they cannot get a rap sheet now, unless they already arrested the man?

Mr. CAMPBELL. No. If they know him from before, they have an arrest number by which they can request his record.

Mr. GITENSTEIN. The police officer has to personally know the man?

Mr. CAMPBELL. Not necessarily. For example, the police officer may develop a suspect in a criminal situation, and he would like to have the man's criminal history. Maybe he needs a photograph. He gets the criminal history, and he sees that the man was arrested in Little Rock

in 1968. There may be a photograph available there to further his investigation.

Mr. KELLEY. I think I understand what your problem is. Take this example, a man is arrested and fingerprinted. The fingerprints go to the identification division of that police department. It then determines that the man has a previous arrest and an FBI number has been assigned. In that event, the police department does not have to send the fingerprints; it can get the man's record simply by using the number.

Mr. GITENSTEIN. In that situation, Mr. Kelley, they have already printed him, taken a set of prints?

Mr. KELLEY. Yes.

Mr. GITENSTEIN. They have already arrested him, booked him?

Mr. KELLEY. Yes, sir.

Mr. GITENSTEIN. That means that a requirement at least in regard to these manual files that you cannot disseminate a record until you have already arrested a man is not an unreasonable requirement, since that is the way most manual records are dealt with now.

Mr. THOMPSON. It is not necessary to have an arrest in order to receive an FBI identification record.

Mr. GITENSTEIN. All I am saying, the requirement in S. 2963 that you cannot disseminate the information until after arrest only will have a significant impact on CCH, but not on the fingerprint files, because the fingerprint files operate in that manner now.

Mr. THOMPSON. Except that you do not have to have a man in custody for a police department to obtain his prior arrest record.

Mr. GITENSTEIN. In order to make sure you have the right record, as I understand from Mr. Kelley, you would have printed him first, taken his prints?

Mr. THOMPSON. For positive identification of an individual with a preexisting record, fingerprints are necessary.

Mr. GITENSTEIN. I think that we are agreeing, and the area in which it presents a problem is where you have a computerized situation where you cannot transmit the fingerprints back and forth instantly, and you just have a name and other identifying information, and you are using CCH, in which case you do not necessarily always send a fingerprint in.

Is that not right?

Mr. CAMPBELL. For investigative purposes, you have drawn this too tightly, I believe. For example, for a positive record, a record that you know absolutely is identical with the individual in whom you are interested, you must submit a fingerprint card. But you might develop the name and approximate age of a suspect in a bank robbery case, and you would like to know if there is a record on him. So you submit as much physical description as you have, and the identification division will attempt to locate a record that is identical with him, and will send you as the investigating officer, a record that likely pertains to the suspect and it will be stamped "not supported by fingerprints." It is an investigative aid, and the investigator can often tell, often at a glance, that, yes, this is identical, because of certain things that are on the record.

Mr. GITENSTEIN. In light of the fact that criminals frequently use a great number of aliases and they may not tell you the truth about their age, and they might have three or four social security numbers,

it may be very difficult to provide positive identification other than by fingerprints.

Is that not true?

Mr. THOMPSON. Positive identification cannot be done without fingerprints.

Mr. GITENSTEIN. For investigative purposes, the officer is never absolutely sure that he has the right record unless he has the fingerprints to support it?

Mr. CAMPBELL. Positive identification does involve fingerprints. The investigator can ask for a record by description and, based on things in there, for example, description, prior arrests, et cetera, the investigator is reasonably certain he has the right record. He is not absolutely positive, but for investigative purposes, criminal histories are an extremely valuable tool. He should not be denied the use of criminal histories in the investigation.

Mr. GITENSTEIN. Thank you.

Mr. BASKIR. Do you have any studies that show that police were more likely to use CCH more, for example, than probation, that it would be helpful for bail or sentencing?

Has any research or study been done on the parts of the agency and the likely use of these various systems?

Mr. CAMPBELL. No formal surveys. The law enforcement part of it represents an overriding percentage; but, in direct answer to your question, no.

Mr. BASKIR. Certainly, the question of whether you need complete records and who needs what records most influences the design of the system. If it is going to be for investigative and police purposes, you might be nearly as interested in dispositions as you certainly would in sentencing, where presumably a court would want to know about disposition. So some of these questions we are asking might bear upon the prospective use of CCH in the future when it is fully operational across all agencies.

Mr. CAMPBELL. For investigative purposes, the investigator does find the disposition very valuable. For example, if he is trying to locate an individual that he has developed as a suspect and he sees there is a charge disposition, and the fact the man is in prison, that could change the entire direction of his investigation. It could very well completely eliminate the individual as a suspect because he would have been in custody at the time of the crime.

Mr. BASKIR. Also, if it turned out that the police were going to use this system more than any other part of the criminal justice system, then an advisory board or a control board that had 20 of the 26 members who were in law enforcement would not be unreasonable. If this was going to be primarily for the use of sentencing or for court purposes or corrections, presumably you would want more representation on the advisory board from those agencies that were going to use it more.

Is that right?

Mr. CAMPBELL. We have not made a direct study, but I would say that the proportion of the board is probably representative of the proportion of use.

Mr. BASKIR. That is 20 out of 26, roughly about 80 percent of the use for police as opposed to courts and corrections and probation combined?

Mr. CAMPBELL. I believe that it will run slightly higher for law enforcement use than that.

Mr. BASKIR. Even higher?

Mr. CAMPBELL. Yes.

Senator ERVIN. I do want to thank you gentlemen on behalf of the committee for your assistance, and I want to reiterate to Chief Kelley that I do not think that the FBI is against the regulations at all; I think your objectives and my objectives are identical, because the two interests coincide, and we are trying to balance those in such a way that we can preserve each interest to the maximum extent without interfering unduly with the other.

Your testimony has been very helpful to us, and I am certain that it will assist us very much in arriving at the conclusion as to what kind of bill we should frame.

Any time you have any other ideas that you would like to communicate with the committee, we would be glad to hear from you, either in person or by letter.

Mr. KELLEY. Thank you, sir.

Senator ERVIN. We will recess until 3:30.

[Whereupon, at 2:10 p.m., the subcommittee was recessed to reconvene at 3:30 p.m. the same day.]

AFTERNOON SESSION

Senator ERVIN. The subcommittee is in order. The counsel will call the next witness.

Mr. GITENSTEIN. The first witness for this afternoon is Mr. Aryeh Neier, executive director of the American Civil Liberties Union, and he is accompanied by Mr. John Shattuck, staff counsel.

Senator ERVIN. I welcome both of you gentlemen to the committee and express our appreciation for your willingness to come and give us the benefit of the views of the organization you represent on the important proposed legislation.

TESTIMONY OF ARYEH NEIER, EXECUTIVE DIRECTOR, AMERICAN CIVIL LIBERTIES UNION; ACCOMPANIED BY JOHN H. F. SHATTUCK, STAFF COUNSEL, AMERICAN CIVIL LIBERTIES UNION

Mr. NEIER. Thank you very much, Mr. Chairman. If I may, I would like to submit the testimony that we prepared for the committee's record and speak briefly about some of the issues that we think are raised by the bills that you have before you today.

Is that all right?

Senator ERVIN. That would be entirely satisfactory to the committee, and the reporter will put the complete statement in the record immediately after your remarks.

Mr. NEIER. Thank you very much. I will make some general comments and I would like Mr. Shattuck to make some brief comments on some particular provisions of the bills.

I think that the constitutional arguments and the arguments in the interest of the right to privacy that are at stake in the bills that you are considering today, are fairly clear.

When arrest records are involved, there is a basic proposition that underlies our entire notion of due process of law. That is, a person is presumed innocent unless proven guilty.

An arrest record, in and of itself, does not have any probative value. When people are punished by the dissemination of their record which causes difficulties in getting jobs and other societal benefits, there is a violation of the presumption of innocence that should attach to an arrest record that is not followed by a conviction.

I was very glad to have an opportunity to hear Mr. Clarence Kelley earlier today, and his colleagues from the FBI, talking about some of the difficulties that they have had in obtaining from local law enforcement agencies around the country information about dispositions of arrest.

It was also interesting to hear them talk about some of the FBI's plans for the future. If the ingenuity and expense that went into the development of plans for satellite technology to disseminate arrest information were invested, alternatively, in collecting dispositions, it would not be too difficult for the FBI to insure that the records it had in its Identification Division and its Crime Data Center did show dispositions.

Today, in very large part, the records that are disseminated by the FBI's Identification Division simply state, "arrest." Therefore, the recipient of the information is left to equate the arrest with a conviction. The consequences for the individual who is described by that arrest record, are very severe indeed.

We have indicated in our testimony a few cases of people who have been injured because of the dissemination of those arrest records. There are very many more such cases that we could describe to you.

I think that when it comes to the question of convictions and the dissemination of those records, there are harder questions involved. A conviction does have probative value. It is a record with integrity. It is something that, presumably comes about after a person has been accorded due process of law.

Nevertheless, I think that there is a due process consideration which ought to bar the dissemination of those records. The only punishment that a person should suffer as a consequence of a criminal conviction, is that punishment which has been specified by a legislature when it established the penalty for that particular infraction of the law.

There should not be any further punishment. Yet the dissemination of the record is really a life-long sentence that goes far beyond the specific punishment enacted by a legislature.

Our current approach to crime is to try to correct people who have engaged in criminal activity by putting them into prisons. That was not always the way in which we dealt with the problem of crime. In an earlier day, when the due process clause was incorporated in the Constitution, the punishment for crime was either physical punishment, up to capital punishment, or it was a purposeful stigmatization of the person who had committed a crime.

Punishment by stigmatization was eliminated starting in the Jacksonian period. Instead, we put people into prison and we thought of prisons as rehabilitating people. Prisons were supposed to be places where people were moved away from the corrupting influences of their home environments and put to work in the hope that, once they got

out of prison, they would have acquired work habits which would then keep them out of trouble. They would then be able to work in the society at large.

Dissemination of a record still attaches that penalty of stigmatization to the person who has been convicted of a crime. The notion that people can be rehabilitated by getting them into the habit of work and making them ready for work in the society at large is entirely defeated by disseminating records which makes it impossible for people to get work. The record functions much in the way that the Scarlet Letter worn by the adulteress functioned—or branding of the thumb or the clipping of the ears. Those punishments were to inform other people which people were criminals.

In opposition to these arguments against the dissemination of arrest and conviction records, which stem from the concept of due process of law, there are public policy arguments for maintaining and disseminating the record. Those arguments say that we can control or reduce crime and apprehend criminals if we disseminate these records. Clarence Kelley made that argument this morning.

I was struck by one sentence in his testimony. He said if only 10 murderers or kidnapers repeated their crimes, and if criminal records could be used to apprehend those persons, is this not enough to warrant criminal justice agencies access to offender's records?

If the argument were posed only in that way, there might be a real conflict between the public policy considerations which lead one to disseminate records in order to control crime and the due process considerations which would militate against the dissemination of arrest and conviction records.

But Mr. Kelley did not adequately state the public policy considerations. It seems to me that they also go against the dissemination of records. The records have an effect on the people that are the subject of those records. Those persons are outcasts from our society because of the records. They are unable to obtain jobs. They are unable to integrate themselves into society. They are unable to enter into a mainstream in which they can behave as responsible citizens.

They become outcasts. They become lepers. They live on the margins of society. We constantly complain about there being a large problem of recidivism. But I believe that the very process of disseminating records helps to create the problem of recidivism. It makes it impossible for people to escape a pattern of criminal activity or an alleged pattern of criminal activity because they cannot get jobs or acquire the other indicia of responsible citizenship.

They have little choice but to exist in some fashion. The record becomes a self-fulfilling prophecy. It does, indeed, suggest that the person is likely to engage in crime because it makes it virtually impossible for the person to do anything else but engage in crime.

Rather than helping to solve the problem of crime, the records have helped to create the problem of crime. Clarence Kelley's argument that the records can be used to apprehend criminals does not state the ways in which the records are actually used by law enforcement agencies. For the most part, they are used after people are arrested. If they have any law enforcement value, it is for setting bail, or for advising a judge about a person's record in connection with sentencing.

Their largest purpose, I believe, is to advise public and private agencies which persons they should hire or not hire. In that sense,

rather than serving a law enforcement purpose, they create a law enforcement problem.

The FBI has not been able to demonstrate that these records are significant in enabling law enforcement agencies to investigate crime. That specific issue was raised in the *Menard* case. I would like to quote Judge Gesell in the course of that trial. He said:

> I would like to hear testimony, if there is such, which would indicate or relate to the points that the Court has been discussing earlier today. My impression as to how law enforcement operates may be erroneous, but I had always thought that the assembling of bits and pieces of factual information could often be successfully related to assist in the apprehension of guilty persons. I would imagine the Bureau's experience is simply replete with examples of that. That seems to me to be a matter that the Court of Appeals did not have in focus. I had a feeling that much of this data may have considerable value in terms of law enforcing functions in assisting in the location of people and assisting in getting information about the modus operandi about different individuals, and so forth.

Despite this challenge by Judge Gesell, the Government failed to present, during the course of the *Menard* trial, any evidence at all that would suggest that the FBI used records to support the investigative purposes of law enforcement agencies. This, despite the fact that the record of the *Menard* case includes some 250 pages of testimony from the Director of the FBI's Identification Division. The records are not maintained according to modus operandi. They are maintained according to particular individuals who are indexed by name and by their fingerprints.

They did not assist in showing law enforcement agencies which person engaged in particular patterns of criminal activity.

Rather they help law enforcement agencies that have already arrested someone learn about that person's past record for purposes of bail and sentencing if the individual should be convicted. They exist—and this is the most important purpose and the most damaging—in order to advise the Federal Civil Service Commission, the various State civil service commissions, local licensing agencies and employers about arrest and conviction records—mostly arrest records. In that way, they exclude the people that are the subject of those records from employment.

Given the FBI's inability to demonstrate that its records serve an investigative law-enforcement purpose, and given the massive harm done by the dissemination of these records public policy considerations support the prohibitions or dissemination of records that derive from constitutional values. Those are the controls that are embodied in S. 2963 on the dissemination of arrest and conviction records.

One final comment about S. 2964.

Both S. 2963 and S. 2964 have, as their main thrust, the elimination of the use of arrest records for nonlaw enforcement purposes. I think S. 2963 substantially accomplishes this purpose. But I would urge you to look closely at S. 2964, because I believe that it does not accomplish this purpose.

S. 2964 says that criminal offender information on the arrest of an individual may not be disseminated or used for a noncriminal justice purpose. However, it defines "criminal justice purpose" to mean "any activity pertaining to the enforcement of criminal laws including police efforts, to prevent, control or reduce crime, or to apprehend criminals, and the activities of prosecutors, courts, pardon and parole authorities."

It seems to me that many forms of public and private employment can be said to "pertain to the prevention or control or reduction of crime." S. 2964 would therefore, place a legislative stamp of approval on the present promiscuous practices of the FBI in disseminating arrest records. It would not serve the purpose of eliminating their use for nonlaw enforcement purposes.

I believe that S. 2963, with its very much tighter language, would serve the purpose of eliminating the use of arrest records for nonlaw enforcement purposes. Since that is the first large step that needs to be taken in this entire field, we very heartily endorse S. 2963.

If I may, I would like to ask Mr. Shattuck to add a few comments on some specific provisions of the bill.

Mr. SHATTUCK. I would like to comment on three particular areas with respect to: first, arrest records; second, conviction records; and third, intelligence records. In both of these bills those three areas are the areas of our principal concern.

The highlight of S. 2963 is its flat prohibition of all nonlaw enforcement uses of arrest records, and as I understand it, arrest records are defined as criminal history records as well as open arrest records. Criminal history records which have not resulted in conviction, therefore, even where a disposition is reflected, would not be disseminated for nonlaw enforcement purposes.

There is one area in the treatment of arrest records in S. 2963 which may have been a drafting oversight. We feel that it is important that it be called to your attention: All criminal justice information systems are required to adopt procedures for prompt purging or sealing of criminal history record information, where the police have elected not to refer the case to the prosecutor, or where the prosecutor has elected not to commence criminal proceedings.

However, this leaves a broad area of arrest records, where the disposition of the arrest was acquittal or dismissal that would be continued presumably for 7 years before they would be purged because they are not covered by the specific language of S. 2963. We would urge that all arrest records which do not result in conviction be promptly purged.

S. 2964, with respect to arrest records, contains a broad prohibition against dissemination, but has a number of exceptions which undercut the effect of the ban:

First, when the Attorney General determines in a particular case or a class of cases that for reasons of national defense and foreign policy the prohibition should not apply.

Second, where a Federal statute expressly provides that the prohibition should not apply.

S. 2963, of course, contains no such exceptions.

With respect to conviction records, I would like to highlight a number of items in both bills. We find considerably greater leeway granted by both of the bills to law enforcement agencies to disseminate conviction records than is the case with respect to arrest records.

Both bills would permit unlimited exchange of conviction record information for law enforcement purposes and would allow wide dissemination of conviction records for nonlaw enforcement purposes when such dissemination is otherwise authorized by State or Federal law.

For the reasons expressed by Mr. Neier, we feel that neither of the bills adequately addresses the problem of the ex-convict who is searching for a job, because his conviction record is allowed to haunt him after he has served his sentence. To the extent that it is more restrictive than S. 2964, however, we favor S. 2963.

In S. 2963, conviction record information is more narrowly defined than in S. 2964. S. 2963 defines conviction records as "information disclosing a person has pleaded guilty or nolo contendere, or was convicted on any criminal offense."

S. 2964, however, allows a considerably broader category of information to be disseminated about convicted persons. Section 3(e) provides that "criminal defendant processing information shall be defined as all the reports identifiable to an individual compiled at any stage of the criminal justice process." These are reports that could be used and disseminated for a nonlaw enforcement purpose when authorized by a Federal or State statute, or a court order, and the Attorney General would have the power to make a conclusive determination as to whether or not they were so authorized.

This provision in S. 2964 really eliminates any possible relief that might be available to a person with a conviction record to bar its dissemination for purposes which might prevent his employment or otherwise make it difficult for him to readjust to society.

Under both bills, the only limit on dissemination of conviction record information is the requirement that the records be distributed only to those authorized to receive them. Again for the reasons expressed by Mr. Neier, we believe that this would allow very broad dissemination under Federal and State law for licensing and other purposes which would shut off considerable areas of employment for persons with conviction records.

Finally, the sealing and expungement provisions of both of the bills—7 years for felonies and 5 years for misdemeanors—would in many respects make it difficult for the persons who have been convicted and are in the greatest need of relief to find employment, because during the period of time when they have been most recently released, they would face the use and dissemination of their conviction records.

The third and final area which I would like to touch upon is intelligence records. Neither of the bills focuses very clearly on these types of records, and, indeed, perhaps this is not the type of legislation in which such controls over intelligence information should be adopted.

Nevertheless, we wish to take the opportunity to express ourselves on this subject because it is an extremely important legislative issue. Intelligence information is defined roughly in the same way by both bills. It is defined in S. 2964 as "information compiled by a criminal justice agency for the purpose of a criminal investigation, including reports of informants, investigators, and anyone associated with the identifiable individual."

In short, it is the raw material of an investigation which may, or may not, have resulted in a prosecution or even an arrest.

There are two provisions in S. 2963 which restrict the use and dissemination of intelligence information, and we support both, although we do not feel that they go far enough. First, intelligence records must be kept segregated from criminal justice information systems; that is, arrest and conviction records. Second, intelligence information cannot be placed in an automated or computerized system.

We find that a great deal of our work takes place in the area of intelligence gathering, in the sense that many of our clients are the victims of abuses of intelligence gathering and dissemination.

Perhaps one of the most serious abuses in intelligence gathering in recent years has resulted from the inability or unwillingness of law enforcement agencies to distinguish between criminal acts on the one hand and controversial, but lawful, political activities on the other. And it is in this area that we feel—as I am sure that the subcommittee and the Senator are well aware—that legislation is most needed.

We have taken the liberty of proposing three very broad, suggested guidelines which should ultimately be considered for legislative enactment.

First, the gathering and storing of intelligence information relating to political or religious activities or any other form of speech or conduct, protected by the First Amendment, should be sharply restricted. Such information should be gathered only when necessary, and incident to a specific criminal investigation, and should not be independently recorded and indexed under the name of the individual to whom it relates, except for the purpose of bringing to fruition a specific criminal investigation.

Second, hearsay or other forms of uncorroborated information about individuals should not be independently recorded and indexed under their names. Such information could only be recorded during the course of a specific criminal investigation on the condition that it be purged from any permanent record of that investigation, after it had been completed. This would be a parallel provision to the purging of arrest and conviction record information.

Third, intelligence information about individuals should be prohibited from being disseminated to, or used by, any agency other than the one that has collected such information, except that certain, narrowly defined categories of intelligence could be made available on a "need-to-know" basis to other government agencies authorized by statute, for example, to conduct security clearance investigations.

These are the areas of the bills that we felt warranted highlighting.

This is not to suggest that there are no other areas of the bills that we support. We are highly supportive of the private remedies created by both S. 2963 and S. 2964. The administrative requirement that the records be updated is obviously essential and goes to the whole thrust of our testimony. Similarly the provision permitting individuals to gain access to their files, and to challenge their accuracy, is also important.

Thank you.

[The prepared statement of Aryeh Neier and John H. F. Shattuck follows:]

PREPARED STATEMENT OF ARYEH NEIER, EXECUTIVE DIRECTOR, AND JOHN H. F. SHATTUCK, STAFF COUNSEL, AMERICAN CIVIL LIBERTIES UNION

The American Civil Liberties Union is a nationwide, nonpartisan organization of more than 275,000 members devoted to the protection of the Bill of Rights. We strongly endorse S. 2963 as a major step toward dismantling the "record prison" which has grown up in the shadow of our criminal justice system. Before discussing the specific features of both S. 2963 and S. 2964, we offer some general comments on the values and social policy considerations which we believe are at stake.

Arrest and conviction records are collected and disseminated in the belief that such practices are necessary to control and reduce crime. At the same time, there is a growing recognition that the right to privacy and the right to employment are severely damaged by the promiscuous dissemination of such records. If both of these propositions were accurate, then the task before you would be to weigh the competing interests and draw legislation accordingly.

On the basis of extensive study of the impact of disseminating arrest and conviction records, however, we submit that it would be a serious mistake to approach the problem addressed by S. 2963 and S. 2964 as if there were a conflict between the interest in security against crime and the interest in the right to privacy. The wide dissemination of these records has not contributed to solving the problem of crime in America. It has helped to create the problem.

Millions of Americans are labelled by their records. As a consequence, they are unable to obtain decent jobs or homes, insurance, credit, or admission to educational programs. The many surveys of the impact of personal records on people's lives point to a single inescapable conclusion: that arrest and conviction records often create social lepers who must exist as best they can on the fringes of society. Crime in America is committed mostly by young males on the run. Much of the time, they are on the run because they have already acquired records, and by moving to a new place they hope to escape the records which make it impossible to get jobs. However, the dissemination of their past records by our law enforcement agencies insures that many of these branded persons will not escape. It may take years until they are able to get steady jobs and put down the roots which take them out of the criminal class and make them law-abiding citizens. When that finally happens, it is often because they have successfully concealed or indeed lied about their records. If the lies are discovered, however, they may lose their jobs and go on the run again.

The dissemination of records places a series of obstacles in the path of persons who wish to enter society's mainstream and end the half-life of the world of crime. Is it any wonder, then, that recidivism rates should be so high? How can we seriously hope to reduce crime if we disseminate records which have the unintended effect of making it impossible for people to stop being criminals?

In all probability, law enforcement agencies will be able to come forward and describe instances in which crimes were prevented or criminals were apprehended because of the availability of records. Similarly, it may be possible to formulate examples of jobs which no sane person would want to be given to people with particular kinds of records. Curiously, the records of legislative hearings and court cases on arrest records lack any actual cases where the things people feared actually occurred. But we urge you not to permit such examples, even if they appear, to obscure the broad consequences of record dissemination practices. The United States disseminates arrest and conviction records more widely than any other country in the western world. While there may be no proof of a cause and effect relationship, it certainly can be inferred from the facts.

When arrest records not followed by conviction are at issue, there are additional compelling reasons to prohibit dissemination. The most elementary premise which underlies our commitment to due process of law is that a person is presumed innocent until proven guilty. That commitment is destroyed by criminal justice systems which punish persons not proven guilty through dissemination of their records. The impact of an arrest record is almost as severe as that of a conviction record in limiting opportunities for employment. Some people are started on the road to crime when they are arrested for things they did not do, and thereby labelled with arrest records.

Different considerations should govern our attitude to persons who have been convicted of crime. No violation of the presumption of innocence is at issue when their conviction records are disseminated. However, in addition to society's need to reabsorb convicted persons once they have been punished for their crimes in order to protect itself, there is a due process consideration in limiting punishments to those specified by the criminal law. If a legislature authorizes a judge to sentence a criminal to no more than a year in prison, that should be the limit of the punishment imposed. In practice, the dissemination of conviction records imposes life sentences, regardless of the crime committed or the penalty specified by law.

The right to privacy is of vital significance. However, the concept of privacy is inadequate to describe the issues at stake in the measures you consider today. The dissemination of arrest and conviction records causes millions of people to lead furtive existences in which they either try to escape the criminal labels attached to them or, finding that struggle hopeless, conform to the labels. This country cannot afford to continue labelling an ever-increasing number of its

citizens as criminals, just as it cannot afford to have so many criminals. We must seek ways to reduce the criminal population, and one way is to stop disseminating the records which label people as criminals, thereby often causing them to act as criminals.

We have appended to this testimony an article by Aryeh Neier which appeared in *The New York Times Magazine* on April 15, 1973. The article attempts to document the multiple injuries suffered by persons with arrest records. In addition we offer some examples which have come to our attention since the publication of that article.

Brian N. was arrested in the state of Washington in 1970 as a "public nuisance." He was tried and acquitted. In 1971, he was arrested in California on charges of marijuana possession. The charges were dismissed. In 1973, he was hired by a firm installing alarms in banks and other businesses in Prescott, Arizona. The Prescott police checked Mr. N. with the F.B.I., were informed of his arrests but not of the dispositions, and reported the information to Mr. N.'s employer. He was fired.

In 1947, at the age of 20, Jane D. married a man of whom her parents disapproved. They moved to California and lived under a different name. Her husband was arrested there and charged with transporting stolen property across state lines. She and her husband were returned to Michigan where he pleaded guilty and went to prison. The charges against her as an accessory to the crime were dismissed. She secured an annulment of her marriage and full custody of her infant son.

Subsequently, Jane D. started a new life and was remarried. She obtained a Ph.D. and an educational doctorate, published numerous articles in professional journals and became a senior education official in a large city school system. She has received certificates and awards for distinguished accomplishments in her profession. Nevertheless, she must live in constant apprehension because the F.B.I. continues to record her youthful arrests, and shows no dispositions for these arrests. She has written to the ACLU:

"I am left with the burden of providing proof that my case has been disposed of.

"Worse—I am forced to reveal the unpleasant details and relive the traumatic experience all over again.

"Worst of all—I am at the mercy of any employer, actual or potential, who, in essence, has been granted the right by the F.B.I. to examine these facts and to serve as judge and jury all over again."

She also notes that the fact that the F.B.I. makes this information available has "prevented me from applying for many other positions. At this very moment, this information still serves to threaten my professional life." She was disturbed recently to learn of a statute which, if duplicated in other states, would be a grave threat to persons in her position: New York State has enacted a statute authorizing the New York City Board of Education to request the F.B.I. to conduct fingerprint checks on employees of the city school system.

William M. was arrested in 1964 and adjudged under a state youthful offender statute which provides that such an adjudication is not a conviction and that it should be sealed. Since then, he has tried to secure return of his fingerprints from the F.B.I. Most recently, he made such a request through a member of Congress and received a response from Clarence Kelley that it is F.B.I. policy "to return fingerprints upon being advised that the record has been ordered sealed." That is what the state law provides. However, because Mr. M is unable to get the local Police Department which submitted his prints to seek their return, the F.B.I. holds on to them and disseminates them in a manner forbidden under the laws of the state in which the arrest and adjudication took place.

Robert G. is a black college student who was arrested and acquitted of a robbery charge in Washington, D.C. As a result of his arrest record, the police have on at least three occasions shown his photograph in neighborhoods where crimes have been committed, seeking to have him identified as the criminal. Apart from his arrest record there is no evidence to connect him with any crime, but he and his family and friends have been interrogated many times.

Calvin L. joined the Marine Corps in 1965. In August, 1969, he deserted and remained at large until he was arrested on January 10, 1973. He was taken to a military base in California and placed in the brig until March 23, 1973. At that time he was given an undesirable discharge, and released from military authority. He was never court-martialed, and was told that the desertion charges would not be prosecuted because of the discharge.

In June, 1973, he was a passenger in an automobile stopped by the Dallas police. The driver had some outstanding traffic warrants. The police routinely asked Mr. L. for identification, apparently ran a National Crime Information

Center ("N.C.I.C.") check, and arrested him on a "hold" for the military. After four hours, he was released. In August, 1973, Mr. L. was hitchhiking, was stopped by the Dallas police who again apparently ran a N.C.I.C. check, and was detained for over 24 hours on a military "hold" before being released. On December 3, 1973, Mr. L. was stopped by the Dallas police because he was driving a friend's car with Ohio license plates, and no Texas inspection sticker. Again, a N.C.I.C. check was made, and Mr. L. was placed in custody for four hours on a military "hold" before being released.

I. PROPOSED CONGRESSIONAL FINDINGS

Both S. 2963 and S. 2964 recognize in their opening provisions that the dissemination and use of criminal justice information can be severely detrimental to individuals. We applaud this proposed Congressional finding. On the other hand, we believe that several of the assumptions underlying both bills are deficient.

First, both of the bills propose to give statutory validity to an assumption that the utility of arrest and conviction records to law enforcement agencies ultimately outweighs the harm that such records can cause to individuals. S. 2964 goes even further and proposes that criminal justice information should be used for non-law enforcement purposes when "the needs of government or of society" clearly outweigh "the interests of the individual" (Sec. 2(b)). This assumption—that arrest and conviction records help to control crime—is totally at odds with what we have said above about the "record prison."

Second, both bills in varying degrees assume that the completeness and accuracy of a criminal record cures its deficiencies and justifies its maintenance, even when no conviction resulted from an arrest. To be sure, both bills would restrict the dissemination and use of arrest records (S. 2963 to a considerably greater degree than S. 2964), but neither prohibits the making of adverse judgments about persons based solely upon their arrest records.

Our perspective on criminal justice information suggests that as a matter of social policy and constitutional principle no judgments should be made about people solely on the basis of their arrest records. Similarly, no social disabilities should be imposed upon people solely on the basis of their conviction records, and such records should be used only for law enforcement purposes until the sentence is served.

Conviction records are the cause of severe discrimination when their use is not tightly restricted to these law enforcement purposes. An arrest record, which is in no way an adjudication of guilt, does not even have this integrity, regardless of its "accuracy" or "completeness."

The probability of a black urban male being arrested at least once during his lifetime has been estimated to be as high as 90%. For white urban males, the figure is 60% and for all males, it is 47%. *President's Commission on Law Enforcement and the Administration of Justice, Task Force on Science and Technology,* Appendix J at p. 216 (1967). Fewer than 25% of those arrested per year are found guilty of the offense for which they were arrested and only a little more than another 25% are found guilty of any crime at all. Despite their innocence before the law, persons with an arrest record are subjected to the severe, continuing and pervasive punishment that attaches to the commission of a crime, namely the lifelong disabilities on a "criminal record." Furthermore, that disability has the same damaging effect on a person's opportunity for employment and acceptance by society as a conviction record. *President's Commission on Law Enforcement, supra,* at pp. 75, 77. Unlike the conviction record, however, the arrest record is an illegitimate offspring of the criminal justice system, and poses a grave threat to the entire scheme of constitutional protection which our system of justice offers to citizens innocent of legal wrongdoing.

Because of the presumption of innocence it is not surprising that the Supreme Court has several times commented that arrest records do not prove anything in and of themselves. "The mere fact that a man has been arrested has very little, if any, probative value in showing that he has engaged in any misconduct. An arrest shows nothing more than that someone probably suspected the person apprehended of an offense. When formal charges are not filed * * * whatever probative force the arrest may have had is normally dissipated." *Schware v. Board of Bar Examiners,* 353 U.S. 232, 241 (1957). Similarly, "arrest without more does not, in law any more than in reason, impeach the integrity or impair the credibility of a [person]. It happens to the innocent as well as the guilty." *Michelson v. United States,* 335 U.S. 469, 482 (1948). See also *Pennex v. United States,* 313 F.2d 524 (4th Cir. 1963).

Conviction records, on the other hand, are conclusive proof that crimes have been committed. They are also proof that the persons convicted have been punished, so the fact of a conviction record should not cause that punishment to continue after a sentence imposed by law has been served. Unfortunately, this is not the way things work, as one ex-convict who served his time in Attica has trenchantly observed:

Once you have a "jacket"—a dossier with all the past details of your life, all the detrimental ones thay can put together, that is—you are a criminal. The jacket does not disappear; it grows fat and follows you around wherever you go. Some day this sentence you are serving will chronologically run out, but society does not forgive; it keeps tabs * * *. William R. Coons, "An Attica Graduate Tells His Story," *New York Times Magazine*, October 10, 1971.

The widespread discrimination against persons with conviction records is so well documented that the proposed findings of S. 2963 and S. 2964 on this issue are virtually indisputable. Of 475 private employers interviewed in New York City, for example, 312 stated unequivocally that they would never hire an ex-convict and 311 stated that they would fire an employee if they discovered that he had a criminal record. See Portnoy, *Employment of Former Criminals*, 55 Cornell L. Rev. 306, 307 (1970).

Nor is the private sector the only source of prejudice against persons with conviction records. Virtually all states and many municipalities have licensing laws like those in California where thirty-nine of sixty licensed occupations permit or require denial, revocation, or suspension of a license for conviction of any felony or misdemeanor involving moral turpitude. See Note, *The Effect of Expungement on a Criminal Conviction*, 40 S. Cal. L. Rev. 127, 136–37 (1967). *Cf.* Shattuck, *Admission to the Bar Following Conviction: Survey of State Law*, 78 Yale L. J. 1382 (1969). Employment in the public sector is even less available to the former offender than employment in a licensed occupation. In more than half the states there is a flat statutory prohibition against government employment of persons with felony convictions, and in all other states government agencies are given the right to turn down a person with a conviction record. See Rubin, *The Law of Criminal Correction*, pp. 613–14, 625–62 (1963).

These considerations indicate that the proposed Congressional findings of S. 2963 and S. 2964 do not sufficiently express the demonstrable harm that individuals suffer as a result of widely disseminated criminal justice information and at the same time make speculative assumptions about the utility of much of this information to law enforcement agencies (S. 2963), or more broadly to "society" (S. 2964).

II. Maintenance, Dissemination and Use of Criminal Justice Information

A. Arrest Records

Both of the bills under consideration contain restrictions on the maintenance, dissemination and use of raw arrest records—records of arrests not resulting in conviction. In view of our position that arrest records can cause great harm to individuals but are not demonstrably useful for law enforcement, we favor the more restrictive approach of S. 2963.

Senator Ervin's bill would flatly prohibit all non-law enforcement uses of criminal justice information or arrest records where no convictions resulted (Secs. 202 and 203). Such records are divided into two classes—records of "open" arrests where no disposition is recorded (Sec. 202 (b)) and "criminal history records" of arrests resulting in dispositions other than conviction (Sec. 202(c)).

The bill provides that both classes of records could be disseminated only for three narrowly defined law enforcement purposes—(1) screening employment applications in law enforcement agencies, (2) referring cases from one law enforcement agency to another, and (3) use in a criminal proceeding against a person who was arrested for a different offense within the last year (Secs. 202(b), (c)). Finally, S. 2963 would require all criminal justice information systems to adopt procedures "for the prompt sealing or purging of criminal history record information in any case in which the police have elected not to refer the case to the prosecutor or in which the prosecutor has elected not to commence criminal proceedings" (Sec. 206(b)(2)).

S. 2964 contains a similar prohibition against the dissemination of both "open" and "closed" arrest records for non-criminal justice purposes (Sec. 8), but there are several exceptions which would undercut the effect of the ban. The two principal and broadest exceptions are: (1) "when the Attorney General determines, with regard to the particular case *or class of cases*, for reasons of national defense or foreign policy it [the prohibition] should not apply" [emphasis added], and (2) "where a Federal statute expressly provides that the prohibition shall not apply" (Sec. 8(d)). Furthermore, unlike the Ervin bill, S. 2964 does not in any way restrict the dissemination of arrest records for asserted law enforcement purposes, although it does prohibit the "subsequent use" of a record for a purpose other than that for which it was disseminated (Sec. 8(b)). Finally, there is no provision in S. 2964 for purging arrest records, which are to be sealed only when the person arrested is not convicted of any offense for a five year period following his arrest (Sec. 9(b)(3)).

Our support for the more restrictive approach of the Ervin bill with respect to the use of arrest records is based on two main factors: *first*, the damaging effect of arrest records on employment and credit opportunities, and *second*, the deprivation of constitutional rights which individuals suffer when their arrest records are disseminated and used against them.

Examples of employment discrimination against persons with arrest records are legion. A study of the New York area employment agencies, for example, indicated that 75% would not accept for referral an applicant with an arrest record and no conviction. See Sparer, *Employability and the Juvenile Arrest Record*, at 5 (Center for the Study of Unemployed Youth, New York University). Despite administrative attempts to prevent the dissemination of arrest records, it has been found, for example, that employers in the District of Columbia have often obtained records from police sources, and that as a direct result job applicants are not hired. See *Report of the Committee to Investigate the Effect of Police Arrest Records on Employment Opportunities in the District of Columbia* (hereinafter "Duncan Report") (1970). The Chief of the Employment and Employee Relations Section of the District of Columbia Personnel Office told the Duncan Committee that many interviewers, receptionists, and employers automatically rule out arrestees whenever a risk is involved in the job. *Id.*, at 10. A representative of the Work Training Opportunities Center of the D.C. Department of Public Welfare declared that employers' attitudes engendered a defeatism among unemployed persons with arrest records. *Id.*, at 12. The Director of the local U.S. Employment Service in Washington stated that many employers required a "clean" arrest record as a condition of employment, and that the Service was able to place only about 15% of applicants with records of convictions or arrests.

Perhaps more disturbing than informal discrimination is the type of discrimination against arrested persons which is promoted by state record-keeping laws. In 1969 New York enacted a law requiring the fingerprinting of securities industry employees. Of the first 20,000 persons fingerprinted, 361 were found to have arrest records, and 54 lost their jobs. Approximately one-half of those with arrest records had never been convicted of any offense. An estimated 56% of all states, 55% of all counties, and 77% of all cities ask whether an applicant has ever been arrested on their civil service application forms. See Miller and Marietta, *Guilty But Not Convicted: Effect of an Arrest Record on Employment*, at n. 15 (Georgetown University Law Center 1972). Many more jurisdictions have vague character standards for civil service jobs which give hiring officials great discretion in rejecting applicants with arrest records. *Id.* Finally, arrest records have adverse consequences under state law on applications for professional and occupational licenses and on applications to surety companies for the bonding necessary for licensed employment.

When these governmentally sanctioned employment discriminations are placed in a constitutional context, the use of arrest records becomes even less defensible. The principle is clear: "imposition of punishment upon a person who has not been found guilty violates the most rudimentary concept of due process of law." *Giaccio v. Pennsylvania*, 382 U.S. 399 (1966) (Stewart, J., concurring) (invalidating statute permitting juries to impose court costs on acquitted defendants). See *Menard* v. *Mitchell*, 328 F. Supp. 716 (D.D.C. 1971), on remand from 430 F. 2d 486 (D.C. Cir. 1970); *Davidson v. Dill*, 503 P. 2d 157 (Colo. 1972).

In *Menard*, a case brought by the ACLU, a 26 year old Marine veteran had been arrested for "suspicion of burglary," but was not convicted, indicted, or even charged. In fact, it was never even established that the "crime" for which he was arrested, following a telephone complaint about a "prowler" in the neighborhood where Menard was sitting on a park bench, was committed by anyone. Seeking removal of his arrest record from the files of the F.B.I., Menard was denied relief in the District Court. On appeal, it was held that since "information denominated a record of arrest, if it becomes known, may subject an individual to serious economic difficulties," 430 F. 2d at 490, Menard was entitled to a trial

on the issue of complete expungement. On remand, District Court Judge Gesell ruled that while the F.B.I. may maintain the record of Menard's arrest for distribution to and use by federal, state and local law enforcement agencies for law enforcement and federal employment purposes only, all other distribution and uses of the record would be enjoined (but see P.L. 92-544, nullifying the effect of the injunction). Viewing the District Court's decision as inadequate, Menard has taken a second appeal in which he contends that he is being subjected to punishment by arrest record, thereby depriving him of equal protection, constituting a cruel and unusual punishment for his status as an arrestee, violating the presumption of his innocence, and invading his privacy.

The equal protection argument is grounded on the simple claim that since Menard has not been convicted of a crime, he is entitled to be treated like other non-convicts. Instead, his arrest record classifies him with the guilty, and he is exposed to all the risks, disabilities and disadvantages that flow from maintenance and dissemination of his record. While Menard's own equal protection claim is strong, the burdens imposed by arrest records are likely to fall even more heavily and unfairly upon members of ethnic minorities, see *Gregory v. Litton Systems, Inc.*, 316 F. Supp. 501 (D.C. Cal. 1970) (judicial finding that blacks are arrested substantially more frequently than whites in proportion to their numbers), or groups whose unconventional life styles, unorthodox political views or social modes are offensive to community attitudes. See *Hughes v. Rizzo*, 282 F. Supp. 881 (E.D. Pa. 1968) (use of arrest records to harass hippies). Indeed, the D.C. Circuit in its opinion remanding *Menard* to the District Court noted that "[hippies] and civil rights workers have been harassed and literally driven from their homes by repeated and unlawful arrests * * *. Innocent bystanders may be swept up in mass arrests made to clear the streets either during a riot or during political demonstrations." 430 F. 2d at 494.

The second element of the constitutional argument is that the maintenance of an arrest record constitutes cruel and unusual punishment. Since "[t]he due process clause * * * prohibits as cruel and unusual the punishment of status," *Wheeler v. Goodman*, 306 F. Supp. 58, 62 (W.D.N.C. 1969) (three-judge court), statutes which impose punishment because of a physical condition, such as narcotics addiction, *Robinson v. California*, 370 U.S. 660 (1962) or because of one's status as an indigent or a vagrant, *Wheeler v. Goodman*, *supra*, have been held unconstitutional. In Menard's case, there has been no legitimate judicial or other determination that his status as an arrestee resulted from any affirmative misconduct on his part. Since he is even less accountable for his status as an arrestee than an addict or a vagrant, the injury to his character and reputation which stems from his arrest record is an even more cruel and unusual punishment than theirs.

Nor can a legitimate public interest in identifying the guilty overcome the denial of due process and equal protection and the infliction of cruel and unusual punishment caused by the attaching of a stigma to an innocent person. In *Boorda v. Subversive Activities Control Board*, 421 F. 2d 1142, 1143, (D.C. Cir. 1969), *cert. denied*, 397 U.S. 1042 (1970), for example, the D.C. Circuit invalidated the disclosure provisions of the Subversive Activities Control Act on the ground that the Act was "constitutionally defective in allowing public disclosure of an individual's membership to be made without a finding that the individual concerned shares in any illegal purposes of the organization to which he belongs." Citing *Boorda* in its *Menard* opinion, the D.C. Circuit held that "[t]here is a limit beyond which the government may not tread in devising classifications that lump together innocent with the guilty." 430 F. 2d at 492.

Finally, the maintenance and dissemination of an arrest record is an unwarranted invasion of privacy. It has been held that disclosure of arrest records to employers constitutes an "unjustified invasion of privacy, particularly where innocent persons are arrested." *Morrow v. District of Columbia*, 417 F.2d. 728, 742 (D.C. Cir. 1969). Other courts have gone so far as to hold that the mere retention of the criminal identification records of an acquitted defendant infringes on his right of privacy. See *e.g.*, *United States v. Kalish*, 271 F. Supp. 968, 970 (D.P.R. 1967); *Eddy v. Moore*, 487 P.2d 211 (Wash. 1971). In this spirit, the District Court in *Menard*, relying on the landmark decision of *Boyd v. United States*, 166 U.S. 616 (1886), declared that "systematic recordation and dissemination of information about individual citizens is a form of surveillance and control which may easily inhibit freedom to speak, to work and to move about in this land, [and consequently that] the overwhelming power of the Federal Government to expose must be held in proper check." 328 F. Supp. at 726.

B. Conviction Records

Considerable leeway is granted by both S. 2963 and S. 2964 to law enforcement agencies to disseminate conviction records. Both bills permit unlimited exchange of conviction record information for law enforcement purposes, and allow wide dissemination of such records for non-law enforcement purposes when such dissemination is otherwise authorized by state or federal law. To the extent that it is the more restrictive of the two, we favor S. 2963, although neither bill would do much to prevent ex-convicts from becoming pariahs in the job and credit markets because of their status as "marked" men or women.

The information about ex-convicts that could be disseminated differs considerably under each bill. "Conviction records information" is defined in S. 2963 as "information disclosing that a person has pleaded guilty or nolo contendere to or was convicted on any criminal offense * * *" (Sec. 102(11)). This information may be disseminated to any recipient authorized by a state or federal statute to receive it (Sec. 201(c)).

Under S. 2964, however, a much broader category of information about convicted persons could be disseminated. "Criminal offender processing information"—defined as "all reports identifiable to an individual compiled at any stage of the criminal justice process * * *" (Sec. 3(e))—could be used under S. 2964 for any non-law enforcement purpose which is authorized by a federal or state statute, or a court order, and the Attorney General would have the power to make a "conclusive determination" whether any such use is in fact so authorized (Sec. 5(d) (4)). S. 2964 would permit even broader dissemination for "criminal offender record information" (a summary of the "processing" information). This information could also be used for any purpose expressly provided for by executive order, and the Attorney General again would be given the authority to make conclusive determinations about the information which is to be disseminated "with regard to the particular case *or class of cases*" (Sec. 5(e)).

Under both bills, the only limit on dissemination of conviction information is the requirement that the records be distributed only to those "authorized" to receive them under federal or state law. Each bill also contains a provision for sealing or expunging conviction records after seven years (felonies) or five years (misdemeanors). S. 2964, however, would exempt "manual systems" from "full compliance" with the sealing requirement (Sec. 9(c)(1)). Presumably, this exemption would include the F.B.I.'s Identification Division, at least until such time as it were to become independently computerized, or to be absorbed by the National Crime Information Center.

Without repeating what we have already said about the adverse effects of both arrest and conviction records on job opportunities, it is worth pointing out that the sealing and expungement provisions of both of the bills under consideration would not be of any significant help to ex-convicts looking for jobs. The five and seven year waiting periods would negate the effect of expungement at the very time when convicted persons are most in need of assistance in overcoming employment disabilities and other forms of discrimination resulting from their criminal records. The principle underlying the waiting-period provision—that recent convicts are too great a risk to employers because they have not shown by a period of "good behavior" that they are rehabilitated—is not supported by much evidence. Indeed the work release programs which have been adopted by nearly half the states and the federal government have registered favorable reactions among the overwhelming majority of employers participating in them. See, *e.g.*, Carpenter, *The Federal Work Release Program*, 45 Neb. L. Rev. 690 (1966). Successful attempts to cut recidivism by using community pre-release employment centers resulted in a federal statute authorizing their expansion (18 U.S.C. § 4082). See generally *Hearings on H.R. 6964 before Subcom. No. 3 of the House Judiciary Committee*, 89th Cong., 1st Sess. (1965); Long, *The Prisoner Rehabilitation Act of 1965*, 29 Fed. Probation (Dec. 1965).

We believe that convictions should not be used to make judgments about people once their sentences have been served. We, therefore, believe that no non-law enforcement use of convictions should be authorized. If any exceptions are to be made, they should be very very narrowly circumscribed. It is not in any way sufficient to rely entirely on other statutes, executive orders or "conclusive determinations" of the Attorney General to define what uses are proper. The F.B.I.'s Identification Division, for example, disseminates criminal records to any agency authorized by law to receive them, but often cannot prevent misuse of the information by local recipients. See, e.g., *Menard* v. *Mitchell*, 328 F. Supp. at 726–27. The Federal Information Systems Board created by S. 2963 (Sec. 30[illegible] would be given the task of making determinations as to the very narrow category of cir-

cumstances under which conviction records could be made available. A good working model is the Massachusetts Criminal History Systems Board, which screens all agencies seeking access to the state's criminal history databank.

C. Intelligence Records

The third general category of criminal justice records covered by S. 2963 and S. 2694 are records of "intelligence information." Neither bill focuses very clearly on these records, although in many respects their misuse represents an even greater threat to civil liberties than either of the more visible components of a criminal justice information system.

"Intelligence information" is defined in roughly the same way in both bills. In S. 2964 it is "information compiled by a criminal justice agency for the purpose of criminal investigation, including reports of informants and investigators, * * * associated with an identifiable individual" (Sec. 3(d)). S. 2963 defines it simply as "information on an individual on matters pertaining to the administration of criminal justice, other than criminal justice information, which is indexed under an individual's name * * *" (Sec. 102(14)). It is, in short, the raw material of an investigation which may or may not have resulted in a prosecution, or even an arrest.

Senator Ervin's bill (S. 2963) does not attempt to come to terms with intelligence records in the same detailed manner as it does with arrest and conviction records. Since intelligence information is defined as "other than criminal justice information," its dissemination and use are not covered by the broad terms of Section 201(b), which restricts "criminal justice information" to "officers and employees of criminal justice agencies." Apparently, the only restrictions applicable to intelligence records under S. 2963 are that (1) they must be kept segregated from "criminal justice information systems" (*i.e.*, arrest and conviction records), and (2) they cannot be placed in automated or computerized systems (Sec. 208).

S. 2964 is certainly no more restrictive on the subject of intelligence records, but it is at least more explicit. Under Sections 5(a)(2) and (3) of that bill criminal intelligence information: (1) "may be used for a purpose not related to criminal justice if the Attorney General determines, with regard to the particular case or class of cases, that such use is necessary because of reasons of national defense or foreign policy," and (2) "may be made available to a non-criminal justice component of [a criminal justice agency] * * * if the information is necessary for the performance of a statutory function * * *."

Intelligence information is not generally contained within an arrest or conviction record. Often its existence is entirely separate from any action which may or may not have been taken against an individual by a law enforcement agency. It is at once more particularized and less concrete than the record of a formal contact between an individual and the police, and its recorded existence is rarely even known by the person to whom such information relates. An intelligence record, therefore, can be a secret time bomb or a deadly weapon, the misuse of which can destroy a person's reputation or career.

One serious abuse in intelligence gathering in recent years has resulted from the inability or unwillingness of law enforcement agencies to distinguish between criminal acts and controversial but lawful political activities. Thanks to the efforts of this Subcommittee, we have learned about the domestic intelligence gathering program of the United States Army which was developed in response to the civil disorders of the late 1960s but which resulted in the recording of the names of nearly twenty-five million civilians in Army databanks. See *Hearings Before the Subcommittee on Constitutional Rights of the Senate Judiciary Committee*, 92nd Cong., 1st Sess. (February 23–25, March 2–4, 9–11, 15 and 17, 1971). See also *Laird* v. *Tatum*, 408 U.S. 1 (1972). Indeed, military intelligence gathering about civilian politics appears to be continuing overseas, even if it has been curtailed domestically. See *New York Times*, February 20, 1974, p. 7, col. 1; *Berlin Democratic Club* v. *Schlesinger*, Civil Action No. 310–74 (D.D.C.). Meanwhile, intelligence gathering by the F.B.I. and state and local police about the activities of political dissenters has increasingly come to the attention of the courts, which have commented on the dangers of such intelligence practices. See, *e.g.*, *United States* v. *United States District Court*, 407 U.S. 192 (1972); *Fifth Avenue Peace Parade Committee* v. *Hoover*, 480 F. 2d 326 (2d Cir. 1973); *Yaffe* v. *Powers*, 454 F. 2d 1362 (1st Cir. 1972); *Philadelphia Resistance* v. *Mitchell*, 58 F.R.D. 139 (E.D. Pa. 1972); *Handschu* v. *Special Services Division*, 349 F. Supp. 766 (S.D.N.Y. 1972); *Anderson* v. *Sills*, 106 N.J. Super. 545 (Ch. Div. 1969), *rev'd and remanded*, 56 N.J. 210, 265 A. 2d 678 (1970).

What happens to intelligence information once it has been recorded? The informality and secrecy which characterize most intelligence records make it possible for them to be widely disseminated almost without restriction and without the knowledge of their subjects. When the individual concerned finally discovers what is being said, it is often too late. One current ACLU case which may result in litigation, for example, involves a former overseas employee of A.I.D. whose personnel file contains derogatory information about his wife. He learned about this only after leaving A.I.D. to work for the F.A.A. After several years at F.A.A. he was promoted to an overseas position and passed a full security check. Shortly before he was to leave he was given an unsuitability rating for overseas assignment because "of information received from A.I.D. about your wife." His attempts to challenge the information were to no avail because (1) A.I.D. intelligence files cannot be expunged; (2) A.I.D. has no control over information in the files of the F.A.A.; and (3) the F.A.A. does not question intelligence information it receives from other federal agencies. Although he probably would have had a right to challenge his record under *Greene* v. *McElroy*, 360 U.S. 471 (1959), had he known about it and had it been used against him by A.I.D., he will have considerably more difficulty doing anything about it now that it has been widely disseminated within the federal government, and, perhaps, outside the government as well.

Obviously, neither of the bills under consideration adequately deals with the variety of ways in which intelligence records can be compiled and used to deny individual rights. Several minimal protections should be incorporated into the legislative scheme. First, the gathering and storage of intelligence information relating to political or religious activities, or any other form of speech or conduct protected by the First Amendment, should be sharply restricted. Such information should be gathered only when necessarily incident to a specific criminal investigation, and should not be independently recorded and indexed under the name of the individual to whom it relates. Second, hearsay or other forms of uncorroborated information about individuals should not be independently recorded and indexed under their names, although such information could be recorded during the course of a specific criminal investigation on the condition that it be purged from any permanent record of that investigation after its completion. Third, intelligence information about individuals should be prohibited from being disseminated to or used by any agency other than the one which has collected such information, except that certain narrowly defined categories of intelligence information could be made available by the collecting agency on a need-to-know basis to other government agencies authorized by statute to screen employees by conducting security clearance investigations.

III. CONCLUSION

The proliferation of records which has taken place in the shadow of our criminal justice system is itself, ironically, a contributing factor to rising crime rates and social disruption. We have discussed what we regard as some of the more important technical solutions to this problem which could be accomplished by legislation. There are other significant features shared to varying extents by S. 2963 and S. 2964 which we support—notably, the private remedies which are essential to enforcement of the legislative scheme; the administrative requirement that records be updated so that none are disseminated without reflecting their dispositions; and the provision permitting individuals to gain access to their files in order to challenge their accuracy.

In the final analysis, however, the social problem addressed by S. 2963 and S. 2964 is not amenable to a technical solution. To solve the problem it is necessary to challenge the assumption underlying the maintenance and dissemination of criminal justice records. That assumption is that crime can be controlled and reduced by utilizing records to keep track of all persons who have ever come into contact with the criminal justice system. That assumption is wrong because it imprisons people in their records, punishes them when they are not guilty or have already been punished, preventing them from escaping their past and forcing them to repeat it.

Thank you for this opportunity to appear before you today.

Senator ERVIN. It seems to me that a mere arrest record does not tend to prove anything at all except that a man was arrested and nothing was done about it. And there is a familiar rule of evidence in most States, especially the common law States, that while an accused

can be asked whether he was convicted and pleaded guilty of a criminal offense for the purposes of impeaching his credibility, he cannot be asked about whether he has been arrested or had a charge preferred against him, which would seem to recognize the unreliability of arrest records to serve any legitimate or useful purpose.

Now it seems to me that in the case of conviction, there is a legitimate need of society to be served by the dissemination to the proper officials of conviction records. Normally in the trial of a case, a conviction record is not permissible into evidence at all. It is only used for the guidance of the judge in imposing the sentence.

And certainly, if a judge is going to impose a sentence on a convicted defendant on a reasonable basis, he ought to be permitted to know something about that defendant's previous records or convictions, because one who has offended the law only one time should be given more leniency than a habitual offender.

There is no reasonable objection, I think, to, or being opposed to making conviction records for the judge after a plea of guilty. Do you have any quarrel with that position?

Mr. NEIER. I could not quarrel with that, but I think that it would be worth noting a problem that would exist. That is, in order to make the records available to judges for purposes of sentencing—and I think that that would be a legitimate use—it would be necessary to store the record someplace.

The problem with various collections of data is that they become extremely tempting to all kinds of people that want access to that data. And, ultimately, they get used for purposes other than the original purpose for which they were collected.

For example, in the State that I live in, New York, we have a large criminal justice data system, the New York State identification and intelligence system. I was involved in the legislative discussions 10 years ago over the creation of that criminal justice system.

At the time it was being created, the State legislators who sponsored it, and the man who became the first director, repeatedly said that it would never be available for private employment checking purposes. It would only be available for law enforcement purposes. That was in 1964. In 1969, 5 years later, the securities industry in the State of New York became very sensitive to criticism of laxity in its handling of stocks, and decided that one way to deal with that problem was to check all of the employees in that industry for criminal records to find out if there was anything which might indicate that they would be people who were likely to steal the securities.

They lobbied through the New York State Legislature a bill to make the State's criminal justice data system—which, by then, had 6 million sets of fingerprints in it—available to the securities industry.

Everybody in the securities industry, every clerk, every stockbroker had to be fingerprinted and had to have the fingerprints checked with the system by the state attorney general. It functioned as kind of a private credit bureau for the securities industry. The securities industry paid $5 for each employee whose fingerprints were checked. There are 80,000 employees in the industry in New York State. The records are made available by the State attorney general to the firms which employ those people.

The State attorney general published a report after checking the first 20,000. My recollection is that there were some 360 people that turned up in that first 20,000 who had arrest or conviction records. Not one of those people had a record of involvement in securities theft.

About half of those people were fired by their employers when the records turned up. I recall one case of a senior partner in a brokerage firm whose life was ruined because the record that was disclosed to the other partners in the firm showed that 20 years previously he had a record of arrest for indecent exposure. He lost his position in that firm. His life had collapsed when that became known.

Here was this great big data bank sitting there with all of this juicy information and here is an industry which, for its immediate purposes, wanted access to that information. If I knew a way, Senator, in which it would be possible to preserve these data banks for some legitimate purposes, such as their value to judges in sentencing people, and somehow permanently safeguard them from invasion by other people who are attracted like flies to honey by existence of that data bank, then it would be possible to support the maintenance of those data banks.

Senator ERVIN. What concerns me—I am a great believer that the court should be open and that any evidence received by a court that is acted on should be at least disclosed in the courtroom. And you may have two men indicted and convicted of identically the same offense, one of them may have a very minor traffic violation and the other one may have a repetition of the same offense, a serious offense, and it seems to me that if the public is going to have confidence in our judicial system, the judge would have to reveal if he was going to take the first man and put him on probation, or suspend his sentence, or give him a light sentence, and going to give a long sentence to the second one that he should be obligated to and should make public the reasons for the obligation.

Of course your point comes down to whether a conviction record should be made available at any time for employment purposes.

Mr. NEIER. It should never be available for employment purposes. It is used extremely widely for employment purposes. If it were possible to devise ways in which one could have confidence that the records would never be available for those purposes, then I think we would be satisfied.

We have great difficulty imagining how it is going to be possible to achieve permanent security for those records. I do not expect that there will be support now for dealing more effectively than I think this bill does, with a conviction— —

Senator ERVIN. That is one thing that I would have to take into account as a legislator—I have seen a number of cases where I thought I could draw a perfect law on the subject, but I could not persuade others, or a majority of the House or a majority of the Senate, that it was.

Mostly you have a strong feeling, but still I am one of the few people that still does think of it, but there are a number. The States that ought to be able to legislate with reference to themselves and not have their laws made by the Federal Government. Of course you have your State

licensing laws which bar people that have been convicted of certain offenses from obtaining a license to sell whiskey. I think it is ridiculous, to a man who is applying for a license to practice law.

Mr. NEIER. There is a multitude of absurd cases. We have cases of persons who have gone to prison and trained there to become barbers. They cut the hair of the other inmates. Then they go out and apply for a license to become a barber and they find that 46 of our States and the District of Columbia forbid a person with a conviction record from becoming a barber. It seems absurd to spend time and money training them in prison for a profession that they cannot possibly practice once they get out.

Senator ERVIN. Laws like that I have always thought were rather barbaric.

Mr. NEIER. The American Bar Association has studied licensing laws. They found that 4,000 State statutes that govern licensing—and these cover professions where some 7 million persons are involved—1,948 contain specific prohibitions on persons with criminal records from being licensed to practice those professions. Those professions include anything from a beautician to drycleaner to what have you.

Senator ERVIN. I had occasion one time as a member of the North Carolina Supreme Court, to write an opinion that was overruled by a 4-to-3 vote, a previous decision sustaining the constitutionality of an act that provided that no one in North Carolina could practice commercial photography unless he was licensed by a board of photographers who were empowered to determine his proficiency of photography; and second, to determine his good character.

And in the reply to the argument, the Court did hold it unconstitutional, ruling that any person has the right to pursue any of the ordinary occupations of life except such things as practicing law and medicine and a few things like that where special skill is required, without the permission of anybody, including any State.

And in the course of my opinion, I said that one of the best ways to encourage the commission of crime is to deprive people of the opportunity of the right to pursue an honest occupation.

Mr. NEIER. Senator, I think S. 2963 is as outstanding a piece of legislation as we have ever seen to deal with this problem.

If this bill is enacted in its present form, we will be absolutely delighted. The fact that we are seeking a further utopia in the testimony we have offered reflects our hopes for action in years to come.

We would be delighted, for the time being, with this legislation.

Senator ERVIN. If we can get S. 2963 enacted, it is really a giant step forward in an area in which we are sadly in need of some legislative control. I do have to go and vote now.

Counsel says he has no questions. We do want to thank both of you gentlemen for appearing and giving us the benefit of your advice which will be helpful to the committee, when it formulates the bill.

This subcommittee will stand in recess.

[A brief recess was taken.]

Senator ERVIN. The subcommittee will be in order. Counsel will call the next witness.

Mr. GITENSTEIN. Mr. Chairman, our next witness is Mr. Gene Eidenberg, chairman of the Illinois Law Enforcement Commission.

Senator ERVIN. I want to welcome you to the committee and express our thanks for your willingness to come and give us the benefit of a field in which you have made much study.

TESTIMONY OF EUGENE EIDENBERG, CHAIRMAN, ILLINOIS LAW ENFORCEMENT COMMISSION

Mr. EIDENBERG. Mr. Chairman, I am pleased to have this opportunity to convey my thoughts and reactions to the bills before the committee.

As chairman of the Illinois Law Enforcement Commission, I have a professional interest in these matters. As a citizen I have a personal and civic concern with the use of government-controlled data systems. And as a witness before this subcommittee 3 years ago when it held hearings on Federal Data Banks, Computers, and the Bill of Rights, I am anxious to see that there is a legislative result flowing from this subcommittee's invaluable work.

As the State planning agency under the LEAA, the Illinois Law Enforcement Commission has been concerned for some time with the role of information systems in the criminal justice area. Our commission is currently withholding support for any new criminal justice information systems in Illinois until we have established an explicit set of standards, rules and guidelines governing their use.

A panel of distinguished and expert citizens of Illinois is serving as the Criminal Justice Information System Advisory Committee to the ILEC and will complete their report this summer. Therefore, while I am here as chairman of the ILEC, the commission itself has not yet adopted policy governing our actions in this area. My testimony should not be construed to reflect the formal or official position of the commission.

I will begin my comments by noting that the two bills leave unclear whether the LEAA and State level planning agencies, like ILEC, are considered as criminal justice agencies for purposes of this act. The LEAA is clearly influencing the pace and direction of criminal justice information systems development.

In addition, LEAA and State planning agencies are themselves developing operating systems. It would be my suggestion that either the bill reported out be expanded to cover certain noncriminal justice agencies or the LEAA program and its affiliated state planning groups be included in the meaning of criminal justice agency for purposes of the act.

THE BASIC ISSUE

Any discussion of criminal justice information systems must immediately confront the dual concerns of public safety and individual privacy. Authorities responsible for public safety must have relevant and timely information to do their jobs. At the same time, citizens in this republic have constitutionally guaranteed rights to privacy. The tension between public purpose and private right is, of course, a recurring theme in American history.

The genius of our system has been the continuing willingness in every sector and at every level of our Government to search for the proper balance. Each policy arena produces its own accommodation. The criminal justice system is particularly sensitive because, as we have too often seen, during times of tension and stress many people are willing to sacrifice individual rights for a greater sense of public safety.

I believe that the purposes of public safety are best served when Government acts to prevent erosion of individual rights. Therefore, I hope this subcommittee reports out a bill which is broad in scope, and which establishes the Federal interest in influencing the balance that will best serve both public safety and individual rights.

CRIMINAL JUSTICE AND NON-CRIMINAL JUSTICE SYSTEMS

Specifically, I am concerned that proper standards be developed in the sharing of information between criminal justice and non-criminal justice agencies. There is a growing pattern in this field of requiring State and local agencies receiving Federal funds to provide client data to national data centers. The client oriented data acquisition program in federally funded drug abuse programs is a case in point.

The data developed under this program is highly detailed as to prior and current criminal activities of persons in the program. These data are routinely forwarded to Washington as a requirement of the Federal grant.

As a general principle, I do not believe that local data should follow Federal funds without clear standards governing the confidentiality of the information. The act in question, Public Law 92–255—The Drug Abuse Office and Treatment Act of 1972—gives the courts the authority to decide when the need for disclosure of highly sensitive personal data outweighs the right of confidentiality.

This provision of existing Federal law violates the spirit of confidentiality that ought to exist between those being treated in drug abuse clinics and the managers of these clinics, be they licensed medical doctors or otherwise. Put another way, the proper functioning of the police power in a democratic society should not be dependent on the penetration of clinically based data systems. They should be inviolate.

Senator ERVIN. If I may interrupt you at this point, that is something that gives me much concern, because you are familiar with the physician, the confidentiality in the physician-patient relationship. That exists in order to encourage those who want medical and psychiatric help to seek it, and I think that this requirement of the divulgence of reporting to the Federal Government the information has a tendency to defeat the real purpose of the act, which is to encourage people to seek help in conquering their problem.

Mr. EIDENBERG. I could not agree more. I would be glad to make available to the subcommittee for the record the suggested intake format that contains the kind of questions that are being asked under this program, and which are becoming a part of the Federal data bank on individuals. I think some of the questions being asked would be of interest to the subcommittee.

Senator ERVIN. We have not received that and we would be glad to receive it and print it in the record as a part of the hearing evidence.

[The material referred to follows:]

EXHIBIT S

SUGGESTED INTAKE FORMAT

SUGGESTED INTAKE FORM

I Identification and Demography

PATIENT'S IDENTIFICATION NUMBER

PROGRAM CODE

TODAY'S PROGRAM DATE

COUNSELOR'S NUMBER

PRINT IN PATIENT'S NAME
(LAST, FIRST (b) MIDDLE
INITIAL)

What is your current address?

Number Direction Street

City State Zip Code

Number (b) Direction (b) Street (,)

CITY (b) STATE (b)

PRINT IN PATIENT'S COMMUNITY AREA ZIP CODE (,)

What is your current telephone number?

What is your Social Security number?

PATIENT'S SEX — ( ) Male 0 — ( ) Female 1

What is your date of birth [ ][ ] month [ ][ ] day [ ][ ] year

RACE

MARK ONLY ONE!

Caucasian (White)........( ) 1
Puerto Rican.............( ) 2
Mexican..................( ) 3
Afro-American (Negro)....( ) 4
Asian....................( ) 5
American Indian..........( ) 6

Other______________________( ) 7
print in

Mother's maiden name ______________________

[ ][ ][ ][ ]
G S

DATE ADMITTED INTO TREATMENT [ ][ ] Mo. [ ][ ] Day [ ][ ] Yr.

II REFERRAL

us
us acquired
9:2A must accompany
referrals from clinics

( )NEW ADMISSIONS
( )VOLUNTARY
( )CLINIC REFERRAL
( )EPIDEMIOLOGY
*( )DA29:2A Attached

( )READMISSION
( )PAYING
( )CT. REFERRAL
( )COM. REFERRAL

( )MEDICAL REFERRAL
( )PRIORITY
( )AGENCY REFERRAL
( )NON-RESIDENT

Are you under any legal pressure, such as by a parole officer, court, or by the police, to seek treatment for your drug problem? — ( ) no 1 — ( ) yes 2

IF YES, SPECIFY ______________________

Previous times in Rx ____________ & ____________ ;
WHERE HOW LONG

____________ & ____________ ; ____________ &
WHERE HOW LONG WHERE

____________ Have you ever detoxed under medical supervision — ( ) YES ( ) NO
HOW LONG

How did you hear about the Drug Abuse Program?

MARK ONLY ONE!

Word of mouth.........( ) 1
Newspaper or magazine.( ) 2
Radio or TV...........( ) 3
Member of the program staff.................( ) 4
Court, probation officer, police.......( ) 5
Social agency.........( ) 6
Physician or medical institution...........( ) 7
Affiliated agency.....( ) 8

Other__________________( ) 9
print in

III PERSONAL HISTORY

What is your present marital status?

IF MARRIED, DETERMINE IF IT IS A FIRST MARRIAGE.

MARK ONLY ONE!

Never married.........( ) 1
First marriage........( ) 2
Re-married............( ) 3
Separated.............( ) 4
Divorced..............( ) 5
Widowed...............( ) 6
Common-law............( ) 7

What is your present religion?

MARK ONLY ONE!

Protestant............( ) 1
Catholic..............( ) 2
Other Christian.......( ) 3
Jewish................( ) 4
Muslim................( ) 5
Other Non-Christian...( ) 6
No religion...........( ) 7

What religion were you brought up in?

MARK ONLY ONE!

Protestant............( ) 1
Catholic..............( ) 2
Other Christian.......( ) 3
Jewish................( ) 4
Muslim................( ) 5
Other non-Christian...( ) 6
None..................( ) 7

With whom are you presently living?

MARK ONLY ONE!

Alone................	( )	01
Spouse...............	( )	02
Spouse & Children....	( )	03
Children only........	( )	04
Common-law partner...	( )	05
Common-law partner & children...........	( )	06
Relatives............	( )	07
One or both parents..	( )	08
Friends..............	( )	09
Other patients in a hospital...........	( )	10
Other patients in a therapeutic community	( )	11
Other inmates in a jail or prison.......	( )	12

How many persons presently depend upon you for their support? IF NONE, ENTER 0 0.

Are there other persons living with you or within your present living arrangements who are now or who have been in treatment with this program?

( ) no	( ) yes
1	2

Are there persons living with you or within your present living arrangements who are now using illegal drugs?

No one.............	( )	1
Spouse.............	( )	1
Common-law partner.	( )	1
Children...........	( )	1
Mother.............	( )	1
Father.............	( )	1
Sister or sisters..	( )	1
Brother or brothers	( )	1
Friend or friends..	( )	1
Other ______ print in	( )	1

What foreign languages, if any, were spoken in your home while you were growing up?

YOU MAY MARK MORE THAN ONE!

French...............	( )	1
Japanese.............	( )	1
Spanish..............	( )	1
German...............	( )	1
Lithuanian...........	( )	1
Yiddish..............	( )	1
Greek................	( )	1
Polish...............	( )	1
Italian..............	( )	1
Russian..............	( )	1
Other ______ print in	( )	1
None.................	( )	1

Who principally raised you as a child?

MARK ONLY ONE!

Mother and father......	( )	01
Mother only............	( )	02
Father only............	( )	03
Mother and stepfather..	( )	04
Father and stepmother..	( )	05
Grandparents...........	( )	06
Other relatives........	( )	07
Foster home............	( )	08
Orphanage..............	( )	09
Other ______ print in	( )	10

Which of these choices most nearly describes the kind of living arrangements you presently have?

MARK ONLY ONE!

One family house.......	( )	1
Apartment..............	( )	2
Rented room............	( )	3
Hospital...............	( )	4
Therapeutic community..	( )	5
Jail or prison.........	( )	6
No stable arrangements.	( )	7
Other ______ print in	( )	8

How many living children do you have? If none, print NONE.

______ Number of living children

31-999 O - 74 - 18

How long have you currently been living in the Chicago area? Write in the number of years. If none, print NONE.

Number of years

Where were you born?

City State

Country

CODE

Where did you grow up?

MARK ONLY ONE!

A city................( ) 1
A town................( ) 2
Farm area.............( ) 3

How many weeks during the past two years (24 months) did you spend in any kind of institution where you had to live in (jail, hospital, Lexington, rest home) for any problem? IF NONE, ENTER 0 0 0.

weeks

What is the total number of months you have spent in jail for narcotics violations and/or related charges, for example, possession of drugs or needles, sale of drugs, forgery of prescriptions, etc? ENTER IN NUMBER OF MONTHS. IF NONE, ENTER 0 0 0.

months

How many times were you picked up by the police during the past two years (24 months)? IF NONE, ENTER 0 0 0.

times

How many times were you "booked" during the last two years (24 months)? IF NONE, ENTER 0 0.

times

Please print in the number of times you have been arrested (booked) for the following offenses. If none, print NONE

Assault, including grand robbery — Number of times

Offenses involving narcotics and/or illegal drugs, forged or illegal prescriptions. — Number of times

Prostitution or pimping — Number of times

Theft, including breaking and entering — Number of times

Other

print in — Number of times

How many different times have you spent time in jail, prison, or a reformatory? If none, print NONE. — Number of times

In months, what was the longest sentence that you ever served? If none, print NONE. — Number of months

Were you involved in any illegal activities before you began using drugs? ( ) no 1 ( ) yes 2

How old were you when you were first arrested (booked)? If you have never been arrested, print NONE. — Age in years

Have you ever been judged a juvenile delinquent? ( ) no 1 ( ) yes 2

Have you ever been hospitalized or treated for a mental or emotional problem other than drug use? ( ) no 1 ( ) yes 2

In the past two years, how many times have you been convicted of crimes committed within these two years? If none, print NONE. ______ Number of times

In the past two years, what are the total number of days that you spent in jail or prison for crimes committed during these two years? If none, print NONE. ______ Number of days

Did you ever serve in the Armed Forces? YES____ NO ____

During which of the following periods?

Prior to 1940 ____

1940 - 1959 ____

1950 - 1960 ____

1960 - 1965 ____

1965 - present____

DATE OF SEPARATION FROM ACTIVE DUTY Mo. [|] Day [|] Yr. [|]

Location of tour(s) of duty (Enter all that apply)

1 - Vietnam
2 - Europe
3 - U.S.
4 - Other
[|]

IV Education and Employment

What is the highest grade in school that you have completed?

DO NOT COUNT UNFINISHED GRADES

MARK ONLY ONE!

Elementary School	Less than four grades	( )	00
	Fourth grade.........	( )	04
	Fifth grade..........	( )	05
	Sixth grade..........	( )	06
	Seventh grade........	( )	07
	Eighth grade.........	( )	08
High School	Ninth grade..........	( )	09
	Tenth grade..........	( )	10
	Eleventh grade.......	( )	11
	Twelfth grade........	( )	12
College	First year...........	( )	13
	Second year..........	( )	14
	Third year...........	( )	15
	Fourth year..........	( )	16
Graduate School	First year...........	( )	17
	Second year..........	( )	18
	Third year...........	( )	19
	Fourth year..........	( )	20

Do you now have a high school diploma or equivalency degree? ( ) no 1 ( ) yes 2

Are you presently in a vocational training program? ( ) no 1 ( ) yes 2

Do you have a legitimate, paying job? ( ) no 1 ( ) yes 2

What are all your present legitimate sources of support?

YOU MAY MARK MORE THAN ONE!

Legitimate job.......	( )	1
Spouse (marriage or common-law).........	( )	1
Family...............	( )	1
Friends..............	( )	1
Savings..............	( )	1
Public assistance, disability or unemployment insurance...	( )	1
Other______________ (print in)	( )	1
No legitimate source.	( )	1

Please mark the type of work you performed for the longest period of time since you first started working.

MARK ONLY ONE!

Unskilled..............( ) 01
Machine operator
or semi-skilled........( ) 02
Skilled manual..........( ) 03
Domestic or service work( ) 04
Clerical or sales worker( ) 05
Salesman................( ) 06
Performing arts.........( ) 07
Housewife...............( ) 08
Student.................( ) 09
Volunteer...............( ) 10
Medical or mental health
non-professional worker.( ) 11
Business manager or
owner...................( ) 12
Major professional or
higher executive........( ) 13

Other__________________( ) 14
print in

Mark the choice or choies that best describes your legitimate, paying job

Working for someone else (stable Job).................( ) 1
Self-employed (stable situation)......................( ) 1
Occasional "gig" or free lance (musician or artist)....( ) 1
Odd-jobs (unstable or fill-in work)...................( ) 1
None of the above.....................................

During the past year, how many months were you employed? If none, print NONE

____
Number of months

During the past year, how many legitimate jobs have you held. If none, print NONE.

____
Number of jobs

What were the total number of days you worked in the last four weeks? If none, print NONE.

____
Number of days

What is your major legitimate source of support?

MARK ONLY ONE!

Legitimate job.........( ) 1
Spouse (marriage or
common-law)............( ) 2
Family.................( ) 3
Friends................( ) 4
Savings................( ) 5
Public Assistance,
disability or unem-
ployment insurance.....( ) 6

Other__________________( ) 7
print in
No legitimate source...( ) 8

What was the average amount of money you earned per week for the past year from legitimate concerns?

MARK ONLY ONE!

$ 0 ( ) 0
$ 1 - $ 50 ( ) 1
$ 51 - $100 ( ) 2
$101 - $200 ( ) 3
$201 - $300 ( ) 4
$301 - $500 ( ) 5
$500 or more ( ) 6

Please mark all your present illegal sources of support.

YOU MAY MARK MORE THAN ONE!

Stealing...............( ) 1
Forgery................( ) 1
Fencing................( ) 1
Gambling...............( ) 1
Mugging (hold-ups).....( ) 1
Conning................( ) 1
Prostitution or
pimping................( ) 1
Drug and/or narcotics
dealings, including
copping for others.....( ) 1

Other__________________( ) 1
print in
No illegal activities..( ) 1

What is your major illegal source of support?

MARK ONLY ONE!

Stealing...............( ) 01
Forgery................( ) 02
Fencing................( ) 03
Gambling...............( ) 04
Mugging (hold-ups).....( ) 05
Conning................( ) 06
Prosecution or
pimping................( ) 07
Drug and/or narcotics
dealings, including
copping for others.....( ) 08

Other__________________( ) 09
print in
No illegal activities..( ) 10

What was the average amount of money you earned per week for the past year from illegal activities?

MARK ONLY ONE!

$ 0 ( )	0
$ 1 - $ 50 ( )	1
$ 51 - $100 ( )	2
$101 - $200 ( )	3
$201 - $300 ( )	4
$301 - $500 ( )	5
$501 or more ( )	6

What are your average living expenses, per week, including your drug habit?

MARK ONLY ONE!

$ 0 ( )	0
$ 1 - $ 50 ( )	1
$ 51 - $100 ( )	2
$101 - $200 ( )	3
$201 - $300 ( )	4
$301 - $500 ( )	5
$501 or more ( )	6

V **Drug Usage**

Since you first started, how many years have you been using narcotic drugs, excluding marijuana? [|]

In what year did you first start using narcotic drugs? IF NEVER, ENTER 0 0. [|] year

In what year did you first start using barbiturates? IF NEVER, ENTER 0 0. [|] year

In what year did you first start using amphetamines? IF NEVER, ENTER 0 0. [|] year

In what year did you first start using marijuana? IF NEVER, ENTER 0 0. [|] year

Which of these drugs are you presently using.... READ

Heroin	( ) 1
Other opiates	( ) 1
Drug store medicine with narcotics	( ) 1
Cocaine	( ) 1
Barbiturates & other sedatives	( ) 1
Amphetamines and similar drugs	( ) 1
Psychedalics	( ) 1
Marijuana or hashish	( ) 1
Other ____________	( ) 1

How long is your present run of drug usage? ENTER IN NUMBER OF MONTHS. IF NONE, ENTER 000 [| |]

1. Are you now, or have you ever been, strung out on heroin? yes ( ) no ( )

2. When did you try heroin for the first time? (Season & Year) ____________________

3. Where were you living at the time you first tried heroin? (Address of Residence)

____

Please mark the frequency (number of days per week) which you use any of the drugs and/or alcohol listed below.

	Not at all	Very rarely	1 Day	2-3 Days	4-5 Days	6-7 Days
Heroin (horse)	( ) 0	( ) 1	( ) 2	( ) 3	( ) 4	( ) 5
Other opiates (morphine, opium)	( )	( )	( )	( )	( )	( )
Drug store medicine with narcotics	( ) 0	( ) 1	( ) 2	( ) 3	( ) 4	( ) 5
Cocaine (snow)	( )	( )	( )	( )	( )	( )
Barbiturates & other sedatives	( ) 0	( ) 1	( ) 2	( ) 3	( ) 4	( ) 5
Amphetamines & similar drugs	( )	( )	( )	( )	( )	( )
Psychedelics (LSD, mescaline)	( ) 0	( ) 1	( ) 2	( ) 3	( ) 4	( ) 5
Marijuana or hashish	( )	( )	( )	( )	( )	( )
Other drugs	( ) 0	( ) 1	( ) 2	( ) 3	( ) 4	( ) 5
Alcohol	( )	( )	( )	( )	( )	( )

Please mark the first drug you ever used

MARK ONLY ONE!

Heroin................( ) 1
Other opiates.........( ) 2
Drug store medicine
with narcotics........( ) 3
Cocaine...............( ) 4
Barbiturates..........( ) 5
Amphetamines..........( ) 6
Psychedelics..........( ) 7
Marijuana.............( ) 8

Other drugs__________( ) 9
print in

Please mark the first drug that you used on a daily schedule.

MARK ONLY ONE!

Heroin................( ) 01
Other opiates.........( ) 02
Drug store medicine
with narcotics........( ) 03
Cocaine...............( ) 04
Barbiturates..........( ) 05
Amphetamines..........( ) 06
Psychedelics..........( ) 07
Marijuana.............( ) 08

Other durgs__________( ) 09
print in
Alcohol...............( ) 10

Please mark which you prefer most.

MARK ONLY ONE!

Heroin................( ) 0
Other opiates.........( ) 0
Drug store medicine
with narcotics........( ) 0
Cocaine...............( ) 0
Barbiturates..........( ) 0
Amphetamines..........( ) 0
Psychedelics..........( ) 0
Marijuana.............( ) 0

Other drugs__________( ) 0
print in
Alcohol...............( ) 1

Please mark which you prefer most when your first choice is not available

MARK ONLY ONE!

Heroin..................( ) 01
Other opiates...........( ) 02
Drug store medicine
with narcotics..........( ) 03
Cocaine.................( ) 04
Barbiturates............( ) 05
Amphetamines............( ) 06
Psychedelics............( ) 07
Marijuana...............( ) 08

Other drugs____________( ) 09
print in
Alcohol.................( ) 10

Please mark which you prefer most when your first two choices are not available.

MARK ONLY ONE!

Heroin..................( ) 01
Other opiates...........( ) 02
Drug store medicine
with narcotics..........( ) 03
Cocaine.................( ) 04
Barbiturates............( ) 05
Amphetamines............( ) 06
Psychedelics............( ) 07
Marijuana...............( ) 08

Other drugs____________( ) 09
print in
Alcohol.................( ) 10

How old were you when you first started using heroin or other opiates daily? Print in the age in years. If you have never used opiates, print NONE.

____
Years of age

How did you take heroin or other opiates? Please mark the main route you now use or used most recently if you are not currently using.

MARK ONLY ONE!

Injection - vein.......( ) 1
Injection - muscle.....( ) 2
Skin...................( ) 3
Oral...................( ) 4
Sniff or smoke.........( ) 5

Other methods__________( ) 6
print in
I have not used opiates.( ) 0

How many times have you kicked an opiate (narcotic) habit on your own (not in a jail or a hospital)? If none, print NONE.

Number of times

How many times have you been withdrawn from opiate (narcotic) drugs in jail or under medical supervision? If none, print NONE.

Number of times

How many times have you kicked a non-opiate habit such as barbiturates, amphetamines, etc. on your own (not in a hospital or jail)? If none, print NONE.

Number of times

How many times have you been withdrawn from non-opiate drugs in jail or under medical supervision? If none, print NONE.

Number of times

What was the longest number of months you have ever gone without any drugs on your own, excluding time in jail or other institutions and no including alcohol? If none, print NONE.

Number of months

How did you first get started on using drugs?

MARK ONLY ONE!

Curiosity..............( ) 1
Introduced by a pusher..( ) 2
Emotional problems......( ) 3
Looking for kicks.......( ) 4
Association with drug users..................( ) 6
Medically prescribed....( ) 7

Other________________( ) 8
print in

Have you ever had a medical problem, lost a job, or gotten into legal or family trouble because of the excess use of alcohol?

( ) no 1 ( ) yes 2

VI Current Problems

What physical complaints or medical problems do you presently have? (Headaches, pains, ulcer, etc.) IF NONE, PRINT NONE

CODE

Are there any criminal charges or convictions against you that are still pending? IF NONE, PRINT NONE

CODE

CODE

CODE

Are you living with other addicts at this time and do you wish to move from this situation?

Are you willing to accept a temporary living situation offered by IDAP at this time?

(If female, answer following)
Are you pregnant?

( ) no ( ) yes

VII Summary Observations and Referral

FIRST VISIT: I have used the following drug/drugs in the last 72 hours. ( ) HEROIN ( ) METHADONE ( ) COCAINE ( ) BARBITURATES ( ) AMPHETAMINES ( ) SPEED ( ) PSYCHEDELICS ( ) DRUG STORE MEDICINE WITH NARCOTICS ( ) NONE ( ) OTHER____________

SECOND VISIT: I have used the following drug/drugs in the last 72 hours. ( ) HEROIN ( ) METHADONE ( ) COCAINE ( ) BARBITURATES ( ) AMPHETAMINES ( ) SPEED ( ) PSYCHEDELICS ( ) DRUG STORE MEDICINE WITH NARCOTICS ( ) NONE ( ) OTHER____________

ID CHECKED: ( ) YES ( ) NO WHAT____________

ID CARD ISSUED?____________ ____________ SIGNATURE OF APPLICANT

INTERVIEW DATA:
DATE FIRST USED HEROIN_____, _____ MONTH YEAR
LENGTH OF ADDICTION_____ _____ YEARS MONTHS
CURRENT RUN _____ _____ YEARS MONTHS

COST OF HABIT PER DAY____________

LAST USE OF NARCOTICS________ ________ am pm

WERE WITHDRAWAL SYMPTOMS OBSERVED AT TIME OF INTERVIEW? ( ) YES ( ) NO
Describe: ( ) Enlarged Pupils
( ) Goose Pimples
( ) Eyes Watering
( ) Running nose
( ) Other________
____

NEEDLE MARKS: IF NOT, WHY?____________
Right arm ( ) Old ( ) New-IN.____________
Left arm ( ) Old ( ) New-IN.____________
Other ( ) ____________

Which of these are you presently using:
( ) OPIATES
( ) DEPRESSANTS
( ) STIMULANTS
( ) HALLUCINOGENS
( ) ALCOHOL

CONTINUED

3 OF 8

Other verification of addiction:

RELATIVES__________ COMMENTS__________

FRIENDS__________ COMMENTS__________

IDAP STAFF__________ COMMENTS__________

OTHER__________ COMMENTS__________

From your interview, do you believe this person is:

( ) PHYSICALLY DEPENDENT UPON OPIATES
( ) DRUG ABUSER CLEAN

__________ __________ __________ am/pm
INTERVIEW'S SIGNATURE DATE TIME

PATIENT TREATMENT

( ) FDA DETOX
( ) METH. DETOX
( ) METH. MAINTENANCE
( ) ABSTENANCE
( ) BARBITURATES
( ) OTHER__________

NARCOTIC URINE TEST RESULTS

TEST 1		Test 2
( )	Barbiturates	( )
( )	Amphetamines	( )
( )	Quinine	( )
( )	Morphine	( )
( )	Codeine	( )
( )	Methadone	( )
( )	Methapyrilene	( )
( )	Other	( )

PLACEMENT__________
NAME/NUMBER OF CLINIC

DATE OF ENTRY__________

DATE TO REPORT__________

TIME__________ am/pm

REMARKS__________

URINE TEST CODES

0 NOT DONE
1 NEGATIVE
2 TRACES
3 POSITIVE
4 STRONGLY POSITIVE
9 IDENTITY UNCERTAIN

INTAKE DIRECTOR__________
SIGNATURE

NOTE: To director of patients placement.
Make sure doctor and nurse at your clinic have seen this report.

TO BE COMPLETED AT TIME OF PHYSICAL EXAMINATION.
Physical Examination Deferred. REASON: ( ) Valid record on file.

OTHER ____________

Diagnosed medical condition ____________
Physical examination completed. No defects noted which would preclude Methadone Maintenance or Detoxification:

STARTING DOSAGE ____ INTAKE PHYSICIAN ____ EXAMINING PHYSICIAN ____

WHO DECIDES

Mr. EIDENBERG. If there is a central difference between these bills it is over the issue of who will control and decide how criminal justice information will be used. Both bills acknowledge that any legislation will repose heavy administrative discretion somewhere.

The chairman's bill, S. 2963, suggests a novel—and perhaps overly complex and cumbersome—national and State controlled board to implement the policies of the act. If I may say parenthetically, I am very much in favor of the notion of State participation. My reference here to the complexity and cumbersomeness of the proposal is not to the sharing of the responsibility between State and Federal Government in this area.

There are some other concerns I have to the administrative problems that might be posed by a 50-member committee and a smaller advisory committee. Those concerns do not go to the essence of the proposal.

Senator Hruska's bill places most of the discretionary authority with the Attorney General. As I point out, S. 2963 proposes that the State control board implement the policies of the act.

Perhaps it is predictable coming from a State official, but I prefer the approach in S. 2963. I am attracted to a system which broadens rather than restricts the number of participants when discretion is to be exercised in this field. I do not believe the public interest is served when the agency collecting and using information also decides the standards governing the use of that information and whether exceptions to those standards can be made.

FEDERAL INFORMATION BOARD

The proposed new Federal Information Board's statutory authority is not, in my judgment, adequate. In seeking to balance national and State interest, S. 2963 contains State option clauses which may weaken the central purpose of congressional action in this field which is to establish national standards and policies governing the use of criminal justice information.

For example, in title II, State legislation can permit the sharing of conviction record information with noncriminal justice agencies. However, no corrective authority is granted the board if State action in this area conflicts with the central purposes of the act. I believe the board should be required by the act to seek Federal court relief if the board believes State legislation fundamentally alters the intent of the legislation or the board's regulations.

In short, I am not opposed to the notion of the States having freedom under this proposed legislation to enact appropriate State level legislation. My concern is, we may return slowly but surely to a pattern of State practices which would over the long pull result in a dissolution of the central thrust of the legislation, S. 2963, which I very much support.

Further, the board should be mandated by the act to develop model legislation and administrative regulations which might be adopted by States and local bodies.

ACCESS AND DISTRIBUTION

Both bills provide for citizen access to criminal information systems for challenge and correction. I believe this to be an important step in achieving the purpose of these bills. In general, the more open and accountable the various agencies and their information systems are to legitimate citizen inquiry, the fewer abuses there will be of the information.

I believe the legislation should require that disposition information be circulated to every level of the system and that when dispositions of innocence are the outcome all references to the event—warrant information, for example—should be purged.

There is no reason why any citizen should have a criminal history file if in fact he or she has never been convicted of a crime. In addition, after a reasonable time, conviction data should be purged or sealed as called for in S. 2963. The underlying concern here is the well known—at least among professionals in criminal justice—aphorism that every conviction is a life sentence.

Information systems and practices surrounding them within the criminal justice system guarantees that contacts with the system will be recorded, filed and recalled each time there is a new contact. There is no way, at present to "wipe the slate clean" and "get a fresh start". We should put our information practices in conformity with our stated goals of redemption and rehabilitation after having paid society's debt.

The endless gathering of data and files is not unique to the criminal justice system. Every large organization practices this peculiar brand of bureaucratic growth. The risks are too great within the system we are discussing, however, to permit the mindless continuation of a practice which threatens basic constitutional guarantees.

PENALTIES

Both bills provide penalties for managers of criminal justice information systems who make illegal and improper use of information within their trust. However, only the Hruska bill, S. 2964, attaches any penalty to improper or illegal penetration of an information system, and in my opinion it is clearly superior to S. 2963 in that respect.

The officers responsible for the system should not be alone in their liability for misuse of information. Equal liability should attach to deliberate efforts to gain improper access to the system for purposes which are not consistent with the act.

INTELLIGENCE

I am concerned that neither bill effectively deals with the matter of criminal intelligence. S. 2963 suggests that the problem is merely technological with the proposal to deny agencies the right to computerize intelligence information. My own view is that the technology is basically irrelevant. I am told by experts that there is no EDP system which is totally secure from misuse or improper penetration. On the contrary, under proper controls and guidance, even a manual file-drawer system can assure a satisfactory level of security from misuse. This legislation should deal with this issue directly.

As a standard, I recommend that no criminal justice agency be permitted to maintain information on the lawful activities of citizens where no criminal investigation is involved or where there is no State or local regulatory requirement.

Mr. Chairman, when I appeared before this subcommittee 3 years ago, I was here in my capacity then as an officer of a State university whose student record information system had been penetrated over and over again by Federal, State, and local law enforcement agencies for purposes that had nothing to do with law enforcement purposes, and were simply the collection, as the committee's record shows——

Senator ERVIN. I recall that. I thought we had some very fine hearings, and I regret that no real legislation has emerged as a result of it. As you know, that is a very difficult field and I have been unable to get much support for a bill that would deal with that subject adequately. I think it is even more, far more important than this restrictive aspect of the whole subject.

Mr. EIDENBERG. I quite agree. I do want to point out, however, that I recognize the need for intelligence data, in the law enforcement field. Properly managed, the intelligence function can be a critical ingredient to wise law enforcement. Thoughtful law enforcement administrators will acknowledge that information on the lawful activities of citizens without reference to a criminal investigation serves no law enforcement purpose.

In addition, any intelligence data gathered pursuant to a legitimate criminal investigation that turns out to be outside the scope of the criminal justice process should be purged from the intelligence files within a reasonable time.

It is my understanding that in the normal course of criminal intelligence gathering an agency is likely to come upon irrelevant information that is pursuant to a criminal investigation. After a suitable period of time has elapsed, that information, if not germane to any criminal justice process, should not be maintained in criminal justice files.

CONCLUSION

There is much good in both bills before this subcommittee. I am encouraged that the Congress and the administration are contemplating positive action in this complex and difficult area.

While I cannot speak for the criminal justice system in general or law enforcement in particular, I can say that my experience convinces me that most administrators in the field are eager for a set of standards and procedures that strike the proper balance between personal privacy and public safety. While we hear much criticism of the police and other agencies in criminal justice, I find professional law enforcement people are sensitive to the rights of individuals.

I believe this subcommittee can take a major step in further securing our basic civil liberties without compromising the effectiveness of our law enforcement agencies by recommending a strong bill.

Thank you for giving me this chance to present my views.

Senator ERVIN. I do not have any questions because I find myself in very substantial agreement with the views expressed by you, and I think you have expressed them very clearly and very understandably. I am indebted to you for your recommendation on page 7 of your transcript in respect to the intelligence information. That was a most

difficult thing to deal with because what is done in that field is rather nebulous, and it was really almost impossible to draw, to be able to draw sound or satisfactory definition of what is intelligence gathering as counterdistinguished from criminal records.

I have had much concern in the hearing that you testified in before that the Government was collecting so much information about political thoughts, religious thoughts, and other perfectly legitimate activities of American citizens as was particularly true when they assigned the Army Intelligence a job that it ought never to have—that is, of spying on the civilian population.

There was very widespread spying on Americans who were merely exercising their First Amendment right to assemble and consult together and petition the Government for redress of grievances. And I was astounded by some of the testimony, by some of the data that they collected and put into computer banks.

You have a very novel suggestion here where you say as a standard you "recommend that no criminal justice agency be permitted to maintain information on the lawful activities of citizens where no criminal investigation is involved or where there is no State or local regulatory requirement."

That, coupled with the old suggestion that any intelligence that they might gain in a proper criminal investigation falls outside of the scope of the investigation should not be permitted to be retained.

Mr. EIDENBERG. Precisely.

Now, if I may turn to another subject in the legislation commented on by former Attorney General Richardson this morning. He talked at some length about his own personal experience and his uncertainty about whether he would have been better off if his driving record had been sealed or remained open for public disclosure. I want to make the observation in support of the sealing provisions of your legislation that it is my understanding that there is nothing in the bill that would prevent an individual who was the subject of the record that was so sealed from accessing that record, and for purposes of his own making it public.

Senator ERVIN. That is my interpretation of S. 2963, that the individual could get access to it, but nobody else.

Do you have any questions?

Mr. GITENSTEIN. I was going to point out to the chairman that along with Mr. Eidenberg, is Mr. David Selig, who is Director of the Dangerous Drugs Advisory Commission for the State of Illinois, and Mr. Selig spoke to me earlier and said that he would be happy to provide us with information on how our legislation and the confidentiality problems arise in the drug treatment area will affect his work. And he has just a few brief words that he would like to say.

Senator ERVIN. We would be delighted to hear from him and to receive any further information that you might want to send us later.

TESTIMONY OF DAVID SELIG, DIRECTOR, ILLINOIS DANGEROUS DRUGS ADVISORY COUNCIL

Mr. SELIG. My presence here is somewhat tangential to Senate bills 2963 and 2964. However, there are two comments that I wish to make. One is because there is a fairly substantial feeling that this legislation may be but the beginning of the regulation of the whole question of information, not just in the criminal justice field, but in

all fields that are in a position to compromise the lives of individual citizens. And therefore, having specific interest in the drug abuse field we wanted to make your staff aware of some of the effects that this legislation may have or may have on future legislation that this subcommittee may consider.

Second, there are some questions that we wish to raise rather than in terms of answers, more in terms of rhetorical questions, that possibly your staff may consider.

First of all, I would like to comment pertaining to Director Kelley's testimony this morning. I think there is a need for continuity in Federal legislation, and I think the subcommittee would agree on that basic premise. By way of comparison, Director Kelley referred to the FBI policy that in correcting inaccuracies in rap sheets, the FBI would look to the contributing source to make those corrections.

I can understand the Director's concern to the mammoth job and the sometimes impossible position that you are putting a cooperating agency in to try to intercede in correcting something that they basically had no part in initiating in the first place. However, let me compare that policy to the Fair Credit Reporting Act of, I think, 3 or 4 years ago. There is a perfect parallel there.

An originating agency, a local police department, makes a feed-in of a particular offense to the FBI through the submission of a fingerprint card that goes onto the rap sheet and into the file jacket. Then it is disseminated to various law enforcement agencies that make inquiries at NCIC.

Fair Credit Reporting is basically the same. The department store will be the originating agency that will make a report on the credit status of a particular citizen to, for instance, the county credit bureau. The credit bureau would disseminate the information to inquiring agencies. Now, the Fair Credit Reporting Act had the provisions in it requiring the disseminating agency to give the person on the reporting end an opportunity to look at its files. The credit bureau is willing to, also to give them an opportunity to explain or correct anything in that file at that point, which is totally contrary to the position that Director Kelley took that it is up to the originating agency to correct. And I think the parallels are perfect, and I think what is good for the goose is good for the gander, so to speak, and I think it is something to consider that if the Congress voted on the Fair Credit Reporting Act to require that type of citizen's rights, that maybe we ought to consider it here.

Second, there is a big difference in this area, contrary to Director Kelley's assertion on the correction of these records, because when the State makes a mistake it is confined to the State. But upon reaching a central repository of information, as the FBI's NCIC is at this point, the mistake is magnified by the ability of a multitude of agencies to now get that mistaken information out. And I think there is a moral responsibility.

The second area that Director Kelley brought up which, from my experience as a former prosecutor and State police official, that makes me feel that I can comment on fairly, is this matter of the updating of fingerprints. I think in any legislation most Senators and Congressmen voting on it consider the practicality as well as the legality, and in the practicality, Director Kelley I think is cognizant that the job of obtaining information given by local law enforcement agencies is a mammoth one, one where you have 50 State agencies

plus 26—I think—metropolitan agencies, and some others, where you have to depend on all of them to update.

They will not necessarily all do so, which puts an administrative burden on the FBI to pester them to supply the information. If the point of this legislation is that arrest material is relevant, that it is conviction material that is relevant, why submit the fingerprint card at the time of the arrest?

Why not submit the fingerprint card at the time of conviction, thereby eliminating the need to update and eliminating the need to enter dispositions on records previously submitted?

A number of States—California, Illinois, at least in Cook County now, I believe New York—have a system where local State's attorneys or district attorneys, as the case may be, will review the charges placed by a police officer the night before and will determine, for instance, what charge the State's attorney is willing to go on based on the facts of the case, more importantly, what charge will go before the grand jury on a State's attorney presentment, as opposed to the original charge placed by the police officer.

We can envision the situation where a policeman charges a man with murder. A day or two later, upon review by the assistant State's attorney, he determines in this case it was involuntary manslaughter. By the time this charge or this decision is made and it goes to the grand jury, the fingerprint card has already gone in and the record is now murder. Even if later on that indictment is entered into the record, there is still that murder charge on it.

So my suggestion to consider for the staff is possibly requiring only submissions based on convictions, rather than arrest.

Two areas in terms of questions:

One, what I consider to be the encroaching Federal policy of tying Federal funding to the release of confidential information by the States to the Federal agency. And I believe Chairman Eidenberg referred to this, and I do not have to elaborate. It is happening more and more and more. Specifically, in my area, where the Department of Health, Education, and Welfare requiring information on CODAP. Now they have another title, that if you want Federal money to fight drug abuse you are going to have to give confidential information. It is causing problems and it is burgeoning into other areas. And the committee might consider making a requirement not tying the two together. I heartily endorse some kind of formal guidelines or something more than merely the Secretary of a particular department of having the ability, say, in this particular case, if you want our money here is what you are going to have to comply with.

The third area is the failure of safeguards to confidentiality.

I point the committee to section 408, Public Law 92–255, that has a Catch–22 in it that provides for the confidentiality of patient records, but provides that upon application to a court of competent jurisdiction requests for information may be obtained and the court shall weigh need for disclosure against the need for confidentiality.

But experience dictates that courts seldom if ever hold such hearings, and the mere application by a law enforcement agency for the information will result in it being obtained. I feel the Congress should consider the practicality of mere legislative pronouncement that a court shall consider, and I think Senator Tunney's comments this morning in terms of prohibitions rather than safeguards merit serious consideration.

Finally, in Senate bill 2963 there is a flat prohibition for nonlaw enforcement agencies to obtain information and the only question that I would raise there, and here the tables are turned on me, what about, for instance, the needs—and this is only by way of example—of a drug abuse program that has a diversion system involving the criminal justice system of the State where it may require the knowledge of prior criminal convictions in order to determine the suitability of a drug addicted or drug-using person to a diversion program from prosecution, for instance?

There may be a legitimate need for a nonlaw enforcement agency to have such information. The flat prohibition may be going a step too far, and I would just raise that as a question.

I thank you for considering these points, and we would like to compliment the subcommittee on its excellent bill.

Senator Ervin. Thank you. The good thing about having hearings like this is we get a lot of suggestions about things we really did not think about when we drew up the bill in our efforts to meet the main problem. We overlook a lot of the kindred problems.

I thank you very much. The subcommittee will take a recess until Tuesday, when we will meet at 10 o'clock in the same place.

[Whereupon, at 5:05 p.m., the subcommittee recessed, to reconvene on Tuesday, March 12, 1974, at 10 o'clock.]

CRIMINAL JUSTICE DATA BANKS—1974

TUESDAY, MARCH 12, 1974

U.S. SENATE,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:10 a.m., in room 318, Russell Senate Office Building, Senator Sam J. Ervin, Jr. (chairman), presiding.

Present: Senators Ervin and Hruska.

Also present: Lawrence M. Baskir, chief counsel, and Mark Gitenstein, counsel.

Senator ERVIN. The committee will come to order.

Counsel will call the first witness.

Mr. BASKIR. Mr. Chairman, our first witness this morning is Mr. Richard Veldo, Deputy Administrator for the Law Enforcement Assistance Administration.

Senator ERVIN. We are happy to have you here with us this morning.

TESTIMONY OF RICHARD W. VELDE, DEPUTY ADMINISTRATOR FOR POLICY DEVELOPMENT, LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

Mr. VELDE. Thank you, Mr. Chairman. It is always a pleasure to appear. I have a rather lengthy statement, Mr. Chairman. It is divided into two portions. The first is a historical background and summary of LEAA systems programs. The second portion of the statement addresses issues in the pending bills.

With your permission, sir, I would like to submit for the record the statement in its entirety and summarize in a sentence or two the first half of the statement and then get into the issues in the pending legislation.

Senator ERVIN. That will be entirely satisfactory.

Mr. VELDE. I may state briefly that LEAA has a very substantial commitment in the development and refinement of criminal justice information systems. To date, our grants management information system shows that we have over $325 million invested in the improvement of these systems.

These projects range from the very simple to the extremely complex—complex technically, complex from the standpoint of the intergovernmental relationships that are involved, and I might add, complex from the standpoint of the issues of privacy and security, as well, sir.

I would turn now to page 11 of the statement where I begin a discussion of the issues in the pending legislation.

Senator ERVIN. Your entire statement will be printed after your oral remarks.

Mr. VELDE. I would now like to present our views on the pending bills, S. 2963 and S. 2964.

The relationship between privacy and governmental information gathering is one of accommodation and compromise. The question is not merely whether public or private interests want to know, but how important it is that such interests have access to information in the light of an individual's rights of privacy. That is the underlying factor in the dissemination provisions which have been addressed in the Department of Justice bill S. 2964.

It is important to note that criminal justice information is separated into three categories: Criminal offender record information, criminal intelligence information, and criminal offender processing information. Each type of data is treated separately insofar as access and use is concerned. Both S. 2963 and S. 2964 categorize different types of criminal justice information and deal separately with each.

I might add, Mr. Chairman, that your bill defines these basic types of information in a somewhat more refined way than the Justice bill does.

Criminal intelligence information, except for the narrowly limited situation involving national defense or foreign policy, may only be used for a criminal justice purpose and only when the need for the use has been established by potential users.

Intelligence systems are defined to include investigative reports as well as reports of informants. Because such information requires the capability to assess the reliability of the information, it should not be disseminated outside of the criminal justice community, and it must be strictly controlled.

However, S. 2963 would leave this area void of control except to prohibit the inclusion of intelligence information in an automated system. There is no provision in this bill for the regulation of manual intelligence systems.

The Justice bill, however, does deal with the question of intelligence systems and, recognizing the legitimate law enforcement need for for such information, sets forth stringent controls with effective penalty provisions against unauthorized disclosure or misuse.

Information from the news media or other public sources should be exempt from the provisions of this bill. Law enforcement personnel should be free to gather information in the public domain, keep such records and freely exchange it without being subject to criminal penalties.

Criminal offender processing information, a second major category, includes information, such as detailed reports identifiable to the individual and compiled by criminal justice agencies, for the purpose of processing the individual from the time of arrest to the time of release from supervision.

This processing information has restrictions placed on it so that such information may be used for a criminal justice purpose and only when a need for this use has been established. In other words, criminal justice agencies will be required to reexamine their use of such information in light of a "need to know" standard.

The Justice bill also provides that if a use is expressly authorized by a court order or a Federal or State statute, criminal offender processing information may be used for a non-criminal-justice purpose. S. 2963 has a similar access and use provision.

This provision should be carefully considered. It should not be subject to discovery or other attacks in civil litigation authorized by other provisions of the pending bills. I refer, Mr. Chairman, to section 14 of the Justice bill and section 308 of S. 2963.

Criminal offender record information is information consisting only of identifying data and notations of arrests, nature and disposition of criminal charges and postconviction status.

Criminal offender record information is also provided with safeguards. But here the need-to-know criteria is not employed. There is a recognition that the use of offender record information is a legitimate and universally used tool of law enforcement agencies which would not require a specific need to know criterion.

These are reasonable rules in light of criminal justice needs.

The dissemination of criminal offender record information for non-criminal-justice purposes is restricted to situations where there is a Federal or State statute or an executive order which expressly provides for such use.

Your bill limits non-criminal-justice dissemination to conviction records where there is a State or Federal statute expressly authorizing such use.

When an arrest has not led to a conviction or other disposition, section 8 of the Justice bill prohibits a dissemination to a non-criminal-justice agency, except in specifically defined circumstances.

We support this provision over the one provided in S. 2963, which would limit arrest records to employment purposes at a criminal justice agency, and, where the particular arrest data is used to commence or adjudicate criminal proceedings.

This is too narrowly drawn. Arrest data is needed by a criminal justice agency for many purposes. We are in agreement that arrest data not followed by a conviction after a prescribed period of time should not be used for non-criminal-justice purposes.

However, there is a different capacity to evaluate such information existing in the law enforcement area, as opposed to the non-law-enforcement area. A law enforcement official is trained to interpret and use such information. To deprive him of a necessary tool where the element of damage is minimal, would be an unjustified limitation.

With respect to the sealing of records, the provisions for outdated criminal justice information in the two bills have the common element of removing such material because it no longer has sufficient value to warrant retention.

However, S. 2963 goes beyond the sealing of records and requires purging, so that there would be no trace of the information, or even an indication that such information was ever compiled.

It should also be noted that S. 2963 sets forth no criteria for a determination as to when a record should be purged rather than sealed.

S. 2963 uses the felony/nonfelony distinction to calculate the period of time that must elapse before a record is sealed. The Justice bill refers to imprisonment in excess of 1 year, or conviction of an offense for which the maximum penalty is less than 1 year.

The latter is preferable language, as it would be technically very difficult for an interstate system to keep records of every jurisdiction's felony and nonfelony classification in order to be aware when a proper period of time had elapsed for a sealing or purging of records to go into effect.

I cite as an example, Mr. Chairman, the criminal statutes of the State of New Jersey, where there is no definition of felony at all. There are two categories of offenses: major misdemeanor and minor misdemeanor. The breaking point is 3 years of confinement before the major misdemeanor sentence would be imposed, so you can see where your classification could cause some complications.

It is also important that the agency directly responsible for compliance provide notification to all systems when records are corrected, sealed, or updated through the inclusion of dispositional information.

Although we support fully the sealing provision in the Justice bill, we would suggest that an additional provision be added so that when the individual involved is subsequently arrested for a crime, there is a provision for his records to be reopened for the purpose of prosecution and disposition of that offense.

If the arrest does not terminate in a conviction, the records should be reclosed pursuant to other provisions of the bill. If a conviction does result, then, of course, the records would remain open.

This could probably be accomplished by the provision in S. 2964 that allows access to sealed records upon a specific determination of the Attorney General.

However, it should be statutorily provided. It should also be appropriate for sealed records to be made available to criminal justice agencies for their own employment checks and to check fingerprints in sealed records for identification purposes.

With respect to completeness and accuracy, section 7 of S. 2964 is a most important provision. It is necessary that all criminal justice agencies, including courts and corrections, assume responsibility for completeness and accuracy of criminal offender record information.

Each agency has or should have the responsibility to contribute offender record information as an individual progresses through the system, or, in many cases, Mr. Chairman, does not progress.

We are not only speaking of the police information systems. We must think in terms of courts and corrections as well. Existing court systems are often inadequate. As stated by the National Advisory Commission on Criminal Justice Standards and Goals in its court report, courts have not kept pace with technological advances in data processing. This is a critical problem in getting dispositional entries. A model is now being developed for State court information systems in a joint project by the Institute of Judicial Administration and Project SEARCH. This is a $2 million developmental effort involving State court administrators and other officials from 11 States. This is a very substantial effort about which LEAA is quite excited.

Only the complete cooperation and action by each criminal justice agency involved will insure accurate and timely records. The Justice bill recognizes this and requires that necessary steps be taken to achieve such compliance.

In some States, this may necessitate the enactment of State laws to make reporting mandatory by all criminal justice agencies.

This is essential, not only to protect individual rights, but also as a tool of criminal justice planning, management, and evaluation. Complete recordkeeping, such as the offender-based transaction statistics system contemplates, makes possible the description of system dynamics in a timely and comprehensive fashion.

Next, with respect to the right of review by the individual, each pending bill makes a provision that the individual about whom a record is kept has the right of inspection.

The bills exempt intelligence information from such examination. However, S. 2963 allows the inspection of the correction and release information. Such information includes reports by corrections personnel and others knowledgeable about the subject individual.

The knowledge that it can easily be reviewed would hamper the free flow of information. For this reason, the Justice bill would allow review by the individual, of offender processing information, only pursuant to a court order or statute. If processing information is being utilized during a revocation proceeding, for example, it would in my view be proper for an individual to review the information or portions of it, at the judge's discretion, for the purpose of challenge or correction.

But, because of the limited use of such information, and the often sensitive sources from which it is derived, a right of review at all times would not be in the best interest of law enforcement.

The pending bills contain similar administrative remedies and sanctions. We concur in the intent of these provisions. We would point out an area in S. 2963 which might create problems.

Section 307 provides that if the Board finds a violation of the act, it may terminate the use of Federal funds for the operation of the system. This section does not take into account LEAA's own authority with regard to fund cutoff. Under our act, specifically section 509, prior to any fund cutoff, LEAA is required to follow its own hearing and appeal procedure.

I would suggest that this administrative sanction be reconsidered in light of LEAA's present fund cutoff authority. Where court action is concerned, it is our strong recommendation that in the case of a State operation, remedies for violations should be pursued through the State courts, rather than the Federal courts, and only after administrative remedies have been exhausted.

It is also important that a defense of good faith reliance upon the provisions of the statute or of applicable regulations be available in a criminal action or civil action for damages.

This is provided in the Justice bill but not in S. 2963.

We support the provision of the Justice bill that would require management control of a criminal information system in a criminal justice agency. This is necessary to guard against unauthorized access to data and also necessary to protect system security.

We support the provisions of S. 2964 which vests regulatory authority in the Attorney General. It is necessary to have uniform regulation of information and intelligence systems.

However, we recognize that there are opposing views on this issue, both with respect to Federal and State systems. If this subcommittee gives consideration to other approaches, we offer the following observations:

Your bill, Mr. Chairman, proposes a three-tiered board and advisory committee structured to regulate and even operate the system. A Federal board could be a workable alternative for Federal systems. But we would recommend, based on 5 years of experience with Project SEARCH, that a group of State representatives, designated by the Governors of the several States, would be an appropriate and effective vehicle to regulate interstate systems.

The group should be created by Federal law and given a Federal charter so as to be able to promulgate and enforce meaningful regulations and controls over systems within their jurisdiction. Project SEARCH has fully demonstrated that State representatives can manage complex technical and policy issues and systems of this kind.

I believe also, Mr. Chairman, that this kind of administrative structure has been recommended with favor by ACIR.

With respect to intrastate systems, this should be a matter of State legislative policy, consistent with minimum standards set forth in the Federal legislation, as is the case in the regulation and control of electronic surveillance.

The SEARCH model bill provision for a State control board, which is contained in S. 2963, and has been adopted in Massachusetts, might be an appropriate solution.

However, we would not object to the recently passed California law which places regulatory powers in the State attorney general. But, this is a matter best left to the states.

The Justice bill sets an effective date of 1 year after enactment. Consideration should be given to making some provisions of the act effective 2 years after enactment.

This time frame is suggested because of the difficulty we perceive in the ability of some States to conform in a shorter period of time. Privacy considerations cannot be tacked on to an automated system, but must be integrated into the software design.

Special attention must be given to designing facilities which house criminal justice information files to reduce the possibility of physical damage to the information. Steps which would be taken include having facilities with heavy duty, nonexposed walls, perimeter barriers, detection and warning devices, and watertight facilities.

This takes time and money. To assure system security and accuracy and completeness of records, audits must be conducted regularly. Audit trails will require added recordkeeping responsibility.

Mandatory reporting will require that all criminal justice agencies, including courts and correctional authorities, contribute accurate and timely data on court dispositions and other steps in the criminal justice process.

Those criminal justice agencies with inadequate or obsolete reporting systems must be given time to bring their data processing up-to-date. Programers, computer operators and others working in the area must be trained. This is in the context of automated systems. Where manual systems are concerned, in many cases, the difficulties would even be more severe. In fact, 2 years may not be enough to respond to these new requirements.

Mr. Chairman, thank you for allowing me the opportunity to express the LEAA's views on these comprehensive legislative proposals. I would be pleased to answer any questions you or your committee would wish to direct to me.

[The prepared statement of Mr. Velde follows:]

PREPARED STATEMENT OF RICHARD W. VELDE, DEPUTY ADMINISTRATOR FOR POLICY DEVELOPMENT, LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

Mr. Chairman, I appreciate the opportunity to appear before your subcommittee today to present the views of the Law Enforcement Assistance Administration on the proposed legislation before you to regulate the collection, storage and dissemination of criminal justice data.

Long standing customs and practices are now being challenged. This has led to uncertainty that is impeding the orderly development of criminal justice information systems. It is most appropriate and necessary therefore that definitive uniform standards covering the collection, maintenance and dissemination of all criminal justice information be established. The Law Enforcement Assistance Administration supports the concept that the collection and exhcange of criminal justice data is vitally needed by criminal justice agencies to reduce crime and to improve the quality of justice. It is equally our view that this need must be consonant with the requirement that the interests of the individuals about whom the information refers be safeguarded.

Mr. Chairman, the legislative proposals before you are comprehensive and in many respects quite similar. S. 2963 demonstrates your commitment, Mr. Chairman, to the issue of security and privacy of criminal justice data. The bipartisan support of the members of this subcommittee is evidence by the sponsorship of both S. 2963 and S. 2964 and I am pleased to be here to comment on the pending bills. However, before beginning, I would like to review the Law Enforcement Assistance Administration's involvement in the area of criminal justice information systems.

Quick and accurate data is vitally needed in the day-to-day operations of criminal justice agencies. The President's Crime Commission in its 1967 report "The Challenge of Crime in a Free Society" stated that:

"An integrated national information system is needed to serve the combined needs of the national, State, regional and metropolitan or county levels of the police, courts and corrections agencies, and of the public and the research community. Each of these agencies has information needed by others; provides a means for collecting it, analyzing it, and disseminating it to those who need it."

LEAA and its predecessor agency have funded a large number of programs for the automation of criminal justice records. Our investment, including block and discretionary funding, is more than $300 million dollars through FY '73. In 1966, for example, the Office of Law Enforcement Assistance, the predecessor of LEAA, provided $97,000 to the FBI to conduct a feasibility study and do design work on a computerized national crime data system. This system became the National Crime Information Center (NCIC). The NCIC system was given more than $10 million during the ensuing years. Tens of millions of dollars more have been spent by the States in the support of State systems linked with the NCIC.

In 1968, LEAA was created by the Omnibus Crime Control and Safe Streets Act with a mandate to assist State and local governments improve their criminal justice systems, institutions, facilities, and programs.

From its earliest beginning, LEAA began to receive grant applications from States seeking funds to develop State criminal justice information systems. LEAA conducted an initial review of State capabilities and determined that there was a central need for the development of a uniform format for criminal history records, one that could be used by all elements of the criminal justice system—police, courts, and corrections. Project SEARCH resulted from this review. SEARCH, an acronym for System for Electronic Analysis and Retrieval of Criminal Histories, began on June 30, 1969. It was designed to develop a prototype computerized criminal history exchange system. Its goal was to provide participating criminal justice agencies with information about offenders in a matter of seconds.

It attempted first to develop common data elements for the automation of criminal histories, then to have an on-line demonstration of the interstate exchange of this data. SEARCH demonstrated that the capability existed to make statewide and nationwide criminal coordination possible through State and local efforts. The success of SEARCH demonstrated forcefully that State governments could assume responsibility for complex technical programs and perform with efficiency and dispatch.

In 1968 there were just ten States in this country with some kind of State-level criminal justice information systems. By 1970 this had increased to 30 States, and today all States have operational systems on the State level serving at least one component of the criminal justice system.

Project SEARCH has been involved in the development of security and privacy policy in criminal justice information systems since the project began. The original members of the Project Group that directs SEARCH activities were sufficiently aware of the implications of a national coördinated system for the exchange of criminal histories to cause security and individual privacy rights to be among the first issues addressed in the project. Almost immediately after the formation of the project, an ad hoc committee was formed to consider the extent to which Project SEARCH should address these issues. The ad hoc committee was transformed into a standing committee on security and privacy within the first three months of project activity, and it is still active.

The original Committee on Security and Privacy stated a series of objectives in the fall of 1969: (1) to develop a code of ethics that could be followed by participating States in the exchange of computerized criminal offender record data, (2) to prepare security and privacy regulations governing the operation of the prototype criminal history system to be developed by Project SEARCH, and (3) to conduct a thorough study of the security and privacy implications of a national computerized criminal offender information system, leading to policy recommendations governing the establishment and operation of such a system.

The committee soon developed a basic (minimum) set of regulations governing the operation of the prototype criminal history exchange system. These regulations were adopted by the Project Group and incorporated into the operations manual for the prototype system. They included provisions for the control of data entered into the system, access to the system via terminals during the demonstration period, and restrictions on the usage of data obtained from the prototype system.

LEAA's interest in privacy has by no means been limited to our involvement with SEARCH. In January 1971, for example, a notice was sent to all State planning agency directors to make them aware of their privacy responsibilities in funding organized crime programs. Also in 1971 the following special condition was added to the award which funded each State's comprehensive plan:

"The grantee agrees to insure that adequate provisions have been made for system security, the protection of individual privacy and the insurance of the integrity and accuracy of data collection." Similar language was subsequently incorporated into LEAA's guidelines as a "general condition" applicable to all grants from 1971 to date.

In May 1972 LEAA took another significant step in the area of security and privacy; it established the Comprehensive Data System (CDS) program. This is a $40 million discretionary grant program now in its third year of implementation. At the inception of CDS, Project SEARCH's recommendations were fully incorporated into the CDS guideline. The present guidelines also require participating States to fully address the recommendations of the National Advisory Commission on Criminal Justice Standards and Goals report. It is important to note here that all of LEAA's discretionary and categorical funds for criminal history systems are funded through the CDS program. Thus all funds over which we have direct control are now subject to these restrictions.

The major LEAA effort to encourage the completeness and accuracy of criminal histories while placing limits on their dissemination has been the Offender Based Transaction Statistics/Computerized Criminal History module of our Comprehensive Data System developed by our National Criminal Justice Information and Statistics Service. This program was established in recognition of the State's need for statistical data for program planning and evaluation. The ability to track an arrestee from the time of arrest until he leaves the criminal justice system permits the development of statistical data that describes the working of the criminal justice system in precise detail.

The recording of such official transactions when coupled with proper identification of the individual is precisely the same information needed to develop a criminal history record.

LEAA discretionary funds now going into the development of the FBI's computerized criminal history (CCH) effort are channelled through the CDS program.

The CDS guidelines require CCH grantees to adhere to the rules defined in SEARCH's Technical Report No. 2. Recommended System Policies Related to Security and Privacy contained in this report were entered in the Congressional Record by Senator Kennedy during debate on Section 524 of the 1973 Crime Control Act. The CDS guidelines also incorporate the Model State Act and the Model Administrators Regulation proposed by SEARCH.

Several States have already adopted the Act or legislation similar in approach—notably California, Alaska, Iowa and Massachusetts—and bills are pending in other legislatures. The CDS program represents a major part of our privacy and security initiative during the past two years.

As of now 33 States have indicated their desire to participate in the program by submitting CDS plans. We will submit a typical CDS plan for your information. Twenty-four of these States have had their plans accepted and are now beginning to implement them. However, Mr. Chairman, I would not like to leave the impression that all of these States now have secure information systems which protect the rights of individuals. Many States are merely in the early stages of planning.

In the 1971 amendments to our enabling legislation, LEAA was directed to recommend legislation with respect to promoting the integrity and accuracy of criminal justice data collection, processing, and dissemination systems funded in whole or in part by the Federal Government. LEAA drafted legislation, which was introduced in the 91st Congress. The proposed legislation was not acted upon.

This past summer, the Crime Control Act of 1973, which extended LEAA funding authority, included an amendment requiring that the collection, storage and dissemination of criminal histories take place under procedures designed to insure that all such information is kept current therein and that security and privacy are adequately considered. Proposed regulations have been published for public comment; Public hearings are also being held. While these regulations are limited to criminal record information, they are consistent to the maximum extent possible with the legislative proposal, S. 2964 submitted by the Department of Justice. These draft regulations are attached as an exhibit to this statement.

[See appendix, Volume II.]

It should be noted that LEAA's concern for the privacy rights of individuals extends beyond the problems involving criminal histories. It was at our request that Section 524(a) was added to the Crime Control Act of 1973. This provision provides LEAA with the statutory authority to assure the protection of persons who are the subjects of statistical and research information.

In the area of criminal justice intelligence LEAA, pursuant to a specific legislative mandate in Section 301(b)(5) and general authority of the Omnibus Crime Control and Safe Streets Act, has been assisting States to upgrade and improve intelligence functions, especially in the organized crime field. Organized criminal activity characteristically cuts across the jurisdictional lines of criminal justice agencies. It involves forms of criminal conduct that are difficult to combat. In organized crime the code of silence, intimidation, and the ability to corrupt and influence require methods to respond to this difficult area of law enforcement. The creation of organized crime intelligence networks offers a resource to improve the apprehension of organized crime members. The President's Commission on Law Enforcement and the Administration of Justice emphasized that criminal justice agencies know entirely too little about the methods and organization of such criminal activities. A number of organized crime information systems have received LEAA funds. However, the agency recognized long ago the sensitivity of these systems and their potential for abuse. Therefore, we have taken great care to insure that systems we have funded respect the privacy rights of individuals.

An example of this concern is the Interstate Organized Crime Index project. This system provides participating agencies with a means of exchanging valuable information.

For this project individual privacy has been protected at many levels. First, participating agencies must be members of the Law Enforcement Intelligence Unit, which has strict membership requirements. Only after a thorough investigation is a person or agency admitted to membership. Secondly, *no* non-IOCI dissemination of data is permitted. Moreover, data in the automated system is limited to information already in the public domain, the media, etc. Information from informants and field investigation reports is not permitted to be exchanged through the index.

The final grant for the prototype system required a full evaluation with a special emphasis on security and privacy. Before any operational system is funded this evaluation will be carefully examined.

I will be submitting for the record a detailed description of LEAA's major funding efforts for criminal justice information systems.

[See appendix, Volume II.]

Now, Mr. Chairman, I will present our views on the pending bills S. 2963 and S. 2964.

The relationship between privacy and governmental information gathering is one of accommodation and compromise. The question is not merely whether public or private interests want to know, but how important it is that such interests have access to information in the light of an individual's rights of privacy. That is the underlying factor in the dissemination provisions which have been addressed in the Department of Justice bill, S. 2964.

It is important to note that criminal justice information is separated into three categories: criminal offender record information, criminal intelligence information and criminal offender processing information. Each type of data is treated separately insofar as access and use is concerned. Both S. 2963 and S. 2964 categorize different types of criminal justice information and deal separately with each.

Criminal intelligence information, except for the narrowly limited situation involving national defense or foreign policy, may only be used for a criminal justice purpose and only when the need for the use has been established by potential users.

Intelligence systems are defined to include investigative reports as well as reports of informants. Because such information requires the capability to assess the reliability of the information, it should not be disseminated outside of the criminal justice community, and it must be strictly controlled. However, S. 2963 would leave this area void of control except to prohibit the inclusion of intelligence information in an automated system. There is no provision in this bill for the regulation of manual intelligence systems. The Justice bill, however, does deal with the question of intelligence systems and, recognizing the legitimate law enforcement need for such information, sets forth stringent controls with effective penalty provisions against unauthorized disclosure or misuse. Information from the news media or other public sources should be exempt from the provisions of this bill. Law enforcement personnel should be free to gather information in the public domain, keep such records and freely exchange it without being subject to criminal penalties.

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The Justice bill also provides that if a use is expressly authorized by a court order or a Federal or State statute, criminal offender processing information may be used for a non-criminal-justice purpose. S. 2963 has a similar access and use provision.

This provision should be carefully considered. It should not be subject to discovery or other attacks in civil litigation authorized by other provisions of the pending bills.

Criminal offender record information is information consisting only of identifying data and notations of arrests, nature and disposition of criminal charges and post conviction status.

Criminal offender record information is also provided with safeguards. But here the need-to-know criteria is not employed. There is a recognition that the use of offender record information is a legitimate and universally used tool of law enforcement agencies which would not require a specific need to be known criterion.

These are reasonable rules in light of criminal justice needs.

The dissemination of criminal offender record information for non-criminal justice purposes is restricted to situations where there is a Federal or State statute or an executive order which expressly provides for such use. Your bill limits non-criminal-justice dissemination to conviction records where there is a State or Federal statute expressly authorizing such use.

ARREST NOT FOLLOWED BY CONVICTION

When an arrest has not led to a conviction or other disposition, Section 8 of the Justice bill prohibits a dissemination to a non-criminal-justice agency except in specifically defined circumstances. We support this provision over the one provided in S. 2963, which would limit arrest records to employment purposes at a criminal justice agency and where the particular arrest data is used to commence or

adjudicate criminal proceedings. This is too narrowly drawn. Arrest data is needed by a criminal justice agency for many purposes. We are in agreement that arrest data not followed by a conviction after a prescribed period of time should not be used for non-criminal-justice purposes. However, there is a different capacity to evaluate such information existing in the law enforcement area as opposed to the non-law-enforcement area. A law enforcement official is trained to interpret and use such information. To deprive him of a necessary tool where the element of damage is minimal would be an unjustified limitation.

SEALING OF RECORDS

The provisions for outdated criminal justice information in the two bills have the common element of removing such material because it no longer has sufficient value to warrant retention. However, S. 2963 goes beyond the sealing of records and requires purging so that there would be no trace of the information or even an indication that such information was ever compiled.

It should also be noted that S. 2963 sets forth no criteria for a determination as to when a record should be purged rather than sealed.

S. 2963 uses the felony/non-felony distinction to calculate the period of time that must elapse before a record is sealed; The Justice bill refers to imprisonment in excess of one year or conviction of an offense for which the maximum penalty is less than one year. The latter is preferable language, as it would be technically very difficult for an interstate system to keep records of every jurisdiction's felony and non-felony classification in order to be aware when a proper period of time had elapsed for a sealing or purging of records to go into effect. It is also important that the agency directly responsible for compliance provide notification to all systems when records are corrected, sealed or updated through the inclusion of dispositional information.

Although we support fully the sealing provision in the Justice bill, we would suggest that an additional provision be added so that when the individual involved is subsequently arrested for a crime, there is a provision for his records to be reopened for the purpose of prosecution and disposition of that offense. If the arrest does not terminate in a conviction, the records should be reclosed pursuant to other provisions of the bill. If a conviction does result, then, of course, the records would remain open. This could probably be accomplished by the provision in S. 2964 that allows access to sealed records upon a specific determination of the Attorney General. However it should be statutorily provided. It should also be appropriate for sealed records to be made available to criminal justice agencies for their own employment checks and to check fingerprints in sealed records for identification purposes.

COMPLETENESS AND ACCURACY

Section 7 of S. 2964 is a most important provision. It is necessary that all criminal justice agencies, including courts and corrections, assume responsibility for completeness and accuracy of criminal offender record information. Each agency has or should have the responsibility to contribute offender record information as an individual progresses through the system. We are not only speaking of the police information systems. We must think in terms of courts and corrections as well. Existing court systems are often inadequate. As stated by the National Advisory Commission on Criminal Justice Standards and Goals in its Court report, courts have not kept pace with technological advances in data processing. This is a critical problem in getting dispositional entries. A model is now being developed for court information systems in a joint project by the Institute of Judicial Administration and Project SEARCH.

Only the complete cooperation and action by each criminal justice agency involved will ensure accurate and timely records. The Justice bill recognizes this, and requires that necessary steps be taken to achieve such compliance. In some States this may necessitate the enactment of State laws to make reporting mandatory by all criminal justice agencies. This is essential, not only to protect individual rights, but also as a tool of criminal justice planning, management and evaluation. Complete record keeping, such as the Offender-Based Transaction Statistics System contemplates, makes possible the description of system dynamics in a timely and comprehensive fashion.

RIGHT OF REVIEW BY THE INDIVIDUAL

Each pending bill makes a provision that the individual about whom a record is kept has the right of inspection.

The bills exempt intelligence information from such examination. However, S. 2963 allows the inspection of the correction and release information. Such information includes reports by corrections personnel and others knowledgeable about the subject individual. The knowledge that it can easily be reviewed would hamper the free flow of information. For this reason the Justice bill would allow review by the individual of offender processing information only pursuant to a court order or statute. If processing information is being utilized during a revocation proceeding, for example, it would in my view be proper for an individual to review the information or portions of it at the judge's discretion for the purpose of challenge or correction. But because of the limited use of such information, and the often sensitive sources from which it is derived, a right of review at all times would not be in the best interest of law enforcement.

SANCTIONS—JUDICIAL REVIEW

The pending bills contain similar administrative remedies and sanctions. We concur in the intent of these provisions. We would point out an area in S. 2963 which might create problems. Section 307 provides that if the Board finds a violation of the Act, it may terminate the use of Federal funds for the operation of the system. This section does not take into account LEAA's own authority with regard to fund cut off. Under our Act, specifically Section 509, prior to any fund cut off, LEAA is required to follow its own hearing and appeal procedure. I would suggest this administrative sanction be reconsidered in light of LEAA's present fund cut off authority. Where court action is concerned, it is our strong recommendation that in the case of a State operation, remedies for violations should be pursued through the State courts rather than the Federal courts and only after administrative remedies have been exhausted. It is also important that a defense of good faith reliance upon the provisions of the statute or of applicable regulations be available in a criminal action or civil action for damages.

MANAGEMENT CONTROL IN CRIMINAL JUSTICE AGENCY

We support the provision of the Justice bill that would require management control of a criminal information system in a criminal justice agency. This is necessary to guard against unauthorized access to data and also necessary to protect system security. As was stated in the National Advisory Commission on Criminal Justice Standards and Goals in its report *Criminal Justice System:*

"* * * the control of and responsibility for the collection, storage, and dissemination of criminal history records lies with law enforcement agencies * * *. Lacking management control over system operators and programers, law enforcement officials cannot assure legislators that the data is properly protected."

REGULATION AND CONTROL

We support the provisions of S. 2964 which vests regulatory authority in the Attorney General. It is necessary to have uniform regulation of information and intelligence systems.

However, we recognize that there are opposing views on this issue, both with respect to Federal and State systems. If this subcommittee gives consideration to other approaches, we offer the following observations. Your bill, Mr. Chairman, proposes a three-tiered board and advisory committee structured to regulate and even operate these systems. A federal board could be a workable alternative for federal systems. But we would recommend, based on five years of experience with Project SEARCH, that a group of State representatives designated by the Governors of the several States would be an appropriate and effective vehicle to regulate interstate systems. The group should be created by Federal law and given a federal charter so as to be able to promulgate and enforce meaningful regulations and controls over systems within their jurisdiction. Project SEARCH has fully demonstrated that State representatives can manage complex technical and policy issues and systems of this kind.

With respect to intrastate systems, this should be a matter of State legislative policy, consistent with minimum standards set forth in the federal legislation, as is the case in the regulation and control of electronic surveillance. The SEARCH model bill provision for a State control board, which is contained in S. 2963 and has been adopted in Massachusetts might be an appropriate solution. However, we would not object to the recently passed California law which places regulatory powers in the State Attorney General. But this is a matter best left to the States.

EFFECTIVE DATE

The Justice bill sets an effective date of one year after enactment. Consideration should be given to making some provisions of the Act effective two years after enactment. This time frame is suggested because of the difficulty we perceive in the ability of some States to conform in a shorter period of time. Privacy considerations cannot be tacked on to an automated system but must be integrated into the software design. Special attention must be given to designing facilities which house criminal justice information files to reduce the possibility of physical damage to the information. Steps which should be taken include having facilities with heavy duty, non-exposed walls, perimeter barriers, detection and warning devices, and watertight facilities. This takes time and money. To assure system security and accuracy and completeness of records audits must be conducted regularly. Audit trails will require added record keeping responsibility. Mandatory reporting will require that all criminal justice agencies, including courts and correctional authorities, contribute accurate and timely data on court dispositions and other steps in the criminal justice process. Those criminal justice agencies with inadequate or obsolete reporting systems must be given time to bring their data processing up-to-date. Programers, computer operators and others working in the area must be trained. In fact, two years may not be enough, in some cases, to respond to these new requirements.

Mr. Chairman, thank you for allowing me the opportunity to express the LEAA's views on these comprehensive legislative proposals. I would be pleased to answer any question you or your committee would wish to direct to me.

Senator ERVIN. I wish to commend you for the excellent manner in which you have analyzed the two bills that are being considered by the committee.

Mr. VELDE. Thank you, Mr. Chairman.

Senator ERVIN. You expressed yourself with such clarity that I do not have many questions to ask.

If I understood you correctly, you made an observation about the right of a person to have a review conducted by the proper authorities for the purpose of correcting derogatory information concerning him which might have been collected.

It is my understanding that you feel this right ought not to be exercised at all times.

Mr. VELDE. With respect to the category of information that the Justice bill defines as criminal offender processing information. For example, a presentence report, or a report prepared by paroling authorities to determine whether or not the decision should be made.

My remarks do not apply to criminal history records. With proper identification the individual should have full access for the purpose of correction and up date.

My reservation applied only to the processing information. There, as you know, many times, Mr. Chairman, a judge will consider information about that individual, say from family or friends, educational authorities, or work associates, which would be of a very sensitive nature. It should be up to the judge, in his discretion, to determine whether the individual or his counsel should have access to that information as provided either by court order or State law or Federal law.

Senator ERVIN. I once had an interesting opinion in a related case. It was a case that involved the custody of children and the judge awarded custody to the mother. In his judgment, he wrote

that he was constrained to do that because of information that was conveyed to him by an officer whom he sent out secretly to investigate the matter, and not on evidence produced before him in open court. I thought this was a rather foolish thing for a judge to put into an opinion.

The Supreme Court of North Carolina unanimously adopted an opinion that I wrote holding that this was a violation of the due process clause. There might be a little bit of trouble, notwithstanding the wisdom of the course that you suggest, in sealing information from the defendant on which the judge acts to take away his liberty.

Mr. VELDE. I agree fully with that view, Mr. Chairman.

My only point here is that there should not be, in every case, an automatic right of access. It should be left to the discretion of the judge, or as provided for in State statutes, such as an appellate review law, which would set forth the conditions under which this kind of information could be made available.

Senator ERVIN. That is a point that needs some thought by the committee, and there is some considerable merit in your recommendation.

But you might run into that due process question. I am glad, however, that I misunderstood—that that observation does not apply to criminal history records.

Mr. VELDE. Yes, sir, that is correct.

Senator ERVIN. Senator Hruska?

Senator HRUSKA. Mr. Velde, I want to join the chairman in his extension of a welcome to you to this committee. We look forward to testimony from you because of your long experience in this line of legislation and national policy of criminology and penology.

I know of no one, Mr. Chairman, who knows more about the workings of LEAA and all of its related activities, and he was instrumental in the phaseology and construction of the act itself, from its inception until today.

Mr. Velde, you noted on page 13 of your statement, the need to protect criminal processing information from discovery in civil litigation. Would you care to elaborate on how such a situation would arise and the reasons that it should not be disclosed?

Mr. VELDE. Yes, sir.

The same view also applies with respect to intelligence information as well. As you know, there are discovery procedures in civil proceedings, as well as criminal, and having this unrestricted authority in all civil cases, could well open up very sensitive and confidential files to discovery in suits that are frankly nothing more than just harassing techniques—harassing purposes.

In the examples already cited, pre-sentencing reports and the parole decision process, there is information that may be submitted from correctional authorities or from individuals who have knowledge about the individual. Such information if made available except under very strictly controlled circumstances as has already been suggested, would inhibit the free flow of information in this decisionmaking process.

Or, it might not protect confidential sources such as informants.

Senator HRUSKA. Mr. Velde, suppose a civil suit is based on the illegal disclosure or dissemination of certain information contained only in these files.

Does it not seem unfair to give the right to sue and then deny the individual the right to give any evidence to back up his suit for that unlawful dissemination? He would have to get into the record, would he not, in order to prove his case?

Mr. Velde. Yes, sir.

Senator HRUSKA. Is it a question of values where one must be asserted as prior to the other, and we just have to suffer the consequences?

Mr. VELDE. There is a balancing of interests there. In the case of criminal actions, our recommendation is that there would be unlimited discovery in a criminal setting, but in the civil, we are suggesting this limitation.

Senator HRUSKA. It is a factor to be considered, I am sure. Concern has been voiced by the press that the proposed legislation will limit its access to information and tomorrow we will have some witnesses on that point from the press and representatives of the press association.

Would you care to comment on this point, however?

Tell us how the press presently obtains information from criminal justice authorities?

Mr. VELDE. Yes, sir. It is largely a matter of custom in most States. There are a few States. I understand, where there are express legislative provisions with respect to records of the criminal justice system. In most cases however, police arrest blotters and court house records are records that are in the public domain and therefore are open to public inspection.

It is these sources that are most frequently used by the press in reporting the actions of the criminal justice agencies.

With respect to the pending legislation, I would refer to the sectional analysis of the justice bill, subsection (f) of section 3, which is commentary on the definition of criminal justice information.

You will note the following language. It says: "files that are not maintained in an individually identifiable manner, such as chronologically ordered police blotters and court dockets, are not considered within the scope of the act." Thus, they would not be regulated and therefore open to inspection by the press or any other member of the public.

Senator HRUSKA. Would you give me that citation again?

Mr. VELDE. It is the commentary, not the provision of the bill, but the section-by-section analysis of section 3(f) of S. 2964.

If you have the Congressional Record reprint, Senator, I am referring to page 16.

Senator HRUSKA. I have it.

Mr. VELDE. It is the upper left-hand column. I would think, Senator, that it might be advisable to codify this right of access by the inclusion of an express provision in the statute. It is important not only for the right of press access, but so the public, in effect, can act as a check and balance on the criminal justice process.

Senator HRUSKA. In that commentary that you referred to on section 3(f), the files that are not maintained in an individually identifiable manner are not within the scope of the act and therefore remain subject to inspection by members of the public?

Mr. VELDE. Yes, sir.

Senator HRUSKA. If they are segregated over a period of 10 years and placed in an individual file bearing John Doe's name, that collection would not be available?

Mr. VEDLE. It would be covered by the act.

Senator HRUSKA. It would be covered by the act?

Mr. VELDE. Yes, sir. No automatic right of access.

Senator HRUSKA. Let me ask you this. Under either of these bills does the mere fact that the police blotter information is transmitted into an automated system disqualify the book of original entry as being open to public inspection?

Mr. VELDE. Senator, I think you have hit on a very key point here. It is a fact that in many cases these police blotters are indexed according to individual in the book of original entry, and in many of the larger metropolitan jurisdictions, these police blotters are, in fact, automated.

This is an area that the committee needs to give more attention to and frankly, I do not think the Justice bill has given sufficient attention to this very sensitive and critical area.

There is a recognition that there is a right of access here, in the Justice bill, but very candidly, that is about as far as it goes. Further attention should be given to the whole matter.

I must say that there is not much treatment of the subject in the legal literature, or in legislative provisions so far. It has just been assumed, I guess, as a matter of custom or perhaps common law, that there is this right of access, that the criminal justice process should be one that is open to public scrutiny.

The history of the Star Chamber and the closed criminal justice proceedings is still remembered in our Anglo-Saxon past. This whole question was not given sufficient consideration in the context of the pending legislation.

Senator HRUSKA. When we consider the many definitions in both bills, I just wonder if we had not better scrutinize this particular point. That type of entry of criminal information has been considered public information, available to the public, whether they are members of the press or not. We should be careful that we would not, by some statutory language, undertake to say, that as soon as that information is fed into a computer or transmitted to some authority, either State or Federal for that purpose, it disqualifies that original entry from being a public document.

I do not know if that would follow. I refer to section 102 of S. 2963 where an information system is defined, whether automated or manual, operated or leased by a Federal, regional, State or local government, or governments, including the equipment, facilities, procedures, agreements, and organization thereof, for the collection, processing, preservation, or dissemination of information. A big book, or an individual card that is written into or upon, when an arrestee is brought in and certain information put on there, will fit within that definition.

Now then, as we go through that act and we say that that type of procedure, or those facilities, or that equipment are covered by the act, are we undertaking to say that we must not allow the public inspection of that record?

I do not know whether it does or not. It may come to a point where the committee would like to consider whether we should expressly say it is not our intent to disrupt that type of accessibility.

I raise that point here so it will be in the record.

Mr. VELDE. I think your interpretation of S. 2963 Senator, as I read the bill, is a reasonable interpretation and these books of original entry and the basic proceedings could well be included.

Senator HRUSKA. It includes court proceedings, and it would have to include incarceration and parole and similar records because those are considered public records—the entries themselves.

Now, on page 16 of your transcript, where you discuss the sealing provisions and you say that the records, in case the arrest does not terminate in a conviction, the records should be reclosed pursuant to other provisions of the bill.

If conviction does result, the records would remain open.

Now this could probably be accomplished, you further testified, by the provision in S. 2964 that allows access to sealed records upon a specific determination by the Attorney General, although it could be provided for by statute.

Now comes the sentence to which I direct your special attention.

> It should also be appropriate for sealed records to be made available to criminal justice agencies for their own employment checks and to check fingerprints and sealed records for identification purposes.

That sentence recognizes that there are certain purposes for which sealed records could properly and legitimately be used. I wonder if in the case of a police department, when they come across a certain course of conduct, or suspected conduct by a suspect, whether it would not be useful for them to go into those sealed records and say, in my memory—after all, machines are not the only ones that are involved in police methods, there are people. There are human people that are very valuable.

In my memory, Joe Doaks over here was engaged in something like that. I believe it might have been 7 or 8 years ago. I would like to get into those records to find out and verify it so maybe we can then make a different analysis here and a different approach to breaking the case.

Now there is a protection there. There is a way that it can be done. They can go out and arrest Joe Doaks and bring him in. Having done that, he is arrested and then they can go back into those records and break the seal and read them. That would be pretty hard on Joe if he is an innocent man because then he has another arrest to contend with.

Could there be devised some means whereby the police authorities, under those circumstances, instead of resorting to the arrest of Joe Doaks to open that seal, that sealed envelope, could be opened for limited purposes?

Mr. VELDE. In the Justice bill there is a provision that the Attorney General may, in effect, make exceptions to the sealing provision by regulation. Our suggestion is, in some of these major areas, that the provision for unsealing of records be codified in the legislation.

In S. 2963, there is a provision that a criminal justice agency, pursuant to a court order, in this case an access warrant I believe it is called, could make a sealed record available.

I would think that in considering the volume of the business involved here, it might be an unnecessary burden on the courts to require in every instance that an access warrant be obtained. But, at

least some procedure which is authorized by law or the court, should be provided for.

There should not be unrestricted access to sealed records merely to serve the curiosity of the criminal justice official who might be interested in the record. If he has a legitimate need for it, a need to know test if there is a specific criminal investigation, that should be sufficient.

Senator HRUSKA. Other witnesses have testified to the usefulness of such a resource, and to put it in the hands of the courts might be slim comfort, because crime goes on 24 hours a day, 7 days a week. Most courts do not sit between 9:30 and 10 o'clock on Monday morning to Friday, if we are lucky, and it would hamper their operations in many instances to have to go to court.

But we hope that there are other means that will protect the individual and bar the idle curiosity seeker, and at the same time, allow those records to be available.

Mr. VELDE. For a valid criminal justice purpose.

I would not want to encourage a situation, however, where there is a high volume of business, that scrutiny by the approving authority, whether it be a court or an administrative officer of some kind, be short-circuited, so that every morning at 9 o'clock he receives a stack of applications 3 feet high, and automatically stamps them. That really is not an effective solution.

It is much more effective to provide for appropriate administrative discretion on the responsible criminal justice official.

Senator HRUSKA. On the matter of sanctions where a State authority does not follow through on the law, and you say, well, we will cut off their funds. LEAA has many funds going through it and in the foreseeable future that sanction will continue as a policy.

Do you see in the suggestion that you make on page 19 that that administrative sanction be reconsidered in the light of LEAA's present fund cutoff authority. Do you see in that a problem of great difficulty?

Those two positions can be reconciled readily, can they not?

Mr. VELDE. Yes; they can.

But as the language of S. 2963 now stands, it would give the Federal board an independent right for fund cutoff without considering the regular procedures that LEAA must follow. I might add that it is just not a question of fund cutoff. In many cases there is an effective sanction as to whether or not additional funds should be provided to the receiving agency. So the original money would remain there. But, in order to continue the program or expand it, more funds would be needed. The sanction would come into play in deciding whether or not to grant additional funds.

Senator HRUSKA. The funds would be for more purposes other than the sustaining of that offending member. That cutoff, in order to be effective since the funds are so intermingled, related activities would also be affected, would they not?

Mr. VELDE. Yes, sir.

Senator HRUSKA. That is one of the difficulties.

Mr. VELDE. That would be the case in many situations, yes, sir.

Senator HRUSKA. Thank you very much for being here, and thank you, Mr. Chairman, for your patience.

Senator ERVIN. Does Counsel have any questions?

Mr. BASKIR. Yes, sir.

Mr. Velde, there has been considerable discussion in hearings and in publications about the relationship between the original Project SEARCH and the decision to transfer the authority over to the FBI in the continuation of this program under the NCIC system.

I wonder if you could summarize the history of SEARCH's original concepts and goals through the present time, in the terms of the evolution of this idea, with particular attention paid to the differing ways that SEARCH, LEAA, the FBI, and the States may have viewed the various issues that arose over the course of 4 or 5 years.

Mr. VELDE. Yes, sir.

That is no small task. This is a complex issue with a lot of history. Pursuant to a letter from you, Mr. Counsel, we have prepared a supplemental statement which goes into some detail on these matters. We have made it available, and at this time I would note that it is about a 100-page statement which goes into these matters in detail.

But just briefly let me attempt to review the major chronology orally. In the very early days of LEAA, its first year of existence, we had a limited amount of funds, $25 million action grants, total discretionary pot of $4.5 million, which in today's currency appears very small, but I think from a taxpayer's vantage point is still very large. We determined very early, based on the kinds of interest and applications that we received from criminal justice agencies, that we were going to have to marshal a significant effort to assist the States in the improvement of the criminal justice information systems.

The applications and the interest that we received were diverse. If I may say, in retrospect now, it was a very confused situation because obviously a lot of these agencies had been talking to vendors with defense or space information systems backgrounds, and were impressed by all the good things that could be done by the wonders of modern, space age technology.

We had more applications to improve information systems in that one area alone than we had discretionary funds nationally. So we attempted to define what seemed to be the most central issue or the most pressing need for development. We sought out the advice of the FBI. We were mindful of the recommendations of the President's Crime Commission and others. We made an informal survey of what we considered to be the most advanced stages of this area. From every source, what was indicated was that the central need was first to develop an automated rap sheet, criminal history record, and then to devise some means for the exchange of this information among criminal justice agencies.

Mr. BASKIR. When you speak of a rap sheet, you are talking primarily about the existing identification system that the police rely upon which mainly notes arrests with less concentration on other items?

Mr. VELDE. It is more than the identification record. It would include the significant entries of the individual's criminal career, the history.

Mr. BASKIR. Including dispositions, in other words, more than what is traditionally called the rap sheet, which concentrates primarily on arrests and perhaps is less careful about further activity throughout the system.

Mr. VELDE. In common terms, the term rap sheet is often used to cover both the history and the identification records, or in many cases you will have both combined.

So we set aside a very substantial amount of funds in that first year, $600,000, and actually had competition from interested States. Over 20 States applied. We selected the six that we thought were the most advanced and able to seize upon their existing experience and technology. This is how Project SEARCH came into existence.

Mr. BASKIR. Was the FBI a member of Project SEARCH in any form?

Mr. VELDE. There was early and very substantial consultation with the FBI on the conceptualization of the project.

Representatives of the FBI did attend the first organizational meeting, and then, because I believe of operational requirements, withdrew from further participation in the demonstration effort.

Mr. BASKIR. What was their view, the FBI's view of the idea of beginning an experiment into the computerizing of rap sheets through a State cooperative effort?

Did they withdraw because they had some disagreements, or was there some difficulty in reconciling the interests of national and State parties?

Mr. VELDE. As I recall, there was a great deal of enthusiasm and support among those officials of the FBI who were interested in the NCIC, the Bureau's automation project. I would not speculate other than the statement that I have made as to the reasons for the Bureau's withdrawing from Project SEARCH. I think perhaps you should seek an answer to that from the Bureau itself.

The Project SEARCH group was assembled. It did attempt first of all to solve this very complex problem on common data elements, what should be in an automated rap sheet. Then SEARCH began the technical experiment or demonstration to assemble the telecommunications network. The computer hardware and the software, the systems design work for the exchange of these criminal histories among systems that have very diverse internal systems, in other words, computers of different manufacturers, and different software design and so on, very complex technical issues were tackled. The project group also looked at the issue of privacy and security, and set up a standing committee very early in the game to address itself to these questions. This resulted in SEARCH Tech Report No. 2 of 1970, of which I believe the committee is aware and about which it has previously received testimony.

This pioneering work laid the foundation for the bill that LEAA sent to Congress in the last Congress, this was, I believe S. 2564, introduced by Senator Hruska, and had many features similar to the pending legislation.

The original demonstration effort on the exchange of criminal histories was completed and it was completed approximately a year later in August of 1970. A decision was made later that year by the Attorney General to give the FBI the responsibility for the operation of the computerized criminal history effort.

Mr. BASKIR. It was decided in the fall of 1970 that the experiment called Project SEARCH was sufficiently valuable to give attention to making it operational.

Is that correct?

Mr. VELDE. That is correct, and the participating States did decide that there was sufficient operational need and utility for this system so that they recommended that the system become operational.

Mr. BASKIR. Were any evaluations done of the experiment up until the time that it was decided to proceed operationally?

Did you seek some outside evaluation of the program?

Mr. VELDE. Yes, sir. There were two evaluations, one by a special evaluation group established by Project SEARCH itself, and then a second by an independent contractor.

Mr. BASKIR. Is that the DDI study?

Mr. VELDE. Yes, sir.

Mr. BASKIR. There has been conflicting opinion expressed about the DDI study.

Did LEAA consider the results of that study to be sufficient to base the decision to go operational?

Mr. VELDE. We were more impressed with the evaluation effort of the SEARCH group itself.

Mr. BASKIR. SEARCH, of course, being the group that had created the experiment.

Mr. VELDE. That is correct. Although it would appear that it might be self-serving on its face, this was not the case. We think the technical quality of the SEARCH evaluation was superior to that of the independent contractor.

Senator HRUSKA. Mr. Chairman, would counsel yield for just a moment?

Mr. BASKIR. Yes.

Senator HRUSKA. There is a bill on the floor, Mr. Chairman, where my presence will be required as to its management on the floor.

There are two witnesses here that I would like to briefly comment about with my remarks and to appear by unanimous consent in the appropriate place in the record.

Senator ERVIN. Yes.

Senator HRUSKA. Mr. Richard Wertz is here of the National Conference on Criminal Justice Administrators. This association has done a world of good in this area that we have been exploring and generally in the field of law enforcement. It is down to earth and founded on a firm foundation. They meet, they consider and they report, and hold a liaison between official authorities and their own organization. That is highly commendable, and Mr. Wertz is particularly well informed. He will make a splendid witness.

The second witness to whom I call attention is Mr. Richard Andersen, chief of the Omaha Police Department, my city and my police department when I am in the confines of that municipality. We are proud of Mr. Andersen. He is an excellent chief. He is a good policeman. He is well informed. He keeps current. He is a compassionate fellow, but if necessary, he is a disciplinarian when a disciplinarian is needed. So far we have been very happy, Mr. Chairman, that whenever Mr. Andersen has been approached by others who would like to give him an increased preference in his profession, he has preferred to stay in Omaha. We hope he does that for a long time, but he will bring a grassroots report from the field of policing which will be valuable to our deliberations.

With that, may I be excused, Mr. Chairman?

Senator ERVIN. We are sorry to lose you because you are doing such fine work with the committee, but we know you will return as soon as you can.

You may continue, Counsel.

Mr. BASKIR. In terms, then, of the decision to go operational with the SEARCH idea, you had the DDI study with which I gather from your remarks that you were not totally happy, and the SEARCH group itself in its own evaluation.

Did LEAA ever at this period feel the need of doing a major evaluation of the whole idea of computerizing rap sheets in the terms of what the experiment has shown, with attention to at least two subjects.

One, what would be the overall cost of computerizing this within all States or a great number of States, in terms of what the State or Federal Government would be required to pay, and two, in committees of this type of a national project which conceivably might be on the order of the Interstate Highway System in terms of the great changes that would be occurring in the criminal justice system?

Was any attention given to an evaluation or a study which would pinpoint what parts of the criminal justice system would have the primary interest in using this, how the information would be gathered, and whether indeed the costs that would be involved would be matched by the usefulness of this development?

I am now talking about this 1970 period, the second half of 1970. Were there any studies along these lines done?

Mr. VELDE. LEAA itself conducted a rather thorough survey about the existing State of the art of the criminal justice information systems. We sent either consultants or LEAA employees to every State to do an on-site survey. For example, they literally took a yardstick and measured the volume of criminal history files. Our rough rule of thumb estimate was that the States at that time held about 18 million criminal history files at the State level, and these were increasing by a rate of about 7 percent a year.

The SEARCH experience was that it cost anywhere from $2 to $5 apiece to convert the manual criminal history records to the automated format. We further estimated that there might be a range from 4 million to 5 million of the potentially most active criminal histories that would actually need to be converted to the format. In other words, not every one of these 18 million records would or should be converted, either because of their age, passage of time or the kind of offense that was involved.

This survey and the cost data from Project SEARCH gave us an indication of what the conversion costs would be. We also had a pretty good idea of what the interstate and central index costs might be, and we considered these to be somewhat modest.

Mr. BASKIR. Was that information submitted in your response to the subcommittee in terms of your survey of existing files?

Mr. VELDE. The 1970 survey, no.

Mr. BASKIR. Could you supply that?

Mr. VELDE. We could supply that and we could supply the results of a followup survey that we conducted in the summer of 1972.

This was on a contract to a group called NASIS, the National Association of State Information Systems, specialists, I believe. I am not exactly sure what the acronym stands for.

This was also a thorough survey of State and local information systems, including file content. We could make both of those studies available.

To conclude, we did have for our planning purposes good estimates of what the system cost eventually would be. We knew from the experience and buildup of the NCIC system that this would take several years to accomplish. We felt in the plan and projected funding levels for LEAA, that there would be sufficient Federal funds, and we anticipated additional State and local resources would be allocated to support the developmental costs and operational costs of a national system.

Mr. BASKIR. In regard to the response that you submitted yesterday evening, which was too bulky to digest between then and now, do I understand that you have recently awarded a grant to develop a much more technical cost analysis system for these projects?

Mr. VELDE. Yes, we have this past summer, not only with respect to the automation of criminal histories, but with respect to other kinds of information systems as well. This is about a $100,000 grant to a nonprofit group located here in Washington specializing in this kind of activity, and I believe that their work product is due the latter part of this year, probably November.

I am sorry. My associates tell me it was $250,000.

Mr. BASKIR. This will give you the methodology and mechanism on how to determine costs?

Mr. VELDE. It will give us some cost estimates, typical cost estimates, not necessarily the final design costs.

Mr. BASKIR. In your brief review, you mentioned the fact that there are some 18 million files within the States. Perhaps 4 million of them might be the subject of conversion to computer systems, with an increase of some 7 million each year.

Mr. VELDE. Seven percent of the 18 million.

Mr. BASKIR. Did you also make an estimate of the Federal files system, criminal files system, or the Federal caseload increase as a comparison to this 18 million or 7 percent?

Mr. VELDE. No, but we were informed that the Federal files were roughly the same size as the State and local files, about 20 million.

Mr. BASKIR. In terms of current caseload?

Mr. VELDE. The total file content of criminal histories held at the Federal level.

Mr. BASKIR. Can you make an estimate that would compare, let's say, the State caseload in a year as against the Federal, and also get some interstate crimes to get the approximate proportion of the content of this nationwide system about which we are talking?

Mr. VELDE. You have to understand that the Federal holdings of criminal histories for the most part, the overwhelming part are records of State or interstate offenders who are not Federal offenders per se. The Federal offender file system is relatively very small. Roughly about 40,000 to 45,000 Federal offenders come into the Federal criminal justice process every year.

In contrast, about 1½ to 2 million offenders come into the State and local systems every year, which require the development of a criminal history file. Of this 2 million universe, about roughly 30 percent of those are described as interstate offenders who are active in more than one State jurisdiction. The other 70 percent are what might be

called intrastate offenders since their criminal career is confined to one jurisdiction.

Mr. BASKIR. Of that 30 percent, quite a large portion of the 30 percent might be in interstate regions, the New York metropolitan area, Washington metropolitan area, other metropolitan areas that straddle State lines.

Mr. VELDE. Yes, or they might be active in two or three adjoining States. The one exception to that might be along the east coast where there seems to be considerable movement between New York and Miami, for example.

Mr. BASKIR. The energy crisis might cut down on that.

Mr. VELDE. It might cut it down somewhat, yes, sir.

Mr. BASKIR. One more question before we move on to another area. In terms of your evaluation of the 1970–1971 study, was some evaluation made of the portions or the individual parts of the criminal justice system that might have the greatest use for computerized criminal histories?

I ask this question because it seems a number of the issues raised by this legislation may turn on where we think the greatest usefulness for this information will lie within the criminal justice system. Presumably it would be considerably cheaper if we were concerned primarily with police use; for then, only arrests might be sufficient. By contrast, if we are talking about sentencing and corrections, we would want much more complete information, and it would certainly be worth the cost when it would be legislatively valid to obtain dispositions and police use would be minimal.

I wonder if you could give us some feeling or perhaps relate some of the studies with respect to the usefulness of this information to the various parts of the criminal justice system?

Mr. VELDE. I do not think that there has been anything that you could describe as an overall study of the usefulness of criminal justice information. I think it is widely assumed and practice confirms that information is the lifeblood of criminal justice, not only from the operational point of view, but from the standpoint of planning and management evaluation, research, and so on.

The whole development of the OBTS effort, the Offender Based Transaction Statistics, which was pioneered by Project SEARCH, was done with the objective in mind of building a timely, accurate and reliable data base as to criminal justice system dynamics.

LEAA has been investing considerable amounts of money in support of the development of the criminal justice planning process at the State level over the past 6 years. We are currently supporting this effort at a level of about $50 million a year. This has resulted in the generation of a series of comprehensive State criminal justice improvement plans.

There is an annual statutory requirement. The early sets of plans that came into LEAA demonstrated very forcibly that there was no accurate, complete, and comparable information as to system dynamics available. Therefore, we felt a very strong need for planning and research and these other related purposes to build this kind of information system and build the data base to be able to intelligently understand what was going on, who was doing what to whom.

Now, that is not addressing the question of operational needs at all

Although I know of no definitive studies in the area, it has just been assumed—and very rightly so—that it is impossible to do business without the ability to gather, analyze, and disseminate all kinds of information that is included in the scope of these bills, not just intelligence, but processing information, all kinds of information.

Consider a jurisdiction like Los Angeles, an area with a population of about 2½ million people, with a police force of about 7,000 sworn officers. There are about 650 criminal investigations held in that jurisdiction per day. There are about a quarter of a million serious offenses reported in that jurisdiction per year, under the FBI classification.

This is a tremendous workload. It generates a tremendous amount of material. Just the building of what might be called an MO file, modus operandi, is far beyond the capability of a manual system to operate, so a system that LEAA has supported named Patric, has been developed to automate this criminal investigation process and to cooperate with local jurisdictions.

That is one example of the many, many that could be cited for the need of information.

Mr. BASKIR. To summarize the system, I gather it is designed to follow individual offenders through the system from the first contact to after their release, and then some?

Mr. VELDE. Yes, sir.

Mr. BASKIR. It is designed to assure that as this man moves through the various parts of the criminal justice system, they report their actions with respect to him to some central place. You can certainly understand what has happened to them, as you say, as he goes through—who has done what where and in what respect.

I guess the eventual goal being that the information that you get about a man, John Doe, would be pretty complete. I guess the goal is to make it complete in terms of his course through the system.

Certainly a requirement in legislation, to the greatest extent possible, is that information should be complete of a man's travel through the criminal justice system. It would not only be incompatible with OBTS but it would be perfectly consistent were the OBTS system with this idea of complete reporting pursued in the State information systems, then you could write legislation which assumed and required that this kind of information was gathered and collected and made available so if and when anybody has information about it you would get everything, not just portions of it.

Is my understanding correct on that?

Mr. VELDE. That is correct, but I should make two observations. First, the OBTS system, one of the major purposes is to develop common data elements so that data can be collected and assembled that is comparable from one jurisdiction to another, not only within the State, from an individual State, but from State to State as well.

Second, it is important to understand about OBTS that it generates aggregate statistics. The data that are produced are not traceable directly to a particular individual. It represents, rather, counts of how many inmates were processed in a jail, in a given day, or a week, or a period of time. How many cases were processed by a prosecutor's office, and so on.

It is not traceable to a particular individual, so you do not have the same question of the individual rights of privacy in the OBTS that

you do in automated rap sheets. It is a secondary set of statistics based on the automated criminal history but generated in such a fashion that you cannot trace an OBTS data set back to a particular individual.

Mr. BASKIR. The system would be a direct beneficiary of this process because any criminal history would indeed have all the information about an individual?

Mr. VELDE. That is correct.

I might just continue my response to your earlier question about what Project SEARCH has done. Since the original demonstration was completed for the development of the automated rap sheet, and its exchange, SEARCH has been engaging in a series of other efforts in the development of criminal justice technology for information systems.

For example, they have explored the uses of satellite telecommunications, whether or not it should be feasible for use in criminal justice applications. The attempt to scan fingerprint images on an automated basis has been the subject of Project SEARCH's concern.

More recently they were involved in two very significant and substantial projects for the development of what may be called a court's information system, and second a prisoner accounting system, to automate information systems processes in the courts and the correctional setting.

Project SEARCH has expanded its activities and its interests somewhat beyond the original development of the criminal history effort.

Incidentally, in the supplemental information that was submitted on page 6, we do have a complete breakdown of the projects that SEARCH has undertaken. The total investment in SEARCH now is about $12 million.

Mr. BASKIR. Thank you.

Mr. GITENSTEIN. Mr. VELDE, I would like to follow up on a couple of questions here.

Would you say that it would be fair to conclude that LEAA's policy in the development of information systems—and I am speaking now of its work with NLETS, its work with Project SEARCH and the development of CCH Systems, and its work with IOCI—is to develop systems that are essentially State-based, on files that are held on a State level where the users themselves attempt to finance the system so that they are not dependent upon the Federal Government for funding for the rest of their lives?

Would that be a fair statement?

Mr. VELDE. Yes, and in the information setting, that is the basic philosophy of the LEAA. We are in the business to assist State and local governments with the development of their own systems. We do not want to dominate, control, or operate them for the States.

Mr. GITENSTEIN. Would you say that it is Federal policy that the Federal Government should encourage the development of systems that the States themselves can continue to finance on their own in particular so the users are financing their own operations?

Is that a fair statement?

Mr. VELDE. I do not know if I would necessarily concur with your value judgment that that was an ideal arrangement. I think from the standpoint of the development of Federal funding financial assistance programs. it is a very realistic method of arranging, because Federal funding efforts come and go and have come and gone.

Furthermore, the basic responsibility of our criminal justice rests in State and local hands under our Federal system.

The Federal criminal justice authority is very narrow and limited. The Federal enforcement and judicial and correctional agencies are a very small part of the Nation's total system of criminal justice and it was one of the basic premises of our enabling legislation that there should be Federal assistance, but not domination and control.

Certainly we have attempted to carry out that philosophy in the information systems effort and I think Project SEARCH is a prime example of that.

In the very early days of putting this project together, we were faced with what now, in retrospect, turned out to be sort of a watershed decision. Should this capability—should this technical expertise and this know-how, be assembled at the State level? Or should it be assembled at the Federal level, in-house and at LEAA?

We decided that it should be assembled at the State level.

Mr. GITENSTEIN. The advantage to that is that the States, if they run the files, and if they are the center of the operation, are responsible in terms of not only financial responsibility, but also in terms of policy control. They can control their own efforts and that is a more satisfactory relationship.

Mr. VELDE. Yes, sir.

Mr. GITENSTEIN. The NLETS system was essentially a consortium of users where each user paid a rental fee? Is that not right?

Mr. VELDE. You are referring to what used to be called teletype, now called the telecommunications system, which is a consortium of participating State and local law enforcement agencies.

It was originally established in the 1930's and in the 1960's it was formed as a nonprofit corporation.

Mr. GITENSTEIN. It paid for its own operations?

Mr. VELDE. Its operating costs are provided by the participating agencies at State and local levels.

Mr. GITENSTEIN. After the $1.5 million LEAA grant to NLETS permitting the computer to computer interface, will NLETS still be self-sufficient, and able to pay for its operations?

Mr. VELDE. The only grant to NLETS went principally for the acquisition of hardware. There is a small portion of that grant, $30,000 or $40,000, that does support salaries of the staff. But that really relates only to the installation, debugging, and initial operation of that equipment. The basic telecommunications line costs and other operational costs of NLETS are borne by the State and local governments.

Mr. GITENSTEIN. And will they continue to be?

Mr. VELDE. Yes, sir. LEAA has no plans——

Mr. GITENSTEIN. Even with NLETS, the idea is that the system, if successful, would pay for itself.

Would that not be correct?

Mr. VELDE. That surely is.

Mr. GITENSTEIN. In other words, the Federal Government will not continue to make those payments?

Mr. VELDE. Yes, sir.

Mr. GITENSTEIN. Looking to IOCI, you supplied us an evaluation of the IOCI. IOCI is an organization that is modeled after a Project SEARCH model, except it is for intelligence. Is that not correct? In a sense, it is a pointer system?

Mr. VELDE. That is correct.

Mr. GITENSTEIN. IOCI was based on the work of the law enforcement intelligence units, is that not correct? And that was essentially a private consortium similar to the NLETS, established for the exchange of intelligence?

Mr. VELDE. The effort was developed by LEIU and Project SEARCH. It was based, principally, on the technology that was assembled under the original SEARCH demonstration as applied and adopted to the particular needs of this intelligence group, that is correct.

Mr. GITENSTEIN. When the Arthur Young Co. did its survey of potential users of IOCI, the question was asked: how much would you be willing to pay for terminals? How much per month?

They came back with a number of different figures, those that had actually participated in IOCI said they would pay an average of $225 a month. Those that were not participating ran about $160.

Is that not generally what the figures were?

Mr. VELDE. I an not sure.

Mr. GITENSTEIN. I believe they are correct.

They actually found that the actual cost of operating the system, on the other hand, would be perhaps $330 or $340 a month. Does that not suggest that there is going to be about a $100 per month deficit for each user?

Mr. VELDE. One of the purposes of the IOCI demonstration effort was to determine what kind of terminal would be the most appropriate, whether it would be a simple teletype or a very sophisticated terminal, what is called a CRT, a display screen. Also involved was scrambling equipment that has a high rental cost.

Some of the disparity in the numbers is accounted for by the different types of terminals.

Mr. GITENSTEIN. Scrambling was not included?

Mr. VELDE. The cost of scrambling was looked at, but there was this disparity. LEAA has a line-item account which has been requested from the appropriations committees that could provide, if necessary, in effect, operational subsidies to maintain this program.

Mr. GITENSTEIN. What I am suggesting is that perhaps the users are not going to pay the price of the system as is suggested, and that might create some problems. It might be one way of looking at and evaluating the system.

Mr. VELDE. May I say that the IOCI system is a very limited one, in contrast to NLETS, and that a very small portion of the traffic that NLETS carries would be equivalent to the total system.

One of the alternatives that is being considered is to place the IOCI system on NLETS, if problems of security and privacy can be worked out.

Mr. GITENSTEIN. The problem with security and privacy would be that intelligence information would be flowing on the NLETS system? Is that not correct?

Mr. VELDE. No; not as the IOCI system is structured now. There is no automated flow, if you will, of intelligence information in the setting that we are talking about.

There is summary information of public records and a pointer system to intelligence files.

Mr. GITENSTEIN. That still could be very sensitive information in that you have a list in IOCI that consists of organized criminals and their associates, and some of those associates are criminal associates, some are simply associates. So that that information if it got out, would be extremely sensitive information.

Mr. VELDE. That is correct.

Mr. GITENSTEIN. To get a name on the system, there has to be a reasonable suspicion that the person is either a principal criminal associate, or a criminal associate.

Mr. VELDE. That is correct, but may I say that if the IOCI system were totally a dedicated one, with its own central index, hardware and its own dedicated telecommunications network, a complete duplication of other existing systems, there would be a substantial question of the cost effectiveness of the continued system, as these reports indicate.

But, if it is shared, to a certain extent, with a network like NLETS or NCIC, although I do not believe that the Bureau would approve of that kind of a system in NCIC, the cost would be reduced considerably.

Mr. GITENSTEIN. Then you would have security problems?

Mr. VELDE. Yes, but you also have security problems with criminal histories.

Mr. BASKIR. Excuse me, let me interrupt to ask, you say the information was public record information?

Mr. VELDE. Yes, the information that is currently in the index of IOCI.

Mr. BASKIR. What do you mean by "public record"?

Mr. VELDE. This is information in the public domain, including State laws and corporation records, who has an interest in a corporation, land records, who owns property, or who owns a car, newspaper clippings, reports of congressional inquiries like the McClellan hearings, information you could go to any public source to obtain.

Mr. BASKIR. The fact that it's a newspaper article or a congressional hearing does not make it so.

Mr. VELDE. That is true. I hate to concede that point. In some cases that is true.

Mr. GITENSTEIN. I understand it is possible that someone who represented organized criminals, to a large extent, might be considered an associate?

In other words, a lawyer who represents an organized criminal might be an associate?

Mr. VELDE. That is a possibility.

Mr. GITENSTEIN. Sam Dash, when he was in Philadelphia, defended an organized crime figure. Might he appear in the IOCI as an associate?

Mr. VELDE. That is conceivable, but not very probable in Mr. Dash's case.

Mr. GITENSTEIN. Is it possible that very reputable attorneys would appear in the IOCI?

Mr. VELDE. Yes.

Mr. GITENSTEIN. If that information was on the NLETS system, it might present problems in terms of security?

Mr. VELDE. It might, conceivably, from a theoretical point of view. But when you look at a national telecommunications network with a high volume of message traffic, the ability of an agency that is not either sending or receiving a particular message, to first of all learn of its existence, and to successfully intercept that message in the era of high speed telecommunications, really becomes pretty hard to do from a technical point of view. This is especially true if you move into the area of satellite communications where you have techniques such as packet switching where the technology is such that it might take you 3 years using very high speed computer to figure out what is going on.

You are technically able to do it. But practically, not.

Mr. GITENSTEIN. My point would be valid whether it was on NLETS or whatever, even if it were a dedicated system, it is very sensitive information even though it is not files that are being transferred, just names on a list.

The fact that your name appears on a list could be extremely sensitive and embarrassing.

Mr. VELDE. It could be, yes, sir. The same is true of criminal histories, too.

Mr. BASKIR. NLETS is a transparent system in the respect that it is only a communications sytem and it does not really determine what is passing from one point to another?

Mr. VELDE. That is right. It has no central data base of its own.

Mr. BASKIR. There is no method by which you can monitor who is asking for what kinds of information?

Mr. VELDE. At the message switching center, it is able to monitor and count the volume of messages coming in from a particular agency.

Mr. BASKIR. Not what they are asking for?

Mr. VELDE. The current capacity of message traffic over NLETS is about 13,000 messages per hour.

Mr. BASKIR. No way to go back 6 days later and find out who asked what to whom?

Mr. VELDE. No.

Mr. BASKIR. If the intelligence is going, it might be impossible or extremely difficult technically to intercept messages from outside the system? Certainly there would be no way to find out if point A was asking point B about information that it did not have a right to, like perhaps IOCI furnished?

Mr. VELDE. IOCI is a pointer system. Assuming that the agency has the code and knows how to make the inquiry in which there is a great deal of security to begin with, if it has access to the pointer system. There are alternative ways of looking at it.

One of the ways that has been explored is if an inquiry comes in about an individual who is the subject of a file and the inquiring agency will receive back summary information, then agencies which actually hold the intelligence files themselves, would be notified of the inquiry.

The inquiring agency would not have any indication that any other agency held any other records. It would then be up to the agency of record to determine what, if any, information it wants to share with the inquiring agency. The inquiring agency would not have the information as to whether or not the subject had intelligence files in any other jurisdiction. That would not be handled through the automated system. It would be done on a one-to-one personal contact basis.

Mr. BASKIR. Just one last inquiry.

There is a proposal that the subcommittee has learned about for the FBI to take over operation and control of NLETS as they have now over NCIC.

Is it also that other agencies are asking and are indeed using the NLETS communication system? Other law enforcement agencies other than the FBI and other than the Justice Department?

Mr. VELDE. That is correct. Treasury agencies have made a formal request of NLETS to be allowed to participate in it. To the best of my knowledge, that inquiry is still pending and has not been finally acted on by the NLETS Board.

It has been conditionally approved, but not finally approved by the NLETS Board.

Mr. BASKIR. In addition to a difficulty of federalism in the terms of an agency of the Federal Government to have operational control over something which is primarily being used for State purposes, we also have the problem of one agency or one department in the Federal Government having operational control over an instrument that might well be used by other departments.

Would there appear to be any kind of policymaking body that would reflect all of the differing uses? I wonder what your feelings are with respect to that.

Mr. VELDE. First, with respect to NLETS and any future developments that might occur, as far as an expanded telecommunications network for State and local criminal justice, as I indicated in my prepared testimony, we believe that the Project SEARCH model, of a policy board with an executive committee, much the same as is suggested in the chairman's bill, would be a very appropriate vehicle for policy determination and regulation of this kind of system.

There is a danger, when any single agency, be it Federal, State, or local, has policy control over a network of this kind. We think this responsibility should be shared.

Mr. BASKIR. Thank you.

Senator ERVIN. I agree with your statement that what we call criminal intelligence, as distinguished from criminal history plays a very substantial part in law enforcement.

Now I take it from your statement, further, that you prefer the Justice Department bill insofar as it undertakes to deal with this subject, over the bill that I introduced because it does go further than merely providing that such information shall not be computerized?

Mr. VELDE. Yes, sir.

I believe that section 208 of your bill, Mr. Chairman, flatly prohibits the automation of intelligence systems. Our view is that these intelligence systems, in fact, now are being and have been automated and they should be automated.

They should be subject, however, to very strict control and regulation and subjected to severe criminal penalties for unauthorized use or the disclosure of the information.

I would like to submit for the record some examples of automated intelligence systems at the local, State, interstate, and even Federal level, which indicate what is being done now and how this flat prohibition would really severely limit criminal justice.

I mentioned the Patric System in Los Angeles. This is an automated system for collecting criminal investigation field reports on a daily basis, putting them in the computer, then being able to retrieve and analyze and work with them. When you have the volume that there is in Los Angeles, 650 new reports coming in every day, this is a tremendous investigative workload. It is just not physically or humanly possible to keep that vast amount of data in a manual system and to be able to do anything with it. Just to be able to find the files becomes a very significant problem. When you have the rather complicated command structure that the Los Angeles Police Department has and its surrounding geographical jurisdictions, it is really difficult. I would cite the examples of two States, Florida and Michigan, that have somewhat sophisticated, automated systems that include not only intelligence data, but criminal history data, and in some cases, criminal processing data.

In the operational setting, it is very difficult to separate the different kinds of information as far as the needs of agencies are concerned on a day-to-day basis.

Another example at the local level would be the ALERT system in Kansas City which is a regional criminal justice information system. Some of its files would be classified as intelligence under the definition of the terms we are using here.

Some of its files would be considered as criminal offender processing information. At the interstate level, we have previously discussed the IOCI, interstate organized crime index.

It means, as defined here, all criminal investigations. That covers literally a multitude of investigations, Mr. Chairman, far beyond the organized crime area. The volume of intelligence data, and its complexity today, requires and sincerely needs the advantages that automation can bring.

So this is why we prefer the treatment of the subject that is contained in the Justice bill as opposed to your approach, Mr. Chairman.

Senator ERVIN. With respect to these two pieces of proposed legislation, that have enabled you to be of great assistance to the committee, I would like to request that if there is anything that occurs to you while the committee is still considering these bills, that you communicate with us by letter any additional recommendations that you might have.

Mr. VELDE. We would be pleased to, Mr. Chairman. I think we have probably already flooded this subcommittee with material. We will keep in close touch with the progress of the hearings and if testimony does bring out any points that w el should be elaborated on, or commented on, we will be pleased to cooperate with the committee.

Senator ERVIN. Thank you very much. We are deeply indebted to you.

Mr. VELDE. Thank you very much, Mr. Chairman.

Senator ERVIN. Counsel will call the next witness.

Mr. BASKIR. Mr. Chairman, our next witness is Mr. Richard C. Wertz, chairman of the National Conference of State Criminal Justice

Planning Administrators and Mr. Lee M. Thomas, who is chairman of the legislation committee of the conference.

Senator ERVIN. Mr. Wertz, we are delighted to have you and your associate with us. Senator Mathias has asked me to tell you that he is very sorry that he could not be here; that he did not have the opportunity to be here at this time and introduce you to the committee and tell the committee something about the fine work that you have done in this area.

Mr. WERTZ. Thank you, Mr. Chairman.

Senator Mathias has been very closely involved with our program and I know he is very interested in this particular topic. We have been in contact with his staff.

Senator ERVIN. He has done some very fine work in the Senate on the Senate committees in this area, and is very much interested in this proposed legislation.

Mr. WERTZ. Of that I am sure.

Senator ERVIN. Please continue.

TESTIMONY OF RICHARD C. WERTZ, CHAIRMAN, NATIONAL CONFERENCE OF STATE CRIMINAL JUSTICE PLANNING ADMINISTRATORS, AND EXECUTIVE DIRECTOR, GOVERNOR'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, STATE OF MARYLAND; AND LEE M. THOMAS, LEGISLATION COMMITTEE CHAIRMAN, NCSCJPA, AND EXECUTIVE DIRECTOR, LAW ENFORCEMENT ASSISTANCE PROGRAM, STATE OF SOUTH CAROLINA

Mr. WERTZ. For the record, my name is Richard C. Wertz. I am executive director of the Maryland Governor's Commission on Law Enforcement and Administration of Justice.

I am appearing here today in my capacity as chairman of the National Conference of State Criminal Justice Planning Administrators.

I have with me Mr. Lee M. Thomas who is chairman of the National Conference's Legislation Committee and who is the executive director of the law enforcement assistance program in the State of South Carolina.

As I indicated earlier, we are delighted with the opportunity to present our views on both Senate bills under consideration by this committee.

As I believe you are aware, Mr. Chairman, the Safe Streets Act requires as a prerequisite that each State that intends to participate in the program develop a State criminal justice planning agency.

All 50 States and 5 territories have developed such agencies. The national conference is composed of the directors of those 55 State criminal justice planning groups, and we have, really, two purposes.

The first is to provide a forum in which the State planning agencies can assist each other in upgrading our planning and program development capabilities; and the second is to develop and present views on the national criminal justice issues of importance and concern to the entire membership, such as the one that we are here to talk about today.

We have available for you a written statement, and with your permission, I will not go through that on a line-by-line basis, but I would

like to briefly summarize about five major points of a general nature and then I would like to turn it over to Mr. Thomas, who did the work on the analysis of the two bills. He is prepared to make recommendations with regard to changes and modifications.

Senator ERVIN. That will be entirely satisfactory to the committee. Let the record show that the complete written statement submitted to the committee will be printed in full in the body of the record after Mr. Wertz' oral remarks.

Mr. WERTZ. Thank you, Mr. Chairman.

I would like to begin with five general comments, and I think, very simple comments, related to the whole idea under consideration here today.

The first is that the use of criminal justice information systems has dramatically increased in recent years. Indeed, the State criminal justice planning agencies that the national conference represents, have identified in their annual comprehensive criminal justice improvement plans, the need for more reliable and accurate criminal justice information. We feel that it is an absolute necessity for the improvement of our criminal justice system in virtually every State in the country.

Many of the criminal justice information systems that are now in use that have been developed in the last 2 or 3 years are beginning to have a very positive effect on the efforts of our criminal justice agencies to both deter crime and to handle persons accused of crime in an efficient and fair manner once they enter the realm of the criminal justice system.

Criminal justice information systems are effective tools in our efforts to do a better job in crime reduction and a better job in conducting the business of our criminal justice systems. Because the criminal justice systems deal with people, and because they are run by people, currently with no controls and guidelines, they can be abused.

And the constitutional privacy of citizens can be violated. The members of the conference's executive committee, I think, are particularly concerned about the access to many criminal justice information systems, of both non-criminal-justice public agencies and probably of more concern, private agencies.

Too many people have access to the files of criminal justice agencies. Specifically, it is our position that uniform controls should be placed on the collection, storage and dissemination of information within the criminal justice sector of government, at the Federal, State, and local levels.

These controls must protect the right of privacy which is fundamental to every citizen, but, at the same time, securing and allowing criminal justice agencies the access and use of these systems so that they can effectively and fairly do their job.

We feel that the proper forum for initiating such controls on criminal justice information systems is the Congress, through its legislative powers. We think both bills under consideration adequately outline the authority of Congress to become involved in this area. We feel that because the administration of criminal justice is primarily in this country a State and local responsibility, that the States and localities should have a very strong voice in any controls or guidelines that are

developed, especially as they relate to the systems the States have prime responsibility for.

In his remarks, Mr. Velde indicated his confidence in the ability of the States and units of local government to adequately carry out a responsibility like this. He based his confidence, I believe, on the experience of Project SEARCH and the very many other efforts that are going on at the State and local level to improve the criminal justice systems of our country.

We have to very strongly agree with that contention. We feel that the States, and particularly the agencies represented by our conference, are very much aware of the problems of security and privacy and very much willing to begin to come to grips with it in a fair and honest manner.

And we believe that both the Senate bills under consideration by this committee are a step in the right direction.

As I indicated, Mr. Chairman, Mr. Thomas who is chairman of our legislative committee, which has representation from each of the 10 Federal regions in the country, has, with his committee, been involved in the detailed review of both bills. And, with your permission, I would like to have him give you our specific comments.

[The prepared statement of Mr. Wertz follows:]

PREPARED STATEMENT BY RICHARD C. WERTZ, CHAIRMAN, NCSCJPA, AND EXECUTIVE DIRECTOR, GOVERNOR'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, STATE OF MARYLAND, AND LEE M. THOMAS, LEGISLATION COMMITTEE CHAIRMAN, NCSCJPA, AND EXECUTIVE DIRECTOR, LAW ENFORCEMENT ASSISTANCE PROGRAM, STATE OF SOUTH CAROLINA

During recent years the United States and its territories have experienced rapid growth and tremendous expansion in the use of automated data systems. An increasingly large part of this use has been devoted to the collection and storage of information about people. The ease and rapidity of data retrieval has greatly increased the need for some meaningful controls to be placed on the dissemination of this information, as well as its collection and storage. If such computerized information systems, both in the public and private sectors, are allowed to grow unchecked, with no control on their use, then a citizen's constitutionally protected right of privacy is indeed lost. Today, the very mechanism which has been charged by society with the protection of these rights, the criminal justice system, is in the process of rapid change as a result of the new computerized technology.

The potential impact of computerized information systems on our criminal justice system cannot be underestimated. The collection, storage, and rapid dissemination of criminal offender data is currently having a positive impact on the apprehension of criminals throughout our country. The utilization of additional criminal justice data in these systems will provide significantly increased capabilities for crime deterrence, judicial caseflow management, rehabilitation programming, and comprehensive system planning.

It is obvious that there are major advantages and disadvantages for society as a result of the development of automated criminal justice information systems. Through the development of fair, well founded controls, society can benefit from such systems while still retaining the right to individual privacy. To be most effective, such controls must eliminate problems inherent in such a system, while at the same time deriving the maximum benefits it has to offer. The proper forum to place such controls on these systems is the Congress through its legislative powers. Indeed, this authority is aptly stated in Title I Section 101 of S. 2963/HR. 12575 entitled "Criminal Justice Information Control and Protection of Privacy Act of 1974," proposed legislation to be discussed later.

Specifically, it is our position that uniform controls should be placed on the collection, storage, and dissemination of information within the criminal justice sector of government at the federal, state, and local levels. These controls must protect the right of privacy which is fundamental to every citizen, while at the same time securing and allowing criminal justice agencies access and use of the system capabilities. In this regard, we feel that neither segments of government

not specifically authorized to operate in the area of criminal justice, nor private enterprise, should be allowed to collect, store, disseminate, receive, or use criminal justice information. We understand that there are exceptions to every rule and that none covering the area of computerized data banks can be "cast in concrete." We feel that statistics and research play a vital role in planning but that these areas should not serve as a "catchall," thereby sacrificing adequate controls placed on dissemination and use of criminal justice information. Emphasis must be placed on the primary purpose of a criminal justice information system by criminal justice agencies—that of providing the basic data needed to apprehend, prosecute, sentence, and rehabilitate the criminal offender. Such systems must not be used nor misused by other agencies for indirectly related reasons.

In general, the numerous pieces of legislation concerning computer data banks have dealt with the specific issues of protection of an individual's right to privacy by insuring the security of the information. Two of the most recent and most comprehensive bills dealing with security and privacy of criminal justice information are S. 2963/HR. 12575, "The Criminal Justice Information Control and Protection of Privacy Act of 1974," and S. 2964/HR. 12574, "Criminal Justice Information Systems Act of 1974."

We feel that these two bills are a positive step in the right direction and that few will disagree with the fundamental objectives they define. However, as witnessed by these hearings, the texts of these bills are open for debate and must receive much further study. These hearings and the material being discussed serve as excellent vehicles for the development of positive and meaningful legislation.

There are certain areas of concern that must be addressed in this type of regulatory legislation: Proper and sufficient justification must be demanded for the collection and storage of criminal justice data; controls must be imposed on the storage of this data in the system as well as its dissemination and use; a distinction needs to be made as to the type and classification of information within the system; provisions must be made for verification of the information collected and stored and for its destruction when obsolete; questions about an individual's access to his own records, and the review and correction of inaccurate or incomplete information in these records, must be answered; finally, there must be a determination made as to where authority should rest for monitoring the operating procedures of criminal justice information systems at the federal, state, and local levels. We feel that both pieces of legislation attempt to cover all of these areas. The first sections of both bills identify the inherent risks of such vast information systems and further adequately state Congress' power to control the systems.

A. CONTROL OF CRIMINAL JUSTICE DATA BANKS

Notwithstanding the expenditures of federal money on criminal justice data systems, the majority of actual operation and maintenance will be at the state and local level. Therefore, we feel that the majority of control necessarily placed on these computer systems must likewise remain at the state and local level. Indirect guidance and broad guideline development would, of course, rest with the federal government due in part to the utilization of federal funds for systems development and in part to the interface necessary between federal, state and local information systems.

We feel that specific statutory control as well as administrative rules and regulations must be developed by state legislatures and the agencies charged with the operation, maintenance, and control of individual criminal justice information systems. However, we do not feel that states can formulate these rules and regulations governing computer data banks and criminal justice information systems without some guidance from the federal government. We feel that S. 2963 (Ervin) attempts to reach a median ground between federal control and guidance while maintaining the identity of the rights of states to govern themselves. We feel that S. 2964 (Justice) removes too much control from the states and vests not only detailed statutory control but also administrative control in the federal government. The establishment of the Federal Information Systems Board in S. 2963 (Ervin) is a step in the right direction. However, we feel that there must be more state and local representation on that board. Such local membership could be obtained through gubernatorial appointments or recommendations by the National Governors' Conference or similar organizations.

The formation of such a board is not the final answer; however, it is in the spirit of broad federal guidance. Federal legislation must be broad enough in scope to cover all possible contingencies but not too specific or restrictive so as to

stifle state participation. Likewise, we feel that proposal and promulgation of federal rules and regulations must be broad in scope while allowing states to formulate and adopt specific rules and regulations governing their own local systems.

B. RIGHT OF THE INDIVIDUAL TO ACCESS AND REVIEW HIS OWN RECORD

The majority of pending legislation dealing with criminal justice information systems which has come to our attention has recognized that an individual has the right to review that information contained in a data bank which pertains to him. We feel that this is one of the central issues that must be dealt with in federal and state legislation and regulations. At this point we must distinguish that an individual must be granted access to his own information files, but must not be granted access to his or other intelligence files. Implicit with this right of review is the requirement that certain records must be maintained by the data bank in addition to those specifically oriented to the criminal information needs of law enforcement, courts or corrections; i.e., criminal justice. In addition to general administrative records, we feel that agencies operating such criminal justice data systems must be required to maintain records identifying the source of information and to whom it was disseminated. For lack of a better term, this could be called a transaction log. We feel that with some revision Section 5(f) of S. 2964 (Justice) achieves the basic necessities for such a log while S. 2963 does not. Such a transaction log is useful in at least three ways: it will notify the individual who received what information; it will assist the data bank in easy retrieval of records disseminated; and from a management standpoint it will allow monitoring of the usage of active files.

Obviously, before an individual is given access to his file, he must be properly identified. Once he is granted access, he must be given as much information as is necessary to thoroughly review his file for completeness and accuracy. Additionally, the proper forum and assistance for challenging inaccurate or incomplete data should be provided, and provision must be made to provide for the costs of such review and possible challenge.

We feel that both S. 2963 and S. 2964 address the individual's right to review but that the approach taken in S. 1963 (Ervin) is more positive. S. 2964 (Justice) places an undue burden on the individual by requiring him to seek out the agency responsible for an inaccurate entry. This requirement, we feel, should rest with the operating agency as does the responsibility for keeping the data complete, accurate, and up to date. This follows since control over entry of the data is placed in the operating agency, not the individual. Inclusion of this requirement will not only insure the individual's right of privacy but insure that the operating agency verifies data and excludes that which is unsupported or questionable thus addressing the overriding need for accuracy.

We feel that the individual must bear some of the administrative costs of his access and possible challenge to deter unnecessary entry. However, such costs should not be prohibitive; and if a challenge is indeed successful in showing that the data bank was maintaining inaccurate or incomplete data, it should bear the bulk of such costs.

C. ACCESS AND USE OF CRIMINAL DATA SYSTEMS

1. Content of System—The primary purpose for the establishment and maintenance of criminal justice data systems is so that the information they contain can be used by criminal justice agencies in the successful completion of their assigned duties. The often-used phrase "need to know" must play an important part when granting or regulating access to data bank and use of the information it contains.

There must at the outset be a clarification of the type of data to be contained in the system. This content will depend on the primary use for which the information is collected and stored. An overview of the type of information normally contained in a criminal justice data system can be discerned by reviewing the definitional sections of the proposed legislation currently under consideration. Although not totally exhaustive, both of the bills under present consideration cover the general types of information to be contained in such systems and thereafter used. However, we feel that certain specific definitions need addition, amplification, or clarification.

The term "criminal justice intelligence information" as explained in both bills and distinguished from "criminal justice information" is confusing. We feel that for proper administration and use of criminal justice data and to insure that law enforcement agencies have access to necessary information pertinent to the deterrance of crime and apprehension of criminals, these two terms must be fully distinguished. Simply requiring that one be for the "administration of criminal justice, other than criminal justice information, which is indexed under an individual's name * * *" is not enough. A chief difference between the two terms which is not mentioned in either bill is that one type of information is specifically oriented to present criminal justice activity and the other is retained for possible future use. That is, criminal justice information is maintained for general criminal justice agency use and should contain each and every transaction presently pertaining to an individual; whereas, "intelligence" information is specifically oriented to law enforcement and maintained for possible future apprehension and surveillance. Intelligence records may contain information about individuals which have never been convicted of a criminal offense but are suspect for criminal activity. This type of information will be helpful for future apprehension, whereas no present violations or other criminal justice agency information may appear on the individual's record.

This difference would lead legislation drafters to consider another difference—that intelligence information may not be as fact oriented and verifiable as criminal justice information. We feel that these two considerations may not be true in every occassion but are representative and would better portray the use for which such information was maintained. We feel that simply to require that intelligence information not be maintained in a criminal justice information system, or to fail to recognize that such information exists and not control it, is a serious shortcoming with both bills. Thus, we feel that provision must be made for the collection and storage of intelligence information with strict controls placed on its dissemination, and under no circumstances should this type of information be allowed dissemination to non-criminal justice agencies or private industry.

2. Access Restricted—Access to criminal justice information systems by non-criminal justice agencies, and especially private industry, must not be allowed unless by specific statutory authority. If good reason can in fact be provided for allowing certain non-criminal justice agencies access to certain data for specific reasons, more stringent restrictions and regulations must be mandated than those in the proposed legislation. In S. 2964 (Justice) under Section 5, there are virtually no controls placed on the access to criminal justice information systems and the use of records therein by non-criminal justice oriented agencies. S. 2963 (Ervin) attempts these limitations and controls, but we feel much clarification is necessary.

3. Second Dissemination—Once information has been disseminated from a criminal justice data bank, direct control over that information is impossible to maintain by the disseminating agency or date bank. We understand that absolute control is a practical impossibility but feel that much needs to be done to insure the necessary control. The problem of indirect or secondary dissemination is addressed in S. 2963 (Ervin) but not to the degree which we suggest.

One of the most meaningful controls over secondary dissemination is to not allow direct dissemination of printed information or record copies. This, of course, is impractical due to differing translations, unreliability of verbal communications, and possible infringement on the individual's right of review—not to mention the impediment placed on law enforcement. We do feel, however, that a practical solution would be to require the return of all document copies, printed transmittals, and original correspondence to the original sender with stiff penalties for secondary dissemination and non-compliance.

4. Purging and Sealing—There must be provision made for the destruction or sealing of documents and records because of obsolescence, court order, or administrative review. There must be legislative provision allowing for the purging of records in criminal justice data banks. To a certain degree, we feel that S. 2963 (Ervin) accomplishes this. It identifies the term purge and distinguishes it from the sealing of a record. However, when the two terms are used in the text of S. 2963, they are placed together and the distinction is negated. S. 2964 (Justice) on the other hand, does not even provide for the destruction of records or documents for whatever reason. It does provide for the sealing of records, but the lack of adequate controls placed on "sealing" makes the term meaningless.

We feel that in most cases arrest information should only be disseminated to law enforcement agencies. Such dissemination must be within rules and regulations established at the state level. S. 2963 has an adequate definition of both the term "purge" and "seal" and recommends that they be inaugurated in final positive legislation.

D. REMEDIES: ADMINISTRATIVE, CRIMINAL, CIVIL

For any regulatory legislation to be meaningful and in fact adhered to, that legislation must provide a remedy for non-compliance or violation of its mandates. Remedies are necessary not only to require compliance but also to deter non-compliance and to compensate those individuals aggrieved by violations. These remedies must be in the form of criminal penalties for violations of the law, civil actions for violation of an individual's rights, and administrative procedure to allow for managerial control.

S. 2964 (Justice) distinguishes to some extent between administrative, civil, and criminal remedies in Sections 13 and 14 respectively; whereas Section 303 of S. 2963 (Ervin) refers to the provisions of the Administrative Procedures Act for administrative remedies, while clearly distinguishing between civil and criminal remedies. We feel that federal legislation dealing with the regulation of criminal justice information systems must identify the need for administrative remedies but not delineate them. This is another area that must be dealt with at the state level within the purview of general federal guidelines. Such remedies are managerial tools and since the federal government cannot and will not manage each and every criminal justice data bank, this must remain at the state level.

Likewise, when providing for civil and criminal remedies, the forum for action should not be exclusively in the federal courts. This is neither advisable nor practical. Again, operation of the criminal justice information systems at the state and local level dictates a remedial forum at that level. The sanctions themselves for civil and criminal remedy may and possibly should be within the auspices of federal legislation. This was in fact done in S. 2963 (Ervin), but we feel that that certain minimums must be specified as well as maximums when denoting fines.

E. SUMMARY

Regulatory legislation at the federal level as well as rules and regulations serve a useful and necessary function when attempting to control the collection, storage, and dissemination of information in computerized data banks. As was stated in S. 2963 (Ervin), the federal government does have the authority for such control and regulation. However, as we have attempted to point out, much of the specific administration and control of criminal justice information systems must remain at the state and local level pursuant to broad, general federal guidance.

We feel that both S. 2963 (Ervin) and S. 2964 (Justice) have considerable merit in securing an individual's right of privacy while allowing legiti ate use of information by criminal justice agencies. However, neither of the two bills nor any of the numerous pieces of pending federal legislation including the project SEARCH proposals, in and of themselves, are the final answer to positive regulatory control of criminal justice information systems. The basic issues of such systems have been identified but deserve further extensive study and deliberation.

We feel that the forum of open Congressional hearings as chosen by this subcommittee are by far the best method yet devised to gain a desirable and workable end product.

NATIONAL CONFERENCE OF STATE CRIMINAL JUSTICE PLANNING ADMINISTRATORS,
Washington, D.C.

The National Conference of State Criminal Justice Planning Administrators represents the Directors of the 55 Criminal Justice State Planning Agencies (SPAs) operating under provisions of the Omnibus Crime Control and Safe Streets Act of 1968 and its 1973 amendments. SPAs exist in the 50 states, District of Columbia, Puerto Rico, American Samoa, Guam and the Virgin Islands. Members serve by virtue of their positions as SPA administrators.

Under the Safe Streets program, states and localities have been given a major responsibility to develop and implement efforts to reduce crime and juvenile delinquency and improve the criminal justice system. The National Conference of State Criminal Justice Planning Administrators was formed in June, 1971. It serves to provide a formal mechanism through which SPA administrators can exchange information and develop consensus views on the nation's crime control problems.

Senator ERVIN. We would be delighted.

Mr. THOMAS. Mr. Chairman, I feel that our national conference of the 55 State and territorial regions of planning administrators is

in an excellent position to talk about several of the issues in each one of the bills.

As evidenced by the testimony of Mr. Velde, the whole issue of security and privacy is complex and complicated in the systems that have been set up to share information and gather information and are complex and complicated.

Our conference does not feel that we have particular expertise in the technicalities of information systems. We do feel, however, that we have expertise in several broad issues that the bills address.

The first issue that I would like to address is one that Mr. Wertz just hit on and that is the issue of control of the information systems themselves and of the assurances of privacy. We feel that the administration bill, or S. 2964, takes too much of the control from State and local government and invests too much control in Federal Government.

We would, therefore, support the direction in which S. 2963 goes, with the Federal Information Systems Board, with some modifications. We feel that it is very important that the control of these criminal justice information systems that are largely operated on a State and local level remain at the State and local level. We do, however, feel that Federal legislation is necessary to establish some uniform minimum standards and to insure the right of privacy and the security of this information.

We do feel also that there needs to be a mechanism to assure that there is a promulgation of administrative regulations and procedures, both at the State, local, and Federal level.

We would therefore recommend that the specifics of the bill, S. 2963, be modified to some extent. The necessity for every State establishing a board, a governing board in that State, within 2 years after passage of this bill, we feel is fairly restrictive. We would therefore recommend that States be allowed the opportunity to respond in that period of time with an appropriate vehicle, whether there be a separate board or if they invest that authority in a line agency such as the Attorney General's office.

We feel this would strengthen the bill and strengthen the State and local inputs, the State and local authority for the system.

We would also recommend that the composition of the Federal Information Systems Board be strengthened as far as State and local representation on that Board. I realize that there is also an advisory committee which would be established, and we feel that this is an excellent mechanism for insuring State and local input. However, we feel that the Board also should be very strongly made up of State and local representatives.

The next major issue that we would like to comment on is the right that the individual has to access to his own record. Needless to say this has to be inherent in any system. The individual has the right to access to his records to determine whether it is accurate.

We feel, however, that there needs to be a clear definition as to what information is contained in that record; a clear definition as to what is intelligence information as opposed to criminal offender processing information.

Mr. Velde has gone into that, as I heard in the previous testimony, in detail. We also feel that neither bill which has been introduced deals adequately with the entire issue of intelligence information. We will comment on that later.

But we do feel that it should be specified that the individual does have a right to access to his records. However, he does not have the right to access to all information that may be contained, specifically, intelligence information.

We feel that there needs to be a maintenance of a transaction log or a log of transactions as far as the specific record is concerned, where information has come from and where information has gone. We feel that this would be necessary if an individual is trying to determine the extent of dissemination of that information concerning himself which may have been in error.

We feel that the burden should be placed on the agency rather than on the individual. The agency should have the responsibility for maintaining the information in the most accurate fashion possible.

We feel that they should provide ease of access to the individual. Needless to say, there must be restrictions here to prevent administrative burdens. However, the individual must have this ease of access.

I might mention, as I go along, that if the committee or the staff has any questions, I would be glad to answer them, or we can wait until the end of the particular testimony.

Back to the issue of criminal justice intelligence information, we feel very strongly that we cannot merely say that criminal justice intelligence information will not be incorporated into an automated system. Law enforcement agencies used intelligence information as a vital part of apprehension and crime deterrents.

In my own State of South Carolina there are excellent examples of automated use of intelligence information. It gives police departments capabilities that they would not have had prior to the advanced technology that we have today.

Therefore, we would not support the provisions in S. 2963 that calls for the exclusion of intelligence information from automated systems. However, we would, in S. 2964, recommend clearer definitions as to what intelligence information is and then the establishment of strict controls as far as the dissemination of information.

Senator ERVIN. It seems to me that there is a fundamental distinction between the accuracy of intelligence information as distinguished from criminal histories.

Criminal histories, by the exercise of utmost diligence can be made very accurate, can they not?

Mr. THOMAS. Yes, sir.

Senator ERVIN. Giving a person access to his own record not only serves his best interests, but also serves the best interests of society in having an accurate criminal record.

However, criminal intelligence necessarily cannot be verified in all instances and for that reason, what would you say about any access to criminal intelligence?

Mr. THOMAS. We would make some specific recommendations. First, we would recommend that there be a clear definition of what criminal intelligence information is. As you already indicated, it is often information that cannot be verified by fact.

We would then recommend that there be a clear separation of intelligence information from criminal records, or criminal processing information. We would limit access to criminal intelligence information to law enforcement agencies, strictly law enforcement agencies.

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We would definitely not allow any utilization of criminal justice intelligence information by any noncriminal justice agency, and only to a criminal justice agency, other than a law enforcement agency in very specific circumstances.

We therefore feel that there should be these specific restrictions on the utilization and dissemination of criminal intelligence information.

Senator ERVIN. We had a very good illustration of the uses of criminal intelligence in this recent kidnaping in Florida. This man in Miami—you recall his conversation with somebody that tried to sell him 300,000 gallons of fuel, as I recall, and it coincided with the same pattern as emerged in the kidnaping and had been printed in the press.

So, as a result of this intelligence that of course could not possibly be verified in advance, the kidnapers were discovered. Which I think is a rather dramatic illustration of the use of criminal intelligence that I can think of on the spur of the moment.

Mr. THOMAS. Yes, sir.

Senator ERVIN. Often police have information on the person's associations but no evidence that he has any criminal history. Yet on the basis of this information they can apprehend those that commit a crime.

Mr. THOMAS. It is a very important part of the day-to-day working operations of the police agency.

We feel therefore they should have the capabilities of automating and utilizing this information.

Aside from intelligence information, we feel that there is an overriding issue as far as criminal information systems are concerned and we feel that the primary users of that information should be criminal justice agencies. We feel criminal justice information should be for criminal justice agencies that should be on a need-to-know basis as has been indicated by other witnesses before this committee.

We feel the S. 2963 bill places restrictions on access as far as noncriminal justice agencies. We feel that S. 2964, the Justice bill, does not place anywhere near the kind of restrictions that need to be placed, as far as dissemination to noncriminal justice agencies is concerned.

In the area of secondary dissemination, we would feel that there is a good possibility here of a break in the security of information if we are not careful in the drafting of the legislation.

S. 2963 does deal with secondary dissemination. We would recommend that there would be specific language that deals with the return or the destruction of information which is disseminated to prevent any secondary dissemination.

The issue of sealing and purging has been discussed at length. We feel that in specific cases purging is in order—complete purging of information from the system—minor arrest cases where there is no further action. I can give specific examples where we feel that this information is in a system and after a period of time the information is obsolete. We feel that it should be purged from the system totally.

We would, however, recommend that sealing be the most common method of operation as far as closing a record after a period of time. There are many views on both sides as to the amount of time that should transpire before an official record is sealed, access to that record after it is sealed.

I think, in major crimes in major cases, there are reasons whereby a police agency needs to have access to sealed records. Access—that does not mean that that agency has to go through the court to gain an access. I feel that this is a very sensitive issue and an issue that needs to be thought about in depth by the committee.

We would feel, in the whole area of administrative, civil and criminal remedies, that both bills deal with this to some extent. We would, however, just as a control within the system, recommend that administrative remedies to a large extent rest with the controlling agency at the State level and local, and at the Federal level for the Federal operation.

We feel that civil and criminal remedies should also be remedies at the State and local level and in a State court as opposed to the language of the bill that specifically talks about the Federal court.

We feel just with our other recommendation that where there is a problem at the State level, it should be dealt with at the State level if at all possible.

Senator ERVIN. Have you accumulated any information as to what proportion of criminal cases are actually handled by the States rather than the Federal Government?

Mr. THOMAS. No, sir; I could not estimate that.

Senator ERVIN. It was estimated by one witness: 95 percent. I guess if you take all the criminal cases, even the insignificant ones as well as the major ones, that that would probably be about true, would it not?

Mr. THOMAS. I would say the large majority of the cases and transactions that are going to be dealt with are going to be dealt with at the local and State levels.

I would make one comment along the lines, as long as we are talking about State and local systems. One comment that was made by the staff is very pertinent; that is, that in the long run, the operating expenses of these systems, the criminal justice information systems, is going to be the responsibility of the State and local government.

Our particular conference, which has dealt over the last 5 years under the LEAA rules and regulations under the Crime Control and Safe Streets Act, I think is particularly aware of that, even though Federal funds are available for the initial establishment of the system or implementation of the system. Over the long run, that State and local government had better realize that they are going to foot the majority of the bills, whether they be for ongoing personal maintenance and operating costs; that is another reason that we feel, to a large extent, the operating procedures should rest at the State and local level.

In summary, we would merely add that we definitely feel that there is a need for this legislation. We feel that the particular method that is being utilized by Congress and by this committee in open hearings is excellent. We feel that there are many feelings on both sides as far as the rights of the privacy of individuals, and the needs for accurate and updated criminal justice information.

We would therefore commend the committee for these hearings and we would thank the committee for the opportunity for presenting our views.

Senator ERVIN. I take it that you favor State control of State records, subject to minimum standards established by the Congress.

Mr. THOMAS. That is correct. We also feel that State laws should definitely take precedence. If the State law is more restrictive than these Federal standards that have been outlined, then that State law should take precedence in the interstate transfer of information.

Senator ERVIN. The State law should prevail if it is at least as restrictive as the Federal standards and would only be vitiated by Federal law in case it failed to meet minimum requirements.

Mr. WERTZ. Mr. Chairman, there is a corollary to that, too, and we feel very strongly that the States themselves should be very much involved in the development of the minimum standards, not only in carrying out the standards, but in initially developing those standards.

Senator ERVIN. Thank you very much. We appreciate it.

If there is anything that occurs to you that you would feel like communicating with us further by letter or otherwise, if something occurs to you, if you think it would be helpful to us, we would be delighted to have it.

Mr. WERTZ. Thank you, Mr. Chairman. We have distributed our statement to all 55 of our members. Because of the feeling on this issue, the importance of this issue, we have invited them to supplement our statement with additional comments of their own, and I am sure you will be hearing from them.

Senator ERVIN. We will be glad to.

Thank you very much.

Mr. BASKIR. Mr Chairman, our next witness this morning is Mr. David Weinstein, who is a consultant to Project SEARCH.

Senator ERVIN. Mr. Weinstein, we are delighted to welcome you to the committee, and I want you to know that we appreciate your willingness to come here and give us the benefit of your views on this legislation.

Mr. WEINSTEIN. I want to thank you for the invitation, Mr. Chairman.

I might point out that there is an inaccuracy in the agenda. I am not in fact a consultant to Project SEARCH. I was formerly a member of the Project SEARCH Executive Committee, and now I am staff director to the State judicial information system project, which is a Project SEARCH project, but I work for the Institute of Judicial Administration which is the agency that is doing the staff work for that project.

I am here basically speaking for myself and based on my own experience, so I would like the record to show that, if possible.

Senator ERVIN. Please proceed.

TESTIMONY OF DAVID WEINSTEIN, FORMER MEMBER, PROJECT SEARCH EXECUTIVE COMMITTEE, PRESENT STAFF DIRECTOR, STATE JUDICIAL INFORMATION SYSTEM PROJECT AND CONSULTANT IN SECURITY AND PRIVACY MATTERS

Mr. WEINSTEIN. In terms of my own background, I have been a State law enforcement planning agency director in Connecticut, and a charter member of Mr. Wertz' organization. In the area of security and privacy of criminal information systems, I worked as a member member of the Project SEARCH Executive Board and was a charter member of the Project SEARCH Security and Privacy Committee that prepared tech report No. 2, model security and privacy legislation and implementing regulations.

I have also prepared the background materials and the draft standards for the National Advisory Commission on Criminal Justice Goals and Standards which appear in the Criminal Justice System Report of that Commission.

I also do some independent consulting in the area of security and privacy in criminal justice information systems, and I am still working with the State of Massachusetts on preparing and implementing regulations for its criminal history statute.

Based on these experiences, Mr. Chairman, I would like to speak with respect to the two bills before the committee. I think there is a fundamental philosophical difference between them. I would like to diverge from my prepared statement and perhaps summarize that difference.

Senator ERVIN. That will be all right. We will print your complete statement following your remarks.

Mr. WEINSTEIN. Thank you, Mr. Chairman.

I would also like to amend or at least supplement my statement if it were possible. I did not have time to comment on all the provisions I wanted to. Today I would like to speak to the administrative provisions of the two bills, S. 2963 and S. 2964, and I think my clear preference, as both the other witnesses have said, more or less, is that administratively S. 2963 is more acceptable. I find two basic problems in S. 2964, one of which is what the statute purports to regulate. If you compare the two bills, you will note that S. 2964 in various sections purports to regulate the use of criminal justice information. What we are talking about here, as the chairman pointed out in his remarks, is what State and local agencies do with this information.

S. 2964 purports to regulate what the State and local agencies are going to do with the information. I would distinguish that from S. 2963 which purports to regulate, access to and dissemination of information but except in very limited circumstances does not speak to use of information.

So although S. 2963 is more restrictive in the sense that it restricts the access and dissemination of information more completely than S. 2964, it is less intrusive in the State criminal processes because it does not get into the question of use. I think as we go on we will see some of the problems the attempt to regulate use of the information has created.

The other basic problem that I find with the bill is the delegation of authority to the Attorney General. In numerous sections which I noted in my prepared statement, there are broad delegations of authority to the Attorney General to implement the regulations. In fact, I might steal a remark from the chairman of the State Judicial Information Systems Project. He said in another context—I might analogize here—the bill is like a bikini bathing suit. What it reveals is interesting; what it conceals is vital.

I think what you find here as we go through it is that we do not know what the bill means until the Attorney General by regulation says what it means. There are a number of sections in which this delegation of authority appears. It is without standards. The Attorney General would not have totally unbridled discretion, but he would have substantial discretion to say what exactly this bill means in practice.

I believe that as a matter of legislative policy this is not as acceptable as having the Congress itself act on those questions on which it feels competent to act. In other instances, as the chairman suggested with the last witness, it is appropriate to establish some framework within which the states can act through their legislative process. I would rather see that, to the extent possible, that controls be established legislatively than administratively.

Senator ERVIN. That is one of the unfortunate things in our system today, that we have overdeveloped the tendency to allow administrators to write regulations. I know when I last practiced law, which was during the period of the Second World War, I had bound the Federal Register for about a year and a half, and it covered a space on my shelves about that wide [indicating], whereas the unannotated edition of the Federal Code, all the laws passed by Congress since 1789 I could put in that much shelf space [indicating].

Mr. WEINSTEIN. That is the general tendency, where Congress gives more administrative officials more discretion.

Just to go through some of these sections of S. 2964 is instructive. Section 3(1) provides, for example, that sealed records are available on the basis of a court order or a specific determination of the Attorney General.

Section 5(c)(1) says criminal intelligence information may be used only for criminal justice purposes and only when need for use has been established in accordance with regulations issued by the Attorney General.

Section 5(d)(1) says criminal offender processing information may be used only for a criminal justice purpose and only where need for use has been established in accordance with the Attorney General's regulations. The other witnesses pointed out that this information could include, for example, presentence information reports, which the courts rely on in felony cases. Many of the States already have statutes, case law, or rules of court governing use of this information. If this information is within the scope of the Federal jurisdiction I might ask the question, would the Attorney General's regulations supersede State law or a court acting under constitutional authority?

Section 5(e)(1) says criminal offender record information may be used for any purpose expressly provided for by Federal or State statute or by Executive order. The Attorney General has power to make a conclusive determination as to what constitutes express authorization. Again a conflict can arise between what the Executive order might order and what State statutes might contain.

Section 8(d) says limitations on dissemination of certain arrest data may be removed in a particular case or class of cases when the Attorney General determines for reasons of national defense or foreign policy they should not apply. Now, "national defense" is a term like "national security." I would have some questions about exactly what the scope of that limitation is, especially when it applies not to a particular case, but to a class of cases. Broad classes of uses could be dealt with by the Attorney General under this very broad and somewhat amorphous grant of authority.

It says in section 9(a), criminal offender record information shall be sealed in accordance with a court order, Federal or State statute, or regulations issued by the Attorney General.

And manual information systems may be exempted from sealing requirements by regulations of the Attorney General.

Sealed records shall be available for access by a specific determination of the Attorney General.

Not to belabor the point, Mr. Chairman, there are other similar sections. As the bill is written, nobody can say now what the effect of this bill is going to be. It is really up to the Attorney General to determine what this bill means; not how it would be applied, but literally what the words in the statute mean and what restrictions will be applied.

Aside from the problem of overbroad delegation S. 2964 talks about the "use" of information. This language involves the Attorney General with State criminal justice processes much more than the bill you submitted which does not deal with the use, but just access and dissemination of information. This is a much lesser intrusion into State processes.

My next point concerns the proper role of the State and Federal Governments with respect to this information. I did mention the problem of presentence reports, for example, where under the bill the Attorney General could then regulate the State use of presentence investigation reports. This whole problem of the criminal offender processing information is difficult. S. 2964 addresses it a little more directly than S. 2963. In the Massachusetts experience the most difficult question we had was what did their statute regulate? They used the Project SEARCH model statute, of which I participated in the drafting, which is not clear whether it regulates just the rap sheet or other kinds of information as well. What we found was that the agencies, corrective agencies particularly, said, if you interpret this to mean the equivalent of criminal offender processing information and the individual has access to that information, will this mean that our probation officer can no longer make a frank evaluation of the man, or a parole agent can no longer present the parole board with a psychiatric examination report?

How is a neighbor going to give a statement with respect to a man's character if the man is going to get the report; there is a fear of retribution. Frankly, there are also some less noble motives involved such as controlling persons in the criminal justice process by having decisions made, based on information not available to the individual. A man never knows on what basis decisions are being made. From the defendant's perspective, the most important decisions are typically made not on the rap sheet; but rather on this other information. He should have some way of getting it.

I frankly do not know how to resolve in my own mind how much he should have access to. For one thing, you would have less than frank evaluations. For another thing, certain sources of information may dry up. The man's estranged wife perhaps is not going to put in a report or tell a parole agent things that she might otherwise have told him.

Another problem is sections 3(1), 5(d)(2), 5(e)(1) and 9(a), which provide, in whole or part, that Federal regulations and Executive orders, or State statutes or Federal statutes or court orders shall determine certain uses of information. I gather—I am not a constitutional expert by any means—that in the area of Federal jurisdiction that Federal statutes prevail over conflicting court rules, opinions or

State laws. What troubles me is that S. 2964 says Federal regulations and Executive orders or state statutes will govern.

Senator ERVIN. You have a regulation made by a man who has no authority under the Constitution to make a law superseding a State law.

Mr. WEINSTEIN. I am not sure what the constitutionality is, but that is what the bill would provide for. I would presume that the intent was that the Federal regulations would supersede State judicial and statutory law.

Mr. BASKIR. Was that the issue in the *Massachusetts* case?

Mr. WEINSTEIN. The one with the Justice Department?

Mr. BASKIR. Challenging Massachusetts' statute as being incompatible with certain Federal regulations.

Mr. WEINSTEIN. I am speaking now from partial ignorance but what Massachusetts said was that Federal agencies, just like State agencies, must apply individually for access to Massachusetts criminal offender record information. That result was that several of the Federal agencies were denied access because of the State statute governing Massachusetts criminal records. Many of the Federal agencies do not qualify, such as the Civil Service Commission. A noncriminal justice agency must be expressly authorized by statute to receive this information. Many of these Federal agencies had Executive orders which purported to authorize access to the information. The State refused to accept those. A Presidential order, for example, or an Executive order or regulation is not a statute in the meaning of their law.

I think the Attorney General contested it. I think he might have had broader grounds, contesting the right of States to regulate access of Federal agencies although I am not sure about the latter. I understand that the suit, if not withdrawn, is at least dormant.

Another problem that comes up is the supremacy of State laws with respect—I think this came up in the last gentleman's remarks—to transmission of information where the sending State has more restrictive laws or regulations than the receiving State.

S. 2963 in section 310 provides that the most restrictive State law would prevail. S. 2964, by way of contrast, for interstate transactions, substitutes the Federal law and regulations. Although the comments in the Congressional Record seem to say they have the same intent, every time I read the two bills, I come out with a difference.

I would recommend to the committee that a viable solution is to permit the most restrictive State provision to prevail, except with respect to Federal offender records, where presumably the Federal law would prevail. But S. 2964 does purport to substitute—I should not say substitute since nobody knows what the state of the law is now—but at least purports to impose Federal control, Federal rules, on all interstate transactions.

I know you have heard from the Governor of Massachusetts about Massachusetts' participation in the NCIC's system. That State's restrictive rules could be gotten around by people who go to the NCIC directly, thereby getting the criminal information in the Massachusetts file when they could not get it if they went to Massachusetts and asked for it directly.

Mr. BASKIR. The fact that there is an interstate use there does not mean that there is a Federal interest in it. If Florida wants to know about an individual that they have within their system, once they ask Massachusetts what their experience was, this may be interstate use. It does not involve the Federal Government, does not involve a Federal crime.

Mr. WEINSTEIN. Assuming there is Federal jurisdiction, an appropriate exercise of that jurisdiction would be to say that State rules on conflicts of laws will govern; a rule of choice between State laws.

Mr. BASKIR. If this is a Florida burglary and they would like to find out about the man's Massachusetts history in respect to burglaries, it is an interstate exchange of information but it has to do with essentially local law enforcement, both in Massachusetts and in Florida, and in terms of the information, the use of it, while it is interstate, that is not the same thing as saying it is Federal. Presumably Federal laws might not be nearly as important as Florida laws and Massachusetts laws with respect to that information.

Mr. WEINSTEIN. It is a question of policy for the committee, rather than one constitutionally determined.

Another important area—I think you heard from your last speakers, and I endorse their remarks—is State participation in the governance of this system. What S. 2963 recommends is not the only vehicle for doing this.

I think the States ought to have a strong role, if not a predominate role in setting the rules for the operation of systems that come under Federal jurisdiction or are involved in interstate transactions. Right now they do have a strong minority position under section 302(a) of S. 2963, or would if that bill were enacted. I would urge that some active State participation be included in the legislation that comes out, especially in the adoption of rules, regulations and guidelines and policy.

The NCIC Policy Advisory Council or Committee is an example of this kind of interstate or State-Federal cooperation. That committee is purely advisory but the National Crime Information Center people apparently listen to it, and it has been an important vehicle. I would like to see a stronger role, perhaps even language to the effect that this multi-State board be required to recommend regulations, guidelines and policies prior to adoption by the Federal Board.

I would prefer again to see a board rather than a single agency. The Massachusetts experience is instructive here. The multiagency board, I believe, came up with a much more balanced kind of set of regulations that took into account the needs of all the agencies than would have been possible if a single agency had been involved even if you have consultation procedures, it is not the same as having a representative on the board who has a vote and an active role in the decisionmaking process. We ended up with a much more balanced set of regulations. It took care of a lot of the problems that otherwise would have been dealt with, and just from a pragmatic point of view, there's an awful lot of consensus generated which is always a problem in a setup in which the people that are going to be regulated are the ones who generate and use the information in the system.

If the persons who are going to be regulated have an active voice and participation, then the regulation is much more readily accepted.

I think we came close to unanimity there. A final vote has not taken place. The regulations just came up for public hearing. Everyone had an active role in creating the regulation and I think, as a result, you have more unanimity than if they had been proposed by a single agency.

Mr. BASKIR. You would have all sorts of different parts of the criminal justice system who would be using the information system for their own particular ends, the courts, the correctionists, and a variety of other things.

Is there any king of policymaking organization if I understand your testimony correctly, to reflect that diversity—not only in an advisory capacity, but in a policymaking organization—so that the decisions do, indeed, reflect all of the interests of the varying parts?

Mr. WEINSTEIN. That is where I would depart from the last witnesses who argued for a single agency. The Congress could mandate that a board be created. If this is unacceptable the carrot can be used instead of the stick. That there are so many potentially conflicting interests, you would need this type of group vehicle. Any State adopting regulations would have to go through this group consensus process anyhow.

I know in California there has been a recent discussion between the courts and the Department of Justice there over who is going to collect this OBTS and criminal offender history data from the courts, and the judicial council there, which is the governing body in California courts, came out with a policy position strongly opposed to the State Department of Justice mandating collection of information from the courts, beyond what statutes already required.

Part of that, I think, was that the courts were not consulted before the directive went out. The argument on the other side was that the information was not being collected and somebody had to do it, so the Department of Justice moved ahead. But I think had there been more consultation, some of these problems could have been avoided.

In fact, now, I think there is an interagency body that is going to address the issues. I favor establishing a State board, by congressional mandate unless you establish firm guidelines for all the States on how to go about doing these things; then it could be a single agency with adequate consultation.

Mr. BASKIR. Certainly in this you have the separation of powers difficulty. You have the judicial branch, which may have more responsibility than just adjudication as one of the partners in the criminal justice system. To give control over information which one witness called the life blood of the criminal justice system, let us say to the attorney general, if he is the chief prosecuting arm, to the State police, or to another police organization, which is the law enforcement, or, conceivably the correctionists, where you run into the problem of separation of powers, in addition to the difficulties of making sure that all these various parts of the system coordinate.

Mr. WEINSTEIN. You may have a problem because the courts may not participate on a statutory board.

Mr. BASKIR. You get a whole lot further if you reflect these differences, even constitutional differences, in roles by making sure the organization is not in the domination of one part of the system, but reflects all the different parts.

Mr. WEINSTEIN. There is another advantage to that especially if the one agency is the operating agency. For example, the U.S. Attorney General, through his Federal Bureau of Investigation and NCIC, is really the operating arm, by law, of the information system, the Federal information system.

You end up with a difficult situation in that he has enforcement duties; he has to use the information that comes out of the system for his enforcement duties. So you end up with—I am not saying necessarily—but possibly, an undesirable situation with a man who needs the information for his other kinds of duties being the man who is setting the ground rules for how it is going to be used.

There is an inevitable tendency to try to make the information available for your law enforcement uses. As Senator Hruska pointed out, if you do restrict some of this information, you are giving something up; for example, some investigative capability but I presume you are getting something in return. The balance that you will have to work out.

In Massachusetts, they have a multiagency board chaired by the director of the State law enforcement planning agency which is a nonoperating agency. It is a granting, planning and administrative agency.

Even if a board is going to run the system, you still have the problem of a system manager regulating the system. The board, per se, should have no enforcement responsibilities so it does not get into the other complexities such as: shall I adopt the rules that help my enforcement efforts or shall I adopt the rules which will restrict information. There is always going to be a conflict if the users are creating the policy, but I think the conflict is less severe if the users are not individually controlling the information. Somehow there seems to be more checks and balances in a collective operation.

Mr. BASKIR. Not only should this board reflect all the different interests, but it also ought not to be an operating agency in terms of having law enforcement operational responsibilities.

Mr. WEINSTEIN. I think so. It might have information system operational responsibilities. I think your statute contemplates that.

The other problem, I notice also in section 301(c) (7) and (8) of S. 2963, that the Federal board would have responsibilities beyond the criminal justice area. I do not know if that was intentional or not. It says that the authority extends to the study of all Federal information systems.

Frankly, whether it is this board or some other, this seems to be something that ought to be looked into. I think the President's recent announcement of the creation of an interagency study group is a step in that direction. It would be useful to have somebody who continuously reviews information, collection, retention, and dissemination.

Massachusetts did this in creating an agency called the Security and Privacy Council and the Governor has recently supplemented that agency with a Commission to study privacy and personal data. But the Security and Privacy Council is the watchdog, as it were, the gadfly. There has been some very useful interaction—you might say friction—but the result has been, I think, that the agencies determine that they can accept the restrictions and still do their job.

So, some independent agency looking into these automated systems is a good idea, either as set forth in this legislation, or other

legislation which the President may recommend after his group reports.

There are other differences administratively. S. 2963 requires much more extensive reporting of information system activity than does S. 2964. It requires mandatory audits annually; S. 2964 makes them discretionary. The reports are not as extensive. I think these are two extremely useful administrative tools; the public reporting than anything else because it allows the public to assess what the system is doing.

Perhaps you know better than I that the reporting required under the wiretap statute has raised a number of questions for the Congress to consider, for further legislative action.

I think the same thing can apply here. Also, the sanctions in S. 2963 are stronger—denial of funding or return of prior funding are obviously stronger than just cutting off the access to information.

The other part that I like in S. 2963 deals with discipline of employees; it requires that agencies take some disciplinary action against offending employees. I think disciplinary action is more effective than civil and criminal penalties because the latter are very difficult to effectuate in practice—either the litigant has trouble or the law enforcement agencies become reluctant to bring prosecutions against other law enforcement agencies.

The requirement of employee discipline, for example, the suspension from duty or loss of pay, I think has a very salutory effect without getting into any judicial process to enforce it.

Also, I noticed a difference in the two bills—I am not sure, perhaps it was intentional—with respect to consent for governmental suit; suit of the government.

S. 2963 and S. 2964 differ. S. 2963, in section 308(g), indicates that the United States has consented to be sued for violation of the act. S. 2964, in section 15 indicates that the State and local agencies have consented to suit. The two bills do not match.

I think probably they ought to have the same provision which is, that both the State and the local and the Federal Government consent to be sued. I do not know whether that was intentional in these bills, or if there was a difference, but it seems like if you put those two sections together, you could come up with a total unity.

There were several other things that Mr. Velde stated. This is a problem that came up in Massachusetts with respect to the public record statutes, the freedom of information statutes, of access not only by the media but researchers and interested citizens to information.

Frankly, I am not sure how to work that out. We have two conflicting policies. One is to protect the individual from having his information disseminated. The other is to permit adequate access by appropriate persons so they can evaluate programs and so forth. Frankly, I agree, as Senator Ervin pointed out earlier and Senator Hruska, this is a matter the committee ought to look into.

With respect to these public information statutes, nobody really knows from State to State what information is, in fact, public record. Massachusetts came up with the question concerning the records of the district court, which is their lower criminal court, and which maintains the bulk of their criminal files. These courts maintain files by name, which record all the appearances in criminal cases in a single court, but no other court.

The question came up, does the statute regulate access or dissemination of those records? The board which has the authority under its regulations said, "Yes." The Attorney General offered an informal advisory and said, "No," those were public records within the meaning of other statutes.

Unfortunately, their security and privacy legislation and other statutes conflict. Now we have two statutes on the books and the relationship between them is not at all clear. It is a question of giving something up, public access with these records, and maybe losing something, maybe gaining something.

Frankly, I just have not had a chance to sit down and try to reconcile the two different policies here. I know the book by Prof. Arthur Miller called *Assault on Privacy* does discuss this question. He comes up with the argument that in some cases the public information statutes policy should give way to the privacy considerations.

Also, another question I would like to speak briefly on, the uses of the criminal record or rap sheet data. In particular: who uses it and how much use?

I have my own unverified opinion that the law enforcement agencies, the police agencies, are not the biggest users of this information, although they are the ones who speak at these kinds of hearings and react to this legislation.

In Massachusetts, when we tried to get some feel for who was using the records, we frankly were not able to get an accurate reading because they did not keep records concerning who asked for or received information. But the impression of the people that kept the records was, at least under former practice, that a large proportion of the dissemination of information was for the purpose of performing either security clearances or various kinds of employment checks; many times on private persons working for defense contractors. Neither bill addresses that particular question directly. This may lead into a problem of what is a law enforcement agency. One of the agencies that got denied in Massachusetts was the Office of Naval Intelligence that could not justify itself as a criminal justice agency because its major function was really not investigative work, but doing security and background checks on persons in the military or naval service that had sensitive jobs.

I do not know where that kind of use falls into your statutes. It is between the criminal justice and the noncriminal justice uses in that security checks are done to weed out people who might later engage in some criminal activity.

I have a feeling that security checks and the uses by bail setting agencies, prosecutors and courts, correctional agencies to a lesser extent, probably aggregate more than the police use.

I was talking to someone in New York—I hope I am accurately reporting their procedure, perhaps you might want to check on it—who said that their policy will be in the future, or is now, that they will not give out criminal histories unless they receive a fingerprint card. That means in that practice a man has already been arrested, therefore, they do not purport to allow field checks by name only against criminal history records. They will let you check the wanted persons files which is a different matter altogether.

Who, really, is using these records? No one really knows. This might be an area for some examination. I have a feeling that the

police agencies are really more interested in wanted persons than they are in past records, at least at the field stage—perhaps later in the investigation, this is different.

I think it is security checks, licensing checks, plea bargaining, and the sentencing process that are the main uses of this information. I do not have any hard data on that. Somebody may want to look into it.

I would like, again, Mr. Chairman, to send in some supplemental comments. There were some definitional problems about what is a criminal justice agency. I would like to comment on that if that is appropriate. I have no further remarks, unless the staff has some questions.

[The prepared statement of Mr. Weinstein follows:]

PREPARED STATEMENT OF DAVID WEINSTEIN, FORMER MEMBER, PROJECT SEARCH EXECUTIVE COMMITTEE

INTRODUCTION

While S. 2963 and S. 2964 concerning criminal justice information systems differ in many particulars, the differences between them are most striking in those provisions dealing with administration of the legislation. The bills differ significantly with respect to: (1) delegation of authority to administrative officials; (2) federal-state relationships; and (3) administrative structure and controls.

DELEGATION OF AUTHORITY

The bills embody divergent philosophies with respect to the appropriate roles of the Congress, the federal courts, the Department of Justice, and state courts and legislatures. S. 2964 relies extensively upon delegation of authority to the Attorney General of the United States for administration of the provisions of the bill. The delegation of authority is, in many instances, not accompanied by any standards or criteria. The Attorney General, in practice, can determine in his discretion what the legislation means and how it will be administered.

S. 2964 contains the following provisions which involve substantial delegation of power to the executive branch of the Federal government:

Section 3(1)—sealed records are available on the basis of a court order *or a specific determination of the Attorney General.*

Section 5(c)(1)—criminal intelligence information may be used only for criminal justice purposes *and only when need for use has been established in accordance with with regulations issued by the Attorney General.*

Section 5(c)(2)—criminal intelligence information may be used for non-criminal justice purposes *if the Attorney General determines with regard to a particular case or class of case that such use is necessary because of reasons of national defense or foreign policy.*

Section 5(d)(1)—criminal offender processing information may be used only for a criminal justice purpose *and only where need for use has been established in accordance with the Attorney General's regulations.*

Section 5(d)(2)—criminal offender processing information may be made available to the individual to whom the information refers *pursuant to a* court order on a *Federal* or state statute or *regulation.*

Section 5(d)(4)—criminal offender processing information may be used for non-criminal justice purposes if expressly authorized by court order or statute. *The Attorney General has the authority to make a conclusive determination of whether or not such use is expressly authorized.*

Section 5(e)(1)—criminal offender record information may be used for any purpose expressly provided for by Federal or state statute *or by Executive Order. The Attorney General has power to make a conclusive determination as to express authorization.*

Section 5(f)(2)—agencies shall maintain records as to source of criminal offender record information *but the Attorney General may by regulation provide for exceptions with respect to the source of identifying data.*

Section 6—provides for review and challenge of information by individual *subject to applicable regulations.*

Section 8(d)—limitations on dissemination of certain arrest data may be removed in a particular case or class of case *when the Attorney General determines for reasons of national defense or foreign policy they should not apply.*

Section 9(a)—criminal offender record information shall be sealed in accordance with a court order, Federal or state statute, *or regulations issued by the Attorney General.*

Section 9(c)(1)—manual information systems may be exempted from sealing requirements by *regulations of the Attorney General.*

Section 9(c)(2)—sealed records shall be available for access by a *specific determination of the Attorney General.*

Section 11—all criminal justice information systems shall meet security standards *promulgated by the Attorney General.*

Section 12(a)—all covered criminal justice information systems shall include *operating procedures established and promulgated by the Attorney General.*

Section 12(b)—periodic reporting by criminal justice information systems *may be required by the Attorney General.*

Section 13(c)—procedures for implementing administrative sanctions shall be in *accordance with regulations issued by the Attorney General.*

The sum total of these provisions is that the Attorney General, in his discretion, will determine how large parts of the legislation will operate. The delegations of authority either contain no standards for exercise of discretion, or they set a floor but not a ceiling on the Attorney General's actions, or they use standards which are so general as to permit substantial administrative determination. For example, Sections 5(c)(2) and 8(d) permit the Attorney General to determine the use of certain information if national defense or foreign policy require. These are notoriously slippery terms and leave room for considerable interpretation; especially when the powers of the Attorney General relate to a "class of case" and not merely to a particular case. If the intent here is to permit certain kinds of security and background investigations, then it would be more appropriate for Congress to speak with respect to this issue.

S. 2963 is considerably more restrictive with respect to delegation of authority to administrative officials. Without going into a section-by-section review of the bill, examination will reveal that it permits only limited administrative discretion and relies more heavily on state and Federal legislative and judicial actions.

APPROPRIATE ROLES OF THE STATE AND FEDERAL GOVERNMENTS

The broad delegation of authority in S.2964 raises a number of questions about appropriate state-Federal relationships in the administration of the legislation. Sections 5(c)(1) and 5(d)(1), for example, permit use of criminal intelligence information and criminal offender processing information only where a need for use has been established in accordance with regulations issued by the Attorney General. If these provisions mean what they say, then state courts could be denied the use of pre-sentence investigative reports (these are included in "criminal offender processing information"), if the Attorney General so determined. I doubt that anyone wants the Attorney General to have that much authority. Part of the problem may be that S.2964 attempts to regulate state *use* of information rather than its *access and dissemination* as does S. 2963.

An equally unhappy situation may be created in Sections 3(1), 5(d)(2); 5(e)(1) and 9(a) in which it is provided in varying degrees that Federal regulations and Executive Orders *or* state statutes *or* Federal statutes *or* court orders shall determine certain uses of information. If Federal regulations have the force of law they may supersede state statutes in areas of Federal jurisdiction. State courts and legislatures may, in selected instances, find themselves overruled by Federal regulations. The relationship between state laws and Federal regulations should be clarified.

S.2963 does not create as many of these kinds of problems since it relies more on legislative and judicial action than it does on administrative action, and it deals mainly with access and dissemination as distinguished from use of information. Sections 301 and 304 spelling out the powers of the Federal Information Systems Board in relationship to state administrative agencies help to clarify Federal-state relations. Section 310(a) spells out more specifically the relationship between state laws and regulations and Federal laws and regulations. This section provides that the former should apply if the latter are less restrictive. Presumably the opposite also applies.

Section 310 of S. 2963 should be contrasted with Section 10 of S. 2964. The former provides for supremacy of the laws of the state which is transmitting

information if they are more restrictive than those of the receiving state. This provision preserves traditional state control over its information. S. 2964 by way of contrast would substitute Federal control by applying Federal law in all interstate transactions. The former approach is more consistent with state authority in a federal system of government.

S. 2963 also endorses more completely the concept of "cooperative federalism." It would formalize the role of the states in setting policy for criminal justice information systems. Sections 302, establishing the Federal Information Advisory Committee made up of state designees and 301(a) giving state people a strong minority position on the Federal Information System Board create an active role for state government in the policy-making process. This is appropriate in light of the fact that the vast bulk of criminal justice information of all types comes from the states.

The NCIC Policy Advisory Committee is an example of this type of cooperative state-Federal interaction. S. 2963 by giving statutory muscle to the advisory body will strengthen the state's role in policy-making. S. 2964 by way of contrast, in Section 16, merely requires consultation with state people prior to adoption of regulation. S. 2964 as written would significantly strengthen the role of the Federal administrative arm with respect to state affairs in undesirable ways and should not be adopted as written.

ADMINISTRATIVE STRUCTURE AND CONTROLS

The bills differ also with respect to administrative structure and controls. S. 2963 would create a 9-member board to administer the legislation while S. 2964 would rely solely on the Attorney General. Aside from the greater state participation under the Board structure, a degree of independent regulation can be achieved which is not possible when the operating head of an agency must regulate his own programs.

The Attorney General is administrator of the Justice Department. As such, he is responsible for a variety of enforcement programs which use the types of information to be regulated by the proposed legislation. He will be in the difficult position of having to judge the merits of a particular use of information when his agency has an operational stake in the outcome of that decision. This is generally not a desirable regulatory system.

Under S. 2963 the Federal Information Systems Board is authorized to run information systems and may, therefore, be called upon to regulate its own systems. While this can create conflicts, they are likely to be less severe than those arising when an agency has operational responsibilities as well. Further, use of a multi-member Board which has on it private citizens will tend to guard against the regulatory agency treating its own systems differently than others.

With respect to the powers of the Board it should be noted that Sections 301(c)(7) and (8) give the Board broad authority to study Federal government information systems policies. This authority appears to extend beyond criminal justice information systems. This type of study agency would have useful functions to perform and would provide continuity to current Federal efforts to review policies with respect to data banks.

S. 2963 has another useful innovation spelled out in Section 304(b). This provision would require the states to create their own regulatory agencies to oversee the operations of criminal justice information systems. This type of self-regulation will ease the burden on the Federal Board and insure that, within the context of our federal system, the states will be capable of discharging their regulatory responsibilities.

The bills also differ with respect to administrative procedures. S. 2963 requires more extensive public reporting of information system activities and has stronger audit provisions than does S. 2964. Required reporting and a strong audit policy are two extremely useful administrative tools for insuring that informations systems comply with the law and remain within appropriate limits. Final legislation should provide for real muscle in these areas.

In the area of sanctions, S. 2963 is also stronger. Administrative sanctions in S. 2963 include denial of federal funding, return of prior funding, and discipline of employees. S. 2964 by way of contrast, limits administrative sanctions to denial of access to criminal justice information systems. The stronger sanctions will help to guarantee compliance with the legislation.

With respect to civil remedies, S. 2963 and S. 2964 differ in one interesting way. S. 2963 in Section 308(g) indicates that the United States has consented to be sued for violation of the Act. S. 2964 in Section 15 indicates that state and local agencies have consented to suit. S. 2964 does not mention consent by the United States and S. 2963 does not mention consent by state and local governments. It would appear that all levels of governments should be subject to suit and the final bill should so provide.

CONCLUSION

S. 2963 establishes a more appropriate administrative framework than does S. 2964. It more tightly controls administrative discretion, establishes more appropriate relationships between the states and the Federal government and puts more teeth into the regulation and enforcement of the legislation.

Senator ERVIN. Thank you very much. You have been of material assistance to the subcommittee in the performance of its duty to study these two pieces of proposed legislation.

I am very much impressed by your emphasis upon the provisions where you give such broad and almost undefined powers to the Attorney General, even in respect to matters that really pertain to the States.

Mr. WEINSTEIN. Thank you. I hope I was of help.

Senator ERVIN. Senator Hruska?

Senator HRUSKA. No questions.

Senator ERVIN. Thank you very much, you have been a great help to us. I will repeat to you the invitation I have given to other witnesses, that if there is anything that occurs to you that you think would be helpful to the committee, I would certainly appreciate it if you would just communicate it to us, either in the form of a letter or otherwise.

Mr. WEINSTEIN. It would be my pleasure, thank you.

Senator ERVIN. Counsel will call the next witness.

Mr. BASKIR. Mr. Chairman, our next witness this morning is Chief Richard Andersen, chief of police of the Omaha, Nebr., Police Department.

Senator ERVIN. We are delighted to welcome you here. From the statement made by my colleague, Senator Hruska, this morning, I think that maybe you and my departed friend in my hometown, who was chief of police for so many years, Foster Douglas, must be somewhat kindred spirits. We used to hold elections prior to the time that he became our chief of police to determine who would be our chief of police. After he became chief of police, his efforts were so satisfactory and so fair that we decided to have elections on other issues during his tenure of office.

We are delighted to welcome you to the committee and appreciate your willingness to appear and give us the benefit of your advice which is based on much study and much experience in this field.

TESTIMONY OF RICHARD R. ANDERSEN, CHIEF OF POLICE, OMAHA, NEBR.

Mr. ANDERSEN. Thank you. I have a prepared statement. I think I should read parts of it. I could paraphrase some but I wish to emphasize that I am not speaking from a position of changing one paragraph for another. Constitutional law definitions are not my field. I am a chief of police of a city and the problems on crime, I feel, are at the local levels in cities and States. I am speaking strictly from my experience.

Senator ERVIN. You are certainly qualified to talk about the practical aspects of law because after all the law is said to be a rule for the conduct of people, and you have much to do with the conduct of people.

Mr. ANDERSEN. Thank you.

I am appearing before this committee and entering these prepared comments speaking as an individual chief of police of a medium-sized city in the United States. I am here at the invitation of the chairman of your committee, the Honorable Sam J. Ervin, Jr.

My general comment toward criminal justice information is that we have never had an accurate system in the United States between jurisdictions to reflect fact situations and judiciary findings in the criminal area. Instead, police started creating their own filing system for their own use and in the majority of jurisdictions, this has been hijacked by other sections of the criminal justice area.

We are now finding ourselves in the position of being blamed for creating something which we originally designed for our own internal use and for our efficient operation of a police unit.

It would be a great deal of help to us if the result of the legislation could simply be complete legislative policies on what are public records and a guaranteed accuracy of these records at the State level, at the interstate level and at the Federal level; and if the concept that police internal work records and intelligence information can remain for communication between law enforcement agencies only.

Simply return us to our original concept of police records for our own use. We cannot be responsible for total accuracy in our internal records. It is not necessary as long as they are internal. The accuracy level and the completeness level comes at the stage where the records leave the law enforcement section of the criminal justice system. We need, as police, legislative help to withstand the pressures from outside parties for access to our records. We also need legislative assistance to allow us to maintain our work records and activity records.

With this general concept in mind, I will go on to what we use records for in the police area.

USE OF POLICE RECORDS BY OFFICERS BEFORE ARREST OF SUSPECT

When arrests are made by field officers, based on on-sight violations or immediate apprehension at the scene of a crime, records do not have any particular valid value because they are not accessible to the officer and are not needed at that time.

One of the principal uses of records is where arrests are made with prior knowledge of who you are going to arrest and basically what the charge would be. Absolute identification of a person prior to arrest is a necessity.

Warrants are normally issued with just a name and address and do not carry identifying factors sufficient to warrant positive identification for arrest purposes. After positive identification has been made of the person, then it becomes a judgment call on how the arrest is to be made.

Arrests are made from the very minimum of calling a person on the telephone and advising him that there is a warrant on file, and requesting him to come to the police station, to the extreme which is the heavily publicized type of arrest in which areas or houses are literally surrounded by police because of the expectation of problems.

Police records allow us to make this judgment. The knowledge of whether it was the first time a person has been arrested, or the 10th time, his reactions on prior arrests, his propensity toward violence or toward resistance, his propensity to flee or to attempt escape are all factors which are contained and can be obtained through a police arrest file. These facts are not known in files that terminate with only a conviction record.

If conviction records were the only records available to police, serious problems would occur to the street officers attempting to make arrests. We would then have to make judgments with no data available with the end result that many people would be arrested using the wrong methods.

Very rarely does a resistance to an arrest, or an attempt to flee, get reflected in a final conviction record on a serious type of crime. Very rarely would these charges go through court for trial purposes. This is one of the major present uses of police records.

It has a direct relationship to the safety of officers and a very great effect as to the convenience or inconvenience of the citizen who is being arrested.

Police are responsible for many types of warrants to be served, from minor regulatory types of warrants, to extremely serious felonies. Judgments must be made as to the methods of arrest on each and every case.

The mere identification of a suspect is a massive task as generally information is fragmented. Even people in the criminal world informing on other parties do not know complete names. It is up to the police to make identification even after information is received from reliable informants and/or citizens.

Cases that are filed and arrests that are made are far more important to police for identification purposes than final disposition of the case. Cases fall out of the system for many reasons that have nothing to do with innocence or guilt. A conviction-only record of a person would give police a completely distorted view of his character, and probable reaction to police. In the broad sense, this is actually part of our intelligence information, though we at present classify it as part of his "rap sheet."

USE OF POLICE RECORDS AFTER ARREST

When a person has been arrested in a district within the city, the average officer will review the party's past record for purposes of determining his crime pattern in the past, if it exists.

For example, if a burglar was arrested in the process of burglarizing a small grocery store, the officer is certainly interested after the arrest has been made in whether this party was a first offender or a near-first offender in a crime against property.

If so, he really does not create a hazard to the city after he is released on bond. If he is a person with an extensive record of arrests for burglary, who has simply moved his territory of operation into the territory where this particular officer is responsible, the officer would be concerned.

The officer will, through proper police records, try to find out the companions of the person who have been with him on prior crimes; the type of crimes he has committed, or has been suspected of committing; the type of stores that he targets; et cetera.

The reason for this is that the officer, being a practical street officer, is going to pay more attention to certain areas of his district, to certain targets in his district and to the parties involved that were in prior cases, coconspirators or companions of the arrested party.

In the case of the first offender, the officer would certainly not consider his release a threat to the city, and so, he would not give priority or emphasis to further prevention concerning this individual.

No street policeman has the time to direct all efforts toward all things. Priorities for observation purposes must be given, not only to the targets or the simple prevention by observation of victims, but also the observation concept of the suspects who are operating in this criminal area within his realm of responsibility.

Without priorities, he simply could not reasonably allocate his time. When he drives down the street and sees six cars parked outside of a store, he should know enough about his district to recognize if one of the cars was a known thief's means of transportation. This is not for purposes of harassment but is for purposes of preknowledge of what could be going on in the district.

For the followup officers, the tremendous use of police records is a simple evaluation of the case and the charge itself. In the practical world, the past record or criminal pattern of a person, whether ending in formal charges or convictions for all charges or not, certainly influences the judgment of a followup investigative officer and, in turn, on into the prosecution area.

I am sure that the judgment would not be the same if the person arrested with two ounces of marihuana—which is a misdemeanor in our State—and two or three schedule I drug pills—which is a felony—was an 18- or 19-year-old with no prior arrests, or whether he was a person in his mid-20's who had five prior arrests for drugs, but which only resulted in one conviction or possibly no conviction. I am certain that the officer would use practical judgment on whether to turn this over for felony prosecution, or misdemeanor prosecution.

I am certain that the prosecutors would take evidence of this. If we were relying only on conviction records, it would have a tendency to even out the prosecution probably at a higher level than would be warranted in this type of case. Judgments are made by people, and they are based on many factors besides the case and the evidence itself.

Another outstanding example is the check fraud area. Certainly a person arrested for a no-account check, that had no prior arrest record in this area, would be looked at differently for prosecution purposes, than a person who had three, four or five prior arrests for a no-account check and for reasons unknown unless researched, had the charges "dropped" or "no complaint"-ed. Again, to reiterate, it rests on judgment and we just use available information to make judgments for the benefit of people.

POSITION ON OPENING OF RECORDS TO THIRD PARTIES OR NON-LAW-ENFORCEMENT ORGANIZATIONS

I realize that both the States and the Federal Government use records for information in licensing, job security, and clearance security investigative concepts.

I do not feel that the release of information of this type should be governed by police. In the concept of an information system that is used for licensing purposes, or for any third-party purpose, this system must be an absolutely accurate reflection of the judiciary process and should not contain any so-called intelligence information and/or "arrest information", with no-charges-filed-types of data.

By the proper placing of responsibility at the State and national level for the "criminal justice information center," the release of data to any third-party for any reason can be covered by legislative processes and accuracy can be guaranteed. I feel that this is where data should be released for legal and lawful purposes.

At the police working level of records, I do not feel that they have to be complete as far as disposition, as long as there is an absolute prohibition against police giving out data of this type to anybody other than another law enforcement agency for investigative purposes.

For too long police administrators have been held responsible for the release or nonrelease of data without legislative assistance. We are not equipped as an individual police unit to make complete proper judgments in this area, nor can we be held responsible for complete information.

Our records are designed for our work purposes to be used internally by investigators. If this type of record can be returned to its original purpose, with heavy penalties for unauthorized use or distribution, I believe the rights of people can be upheld in the criminal justice information area without penalizing the police and the resulting loss of efficiency in investigation.

COMPLETE ACCURATE SYSTEMS FOR THE UNITED STATES CONTAINING ONLY FACT JUDICIARY RECORDS

I will now paraphrase the next section. This is the judiciary records. One system is the Federal system, which I should not comment on as a police officer. The offenses that the Federals work with, generally in the criminal area, are not the type of offenses that create the street crime problems and the arrest problems in a city.

The system of interest would be the interstate system of records, the CCH concept. This should be governed, I believe, by State representatives. Even though it would be extremely bulky to have a group of 50 or more, I believe that each State is entitled to its input as to the regulation of this system.

The question of disposition and complete accuracy of records must be emphatically legislated. This is the area or the level where I believe that any release of data for licensing functions, et cetera, should be handled and preprogramed.

The third level of information would be the intrastate system. In Nebraska, the legislature at present is discussing a legislative bill to form a committee at the State level, to handle the rules and regulations for dissemination of information.

I believe that it should be a structure at State level that should have the power to write rules and regulations for local records of police. Whether this would be a commission under the auspices of the State supreme court, the Governor's office, or the attorney general's office, I do not consider too critical except that it should be a separate function with the total responsibility of criminal justice judiciary data.

Our State, among many, is going to a State court system. Therefore, the logical place for this is at that level. All of these systems should contain only absolute fact situations and should carry up-to-date data with dispositions.

One of the things my experience has found to be true, is that if a person has been arrested in the past, and/or charged and found not guilty, one of the problems that arise is that people's memories are extremely long, but not too accurate.

They will remember the fact that a party was arrested. If it is not available for that person to absolutely show that he was, in fact, found not guilty, or the case was dismissed, you will find the person will be hurt by hearsay and by defective memories of people. Therefore, I do lean toward the system containing "not guilty" findings or "nolle prosequi" findings after formal filing of charges.

INTELLIGENCE RECORDS OR WORK RECORDS FOR POLICE

The definition of an intelligence record could be anything, other than records that result in a conviction. If arrest records that did not result in conviction were not maintained in the interstate or intrastate system, I am certain that these same arrest concepts would revert over to a type of intelligence record held at a local level for working use of the officers.

The vast types of records which run the gamut from simply street information gained on a crime-oriented person, to the maintaining of facts about him—past methods of operation, associates' addresses, types of crime he is probably involved in—are all intelligence data.

I am certain, in my city, as in the majority of cities, the criminal element—the thieves, the drug sellers, et cetera—are known to the police. It is not a question of knowledge. It is a question of gathering evidence and making a case on a particular incident.

In the passing of this type of information back and forth between cities, I would hope that we could maintain a national system—call it a pointer system—so that we can find a city or the jurisdiction to contact for information of this type.

For example, somebody arrives in the city and we immediately hear that he is, in fact, some type of drug seller or stick-up man. We can normally get fragments of information about him. We can normally get the reasonable area of where he came from. We need the capability of checking this person in some intelligent manner so that we can find out his background in the city he came from, and what we can expect from him in the criminal operation field.

Professional criminals at this level move frequently and it is unreasonable to ask each city police department to live through the time period necessary to get the background information on this person. Drug sellers, in particular, fall under this category.

As a recent example, a drug seller left our city. We knew where he was heading and we got a name of the person he was going to be with, but it was an extremely common name, the equivalent of John Jones. That was all the data we knew.

We felt we had an obligation, as well as a self-interest, to further identify John Jones, to advise the jurisdiction where our seller was heading, and what we reasonably believed was his purpose.

We expected them to relay back to us information regarding John Jones, if they know it, and what drugs we could expect to come into our city via this connection.

Criminals do work in patterns and they do change locale. Whether they are convicted of that particular type of crime or not, it is fairly common knowledge among officers who does what and in what manner.

We feel we need an interstate/intercity system to assist us in this. The direct communication regarding the background of the person can be done on a direct basis, person-to-person, between members of a police department, and should not be in any bank or any method of access where there is any possibility of outside parties having access to this data.

We need this simply to keep operating as police. At the very least, if such a system is not set up on a government-to-government basis, I would request that it not be forbidden for cities to communicate on a person-to-person, specialized-unit-to-specialized-unit basis.

LEGISLATIVE DETERMINATION OF SOME OF THE PROBLEMS POLICE HAVE NOW WITH RECORDS AND DATA

As I have stated previously, local police are under a great deal of pressure for the release of a great deal of data.

The pressure is not from just one area. It is from the press, defense attorneys, pretrial release personnel, private businesses, licensing agencies, Government personnel investigators from all departments of Federal Government, some with general law enforcement powers, and others with just internal investigative powers of their respective Federal departments, pressure from victims themselves to view our data and, of course, from the suspects.

Among items that appear minor to outsiders, but are critical to police in this determination are such things as: the record of arrest or the police blotter; the investigative reports of the officers on crime complaints; reports from the victim on the original complaint situation; witnesses' names and addresses and the resulting statements from these witnesses; photographs of persons and places, both crime scenes, victims and suspects, and physical evidence obtained in the resulting investigation of all types; verbal evidence given by people, this would cover the area of confessions and admissions and denials; the returns of search warrants and the resulting physical evidence seized.

These are just some areas that need either a complete legislative look, or rules and regulations set down by the respective levels of information responsibility.

This concludes my formal presentation. I thank you for the opportunity you have given me.

Senator ERVIN. Chief, I am very much impressed with your suggestion as to how criminal intelligence should be defined. You state, very succinctly, that it should be defined to be any information which could be of material assistance to law enforcement officers in the performance of their law enforcement duties, other than information which consists of criminal histories which show prosecution resulting in convictions or resulting in pleas of guilty.

Mr. ANDERSEN. For lack of a better definition, the work product of our operation, police intelligence is everything other than what has gone into prosecution, for the sake of discussion.

Senator ERVIN. You also made it very clear that in your judgment intelligence information, as thus defined, should be restricted to law enforcement officers, and not disseminated to any other groups.

Mr. ANDERSEN. Definitely, sir. I would go one step further. I do not believe that you would find police jurisdictions that would voluntarily put intelligence information into any place where a third party, even a law enforcement agency, could look at it without the knowledge of what they are looking for.

I think the LEAA concept is needing a pointer system where I can get a background of what city or unit of government could assist me. Then I think we could communicate directly between these jurisdictions.

If I knew that everybody had access to all our data, rest assured I would not put it into a system so they could draw the data out. But, I definitely need some kind of finding system between jurisdictions to locate a source. But the source is going to be handled by individual people in the system. I do not think they are going to accept blanket output.

Senator ERVIN. You take the position that the question of whether criminal histories should be given under any circumstances to persons other than law enforcement officers, is a matter that ought to be determined by legislative bodies or policymaking bodies, rather than police.

But, that you are of the firm opinion, I take it, that going to the possibility of the injury that may be done to an individual, that no criminal history should be disseminated to persons outside the law enforcement field unless that history is complete and showed that there was a conviction or a plea of guilty.

Mr. ANDERSEN. I do not accept the restriction of just guilty. I feel that a finding of not guilty to a person is important in the big public area of people. The mere fact that it went to the court and was found not guilty, I think, is critical to him. As I pointed out, people have a tendency to remember half-facts. And they will remember that such-and-such was arrested. If he never gets the opportunity to clear himself, he is going to bear that stigma forever. He will never get an opportunity to clear it. People's memories hurt if they do not have facts.

One point I think—and I was talking to Mark briefly—in the arrest information area, there is a level in there that I have not even heard discussed. Arrest information comes in two steps: one is an arrest step by police; the second step is the formal review of the charges by a prosecutor and the formal filing of charges. At that point it becomes a part of a judicial docket.

That is a point where I feel it turns into the public arena and should be carried on through with formal findings. I find no reason for people to be ashamed or worried about open judicial adjudications.

Senator ERVIN. Maybe I can rephrase my understanding of your position a little better. That is, in your opinion, criminal histories ought not to be disseminated to non-law-enforcement agencies unless the record is complete, with the disposition.

Mr. ANDERSEN. There has to be a legislative determination. We have been making it for a number of years and to be quite frank, I cannot stand the heat anymore. I think there are many chiefs just like me. We are getting fried in this process.

Senator ERVIN. Senator Hruska?

Senator HRUSKA. In that regard, about showing records that are complete, and also the availability of your police information to other than law enforcement agencies, it seems to be the song that you sing here is one I have heard before from one of your fellow Nebraskans, Clarence Meyer. He says we do not have any trouble as long as we stay within the system. The pressure from the outside to get access to a lot of materials, some of which is not complete, some of which does not tell the proper story, and our inability of the police departments and prosecutors to withstand the pressure for that partial information, that is one of our problems.

Mr. ANDERSEN. Yes, sir.

Senator HRUSKA. He also said that he does not feel that that decision should be made by police departments or by prosecutors, but that rules for that should be set up by the legislature, which should either give the protection that people like you would like to have from those pressures.

Do I properly describe your position?

Mr. ANDERSEN. Yes, sir. We have masses of data in our files. We basically deal on hearsay as police investigators, and this type of thing, you know, handling people, and it should not go to a third party. It is very injurious. The basic fact is that if police tell people in their city everything they know about the people, they would all be moving out of town.

We know secrets about people that are just unrealistic but there is always that fear of that going out if we do not have legislative protection.

For example, on the subject of supena from civil court, I get a subpena for all records involving a child custody case or a divorce case. What is my position? What do I do? I have data there that I know is very injurious to people, and I know it is also not backed up by factual situations.

Senator HRUSKA. Raw files?

Mr. ANDERSEN. Raw files. I am in a position where I do not know what to do. I am subpenaed and I am dead. We know a lot about people. Our information should not go beyond our realm.

Senator HRUSKA. How can members of the public, including members of the media, the radio, TV, newspaper reporters, get information from your department now, as to an individual?

Mr. ANDERSEN. We run, basically, an open department as far as news is concerned. A record of arrest is certainly an open document. The filing of charges is open. Basically, the majority of our reporting system of victims is open to the press. We hold back reports that would impede our investigations, something of that type. Basically, we are a fairly open police department.

Senator HRUSKA. For example, if you get the names of some potential witnesses, you do not like to disclose those until after you have had a chance to visit with them and pursue those leads yourself? Would that be a fair statement?

Mr. ANDERSEN. Yes. Even after that, I would rather not reveal them, but I am in the position that I cannot withhold them, unfortunately.

Senator HRUSKA. You say, on page 12 of your statement, in the last two lines there: "Therefore, I do lean toward the system containing 'not guilty' findings or 'nolle prosequi' findings after formal filing of charges."

When you "lean toward" that kind of system, I take it that is only with reference to your internal uses and your internal reference and knowledge?

Mr. ANDERSEN. No. If we are going to a central place, where a person, a record of arrest—a physical fact of arrest—is going to be in a public area. People have memories. They are going to remember that he was arrested. If there is not the possibility or there is not some kind of public way for him to find a not guilty finding, he is going to be injured as time goes by.

I lean into that as going into the total system, the dissemination of that system beyond the criminal justice arena, as back to the legislative determinations for licensing purposes and this type of formal thing. People get injured in this process and it bothers me.

Senator HRUSKA. Well, you discuss that pointer system and you say, where you find some man with proclivities and propensities and record of arrest, maybe a conviction or two, and you know he is going to move to Kansas City or Des Moines, you call up the fellow there in that city and you say he is moving to your city, just be on the lookout for him, if he should turn up there, we do have a record here.

You say it is unreasonable to ask each city police department to live through the time period necessary to get the background information on this person so you save them. There is an element of preventiveness there, is there not?

Mr. ANDERSEN. Yes.

Senator HRUSKA. Drugsellers are one of the most common examples. There are others, are there not?

Mr. ANDERSEN. Professional burglars, professional stickup men, as soon as they come into an average sized city, or even the larger cities in the various precincts, I do not think it takes very long for the police to find out. We have a new face on the street. Who is he? What has he done? We know he is a thief because he is with 40 other thieves. That is his business. What we are trying to find out is who is he and where has he come from? If he is a drugseller, we want to get back to the original city he is from and find out what kind of drugs he is peddling. Is he a manufacturer, or a seller? What can we expect from him?

If we have to spend a year, or up to 2 years, building up our own background on this person, that just seems so ridiculous. He has probably left the other city for a very definite reason. Now he is in another town. This is intelligence information. This should be handled between cities, not on a face-to-face basis, but on a real, private communications basis, because many jurisdictions will not tell other jurisdictions about things.

I am not blaming them. I know jurisdictions that I would not give my data to in certain areas.

Senator HRUSKA. It would appear that that is a legitimate practice and I take it further that if there is anything in the pending legislation here that would interfere with you doing things of that kind, you would be concerned?

Mr. ANDERSEN. I have been reading these bills, and we are a little worried about the possibility of banning our police communication on this level. This does bother us a little bit. The mere fact that it is considered.

Senator HRUSKA. This legislation has certain purposes, yet, in making a law out of it, sometimes we incur what in medicine they call "side effects" and I think that that is one of the things that we ought to be on guard against.

As far as I know, the staff and the rest of the members of this committee are aware of that danger, and we try to guard against it. I hope that we succeed.

Mr. Andersen, thank you very much for coming here and giving us the benefit of this very splendid statement.

Mr. ANDERSEN. Thank you, Senator.

Senator ERVIN. Does counsel have any questions?

Mr. GITENSTEIN. I would like to follow up on the last question Senator Hruska raised about the possibility that we might interfere with legitimate police communications between each other. We talked about that this morning, you and I, but the thing that I would like for you to clarify for the record, is the routine exchange—not of intelligence, but "rap sheets"—and criminal histories prior to arrest for police officers. Could you discuss that in greater detail?

You described that in some detail in the statement and we went into greater detail this morning. Specifically, would it not be unusual for a police officer, prior to arrest, to ask for the criminal history for a person—in other words, the formal criminal history of a person from another agency prior to the arrest of that person?

Mr. ANDERSEN. This would be unusual. You would rely on what background you had. You would probably have a Federal rap sheet if he had been in your community and arrested before; you would have that. You would probably not access another city if you were going to make a direct arrest, probably because of the time process, and, as I say, when we are dealing in local cities, we are not dealing with a 6-cases-in-6-months process; we are dealing in arresting 30 or 40 people a day. You just cannot do that.

If you cannot get this data and you do not have it available, you are probably going to raise your level of arrests, your precautionary level of arrests, to the charge. You would probably never take the time to call another city if you already had reasonable grounds for arrest. You would probably just evaluate your arrest to the best of your ability.

Mr. GITENSTEIN. Senator Ervin's bill is not designed to restrict a police officer in the field to access to his own files but is only designed to restrict that officer's and that department's access to another agency's files.

There is a restriction in the bill that places certain limitations on that access, from one agency's files to another agency's files. Those are not necessarily unrealistic?

Mr. ANDERSEN. Just on the two levels—the formal level is probably used more for prosecution than it is for police usage. When you get below that level, when you get down to the intelligence level, that we not be restricted so we cannot communicate with other cities freely as long as we are speaking or dealing with persons that we probably know or understand and we understand each other's positions.

Mr. GITENSTEIN. In other words, if this legislation allowed you to continue to talk on the telephone with the other departments, once you isolated a man that you wanted to ask about, you would be satisfied?

Mr. ANDERSEN. That would solve about half of the problems, just make sure that we are not restricted on this. If one policeman is talking to another one, he is going to tell him, this is what I have heard. It is not fact. We have not got a document and all this yet. You can reasonably expect that he has an LSD factory in his basement.

Mr. GITENSTEIN. Senator Ervin has a provision in his bill that says that one department cannot access a criminal history files of another department unless they have arrested the person.

Mr. ANDERSEN. Yes.

Mr. GITENSTEIN. That is not only a reasonable provision, but reflects good police practice?

Mr. ANDERSEN. That would be reasonable. You should be able to access their judiciary processing records, because you are going into the public arena. If you mean just access the criminal intelligence information, without their knowledge, I would reject that.

I think you ought to have the ability to know that they have something on file. The data itself should not be though.

Mr. GITENSTEIN. When I say "access their files," and an arrest has not resulted in a conviction, systematically accessing that file——

Mr. ANDERSEN. This is where we come into raw arrest or formal filing of charges. I would take the position that if charges have been formally filed, which means they have a docket number, that to me puts it into the public arena and I cannot get too enthused about sealing that or anything else because it is a factual situation. It is at two levels of adjudication. Policemen had a reasonable cause of adjudication to make an arrest; a prosecutor made a reasonable grounds of evaluation to file formal charges. I think you are on pretty safe grounds as far as an arrest.

Mr. GITENSTEIN. My understanding from our conversation was that except in the professional criminal situation when you are dealing with a drug dealer or a burgular who has been active in another city, it would be unlikely that a police officer would request that information except after an arrest.

Mr. ANDERSEN. Very unlikely; yes, sir. It would be very rare.

Mr. GITENSTEIN. This provision would not be a burden, then?

Mr. ANDERSEN. No.

Mr. GITENSTEIN. That is all I have to ask.

Senator ERVIN. Chief, the committee is certainly very grateful to you for appearing here and giving us the benefit of your advice on a subject that your experience makes you an expert in.

Thank you very much.

Mr. ANDERSEN. Thank you, Senator.

Senator ERVIN. The committee will stand in recess until 10 o'clock tomorrow morning when we will meet in the same place.

[Whereupon, at 1:35 p.m., the subcommittee recessed to reconvene at 10 a.m., Wednesday, March 13, 1974.]

CRIMINAL JUSTICE DATA BANKS—1974

WEDNESDAY, MARCH 13, 1974

U.S. SENATE,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:05 a.m., in room 318, Russell Senate Office Building, Senator Sam J. Ervin, Jr. (chairman), presiding.

Present: Senators Ervin and Gurney.

Also present: Lawrence M. Baskir, chief counsel; and Mark Gitenstein, counsel.

Senator ERVIN. The subcommittee will come to order.

Counsel will call the first witness.

Mr. BASKIR. Our first witness this morning is the Honorable Abner Mikva from Illinois.

Senator ERVIN. I am delighted to welcome you to the subcommittee, and appreciate very much your willingness to appear and give us the benefit of your views in respect to these legislative proposals.

Mr. MIKVA. Thank you, Senator. I am pleased to be here and pleased that these hearings are being conducted by you and the issue is being put on the front burner as it were; and I am pleased to be back before this committee.

On a personal note, I would like to say the country is going to miss your strong voice and strong right arm in the next session of Congress. In terms of your awareness and concerns about these constitutional rights and liberties, they have been in good hands.

Senator ERVIN. Thank you very much.

I will take this occasion to thank you for the great advice you have made and your service to the Congress in the basic rights of all Americans.

TESTIMONY OF HON. ABNER J. MIKVA, FORMER MEMBER, U.S. HOUSE OF REPRESENTATIVES

Mr. MIKVA. Mr. Chairman, I hope this subcommittee accepts the substance and direction of your bill, S. 2963, because I think that it concerns itself about all of the important matters that are involved in this field of privacy; but whatever the final form of the bill, I would hope the Congress moves as expeditiously as possible. I do not think we can afford to wait for initiative or direction from the White House. We certainly cannot afford to wait too many months studying a problem that has been thoroughly studied before by so many qualified people. There is just too much at stake.

This legislation is urgently needed, but I think its significance goes far beyond the question of computers and criminal data. It is more than just a technological subject with which this committee is concerning itself. It goes to the heart of this society.

It is with this legislation, and other bills like it, that we are going to be deciding whether our children will grow up in an open, democratic country which welcomes debate and cherishes individual liberty, or a secretive country marked by fear and intimidation.

About 200 years ago Thomas Jefferson said that "Democracy is the only form of government that is not eternally at open or secret warfare with the rights of the people."

I do not think you have to be reminded, Mr. Chairman, that Thomas Jefferson might be a little bit uneasy about some of the things he saw in government today.

In many ways the right of privacy has been under siege in this country over the last few years.

Illegal wiretapping, political surveillance and espionage, breaking and entering in the name of national security, searches of telephone records and bank accounts without a warrant, military spying on civilians which both you and I know something about, and the litany of unconscionable activities that assault the individual's right to privacy—all of this has happened and with disturbing frequency and a disdain for the law.

So, I was encouraged, as I think most of the people who have been concerned about this problem were encouraged, to learn that the administration has listed the right to privacy as 1 of its 10 major priorities this year, and has backed up that concern with S. 2964 which is under consideration here. I think that the President's recent radio speech contained commendable language and commendable intentions, especially in regard to this legislation before the subcommittee.

But I think that that address was as notable for what it left out as for what it included. As others have said, privacy is a matter of definition, and it seems to me that the Administration's definition is very, very narrow. It is important to regulate the use of computer data banks, but as we have learned in the last 18 months, computer data banks do not represent the only threat to individual rights and liberties.

There will always be a tension between government and the interests of individual privacy. But there must always be a balance. Over the last few years, the scales seem to have swung in the direction of government, and individual privacy at times has been very seriously compromised. These next few years and the fate of the legislation before this subcommittee will determine whether we can balance the scales again, or if, instead, we continue to sacrifice privacy for the convenience of government.

I think that the need for legislation to control the dissemination of criminal justice data has been widely recognized. The Nation's law enforcement agencies need information and some access to criminal records; but the right of privacy is seriously threatened when that information and those records are improperly compiled or used.

This is not a vague or intangible thing. This is very real. There are millions of people each year who are labeled by their record, and as a result, are often unable to obtain decent jobs, homes, credit or schooling, often unaware as to the reason why they have been denied these rights, and often denied these rights because of mistaken identity, stale records, or confusion of recordkeeping. We simply have made it very, very difficult, because of our recordkeeping processes and patterns, even for those who are guilty of what the records say they are, to rehabilitate themselves and reinvolve themselves in society in a useful way.

And so I think it is essential that we take a close look at the impact of the present policy of disseminating criminal record information, and its relationship with the incredible recidivism rate that we have in this country. I hope that this is one issue that the subcommittee can consider in its determinations of S. 2963.

It is a fact that if you keep hitting somebody over the head with the things that he has done wrong as reasons why he cannot find his way into the useful part of society, he is going to continue to operate in that underworld part of society from which we are hoping he will escape.

Mr. Chairman, I do not want to put words in your mouth, but I suspect you share my wish that the National Crime Information Center could be recast in the original mold that was contemplated by Project SEARCH. That was for the Federal Government, through LEAA, to help fund computerization of State criminal recordkeeping, but that only a central index was to be maintained in Washington. We were really to be just a depository rather than some functioning, substantive agency collecting this data, measuring this data, and evaluating this data.

This system, it seems to me, would have provided sufficient sharing of criminal information while diffusing it in 1,000 localities. Unfortunately, the FBI took control of the project from LEAA and the States years ago, and we are now faced with the problem of placing effective controls on a centralized data bank, one that I think can really haunt this whole concept of privacy for generations to come.

Senator ERVIN. You are correct in assuming that I share your views on that point.

Mr. MIKVA. I hope something can be done about it. I would urge a return to the original Project SEARCH concept and a return of control of the data to the States, limiting the Federal role to a coordinating central index function.

If there is one place where the notion of States' rights and sovereignty and local responsibility is important, it is in this area of law enforcement. I worry, as I know you do, about the concept of national law enforcement agencies swallowing up local jurisdictions and local discretions.

I have my full statement which I will not read. I hope you will permit me to put in into the record.

I would like to comment on two things very specifically. First of all, I think we have to be concerned about the relevance of stale data, whatever the intended use. How long should a person be saddled with the record of an arrest followed by acquittal? How long should he be saddled with an arrest followed by a conviction? If we accept the principles of rehabilitation, there must be provision for expunging the records of past convictions. We must determine the relationships

between present policy and rehabilitation and act accordingly, hopefully sealing records far earlier than the administration proposals suggest, or the present system now provides.

I was pleased to see your bill, Mr. Chairman, take this very sensitive problem into account and recognize that for our sake, not out of any humanitarian reasons, but for our sake, we simply must not keep hitting somebody over the head with a stale criminal record that keeps him from getting a job or getting credit or getting into school or any of the other things that are important.

Moving from relevance to accuracy, I think data systems should be required to employ standard operating procedures to insure the completeness and accuracy of all data, and a complete data trail must be required providing a permanent record of all requests for information, what information has been provided to whom and under what authority. Whenever information is updated, corrected, or purged, identical action must be required both up and down the data trail.

Mr. Chairman, already in these early years of the computerized society we have found too many accidents, too many mistakes of recordkeeping that have haunted people. We must be able to know who is asking for information, what use it is being put to, and make sure that the input and the outgo is as accurate as both the human mind and the machines can make them. Then we must allow the individual an opportunity to challenge the accuracy and propriety of information in those files. The statute should specify the grounds on which the challenges may be based. Individuals must be given the right to inspect their file accompanied by counsel if they wish. A copy should be made available at reasonable cost and in a comprehensible form, not in code or computer language.

Once a challenge has been submitted, the subject's file should then be flagged so any information disseminated will reflect the fact of the challenge. The agency maintaining the data bank should be required to reexamine the challenged information, either verify its accuracy or propriety, or make the necessary correction or deletion. There must be a notification to the individual of what action has been taken. If no response is received or the individual is dissatisfied with the result, an administrative hearing should be available subject to judicial review.

Mr. Chairman, again I know I do not have to emphasize to you the importance of this accessibility by the individual himself, the right to challenge false information or mistaken information. His life can turn on what those records tell a prospective employer, a prospective lender of credit, a prospective school.

If he or she does not have the right to challenge inaccuracies and find a way to get them corrected, we are really in deep water. I cannot think of anything more important than that. If the information is important enough to disseminate, it is certainly important enough to give the individual about whom that information is concerned the right to look at it and test it for accuracy.

I might say here, Mr. Chairman, I was pleased to see your bill separate out very distinctly the difference between criminal investigation and a criminal record. It seems to me that criminal investigation material, if it is of such a confidential nature that it cannot be disclosed even to the individual about whom it is being collected, ought not be given out to anybody else; if it is of the kind that is

criminal recordkeeping, certainly the person about whom those records are kept ought to have every right to see the contents of the file so he can challenge any inaccuracies.

Of course, Mr. Chairman, one of the greatest dangers of data banks in this respect is the risk of improper dissemination of data for uses inconsistent with the legitimate uses for which it was collected. A prime example is the dissemination of criminal information to credit bureaus and employers.

Mr. Chairman, the Federal Government has no business to be in the gossip business. We just ought not to lend our facilities, our resources, our people to giving information to sources that do not require those sources. The basic legislative approach should be to prohibit all dissemination except as specifically provided by statute, such statutes should provide appropriate limitations to the two kinds of Government users: Law enforcement agencies, which have a very special use of the information and non-law-enforcement agencies.

I think law enforcement agencies should be entitled to exchange information. That was the original concept of Project SEARCH. But non-law-enforcement agencies ought not to be able to set up their own competing data banks by getting the Federal Government to provide the initial input. They should be permitted to receive only conviction and postconviction data; they should not be involved in the receipt of arrest records which do not lead to conviction or other preconviction information. And of course, it follows that under no circumstances should they receive any kind of criminal investigation material which is not the subject of concrete, objective proof.

I think that one important protection your bill provides is that the subject should be given advance notice that his criminal record is going to be checked. An applicant for a job demanding a clean criminal record should be notified on the face of the job application that a record check will be made. When requests for data are not generated by an application on which prior notice is feasible, such as a judicial appointment, the requesting agency itself should be required to notify the subject that a request has been made.

In any event, a person should be entitled to notice of any adverse action based on criminal record information so that the subject has an opportunity to challenge and correct erroneous information.

Finally, I would like to talk about enforcement briefly. I think we must provide that the General Accounting Office be required to conduct annual random audits of data systems and report the results to Congress. There must be civil and criminal penalties. A private line of action should be made available to injured or aggrieved persons. If necessary, even sovereign immunity and official immunity restrictions should be modified to permit damage recovery.

We are dealing with some very fundamental and important rights of individuals here. If the Government takes an action because of faulty recordkeeping or because of a breakdown in the machine or a breakdown of an employee who is keeping the records, the individual who is adversely affected ought not to be left without recourse to some kind of action.

Mr. Chairman, these are the parameters which I consider those minimum requirements for responsible legislation restricting the flow of criminal justice information. I think your bill, S. 2963, fully meets

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those minimum requirements. The Department of Justice bill acknowledges all the appropriate concepts; but with all due deference to its sponsors, I think it fails to implement them with the necessary specificity. Too often S. 2964 leaves important legislative judgments to the discretion of future Attorneys General. We have learned that Attorneys General can be indiscreet.

In all of this, it is important to remember that we are talking about individual rights and responsibilities, when it comes to privacy, the threat of invasion is almost as dangerous as the invasion itself. Just about 3 years ago, John Mitchell, then Attorney General, now occupying a different role, coined a new phrase. He called it "taponoia." He said that there was a new kind of paranoia in the belief that one's telephone was being tapped.

Then and now there are more than a few people in Washington, D.C., that would not mind admitting that addiction. That is the point, Mr. Chairman; whether wiretapping was as widespread as some of us think it was or not, the fear of wiretapping was a very serious problem, not only for all of Washington, official and nonofficial, but for the rest of the country as well.

In terms of effect, it does not really matter whether or not there is a wiretap or whether or not criminal justice information is abused or given to the wrong people. The result is the same, if somebody is intimidated, if somebody is afraid, if someone is a little less brave; and that is the chilling part of Government action in these fields.

With strong legislation like the bill you have drafted, Mr. Chairman, we should be able to shed some light on the situation and hopefully take some of the chill out.

Senator ERVIN. I want to commend you on the excellence of your statement. It shows that you understand the problem and understand what I think are the things that must be done to solve the problem.

Now, you and I both recognize that sometimes you have to advocate a bill that is not as strong as you would like in order to get enough votes to get it through both Houses of Congress and secure the approval of the President. Personally I do not think it ought to be the function of those that keep criminal records, that is, records of criminal histories, to make them available to anybody outside of law enforcement for employment purposes, but there are a number of laws in the States which require investigations available to licensing boards and things of that kind. While I would like to eliminate that myself, it would probably be part of the wisdom to allow that to continue in order to get the necessary support.

Mr. MIKVA. I would agree.

Senator ERVIN. Legislators have to be pragmatic, and realize they have to get the vote of the majority of the Senate and the majority of the House to make any bill become law, as well as the signature of the President.

Mr. MIKVA. I would agree, Senator. One of the reasons why I admire your bill is that it recognizes that that tradeoff may have to occur, but it does set some limits on how the information is to be obtained, used, and gathered. It seems to be that at [illegible] your bill is aware of trying to protect the rights of the individual as much as possible, given the fact that we are going to have to allow the States to continue some investigation into criminal records, probably in areas where it may not even be relevant.

When I was in the State legislature, there were a lot of times when the State asked for criminal records that probably were not even necessary. I do not know that the State has any more concern about whether a tree-trimmer has a criminal record than it has about any other citizen, but in Illinois they do have a search for a tree-trimmer's license.

Senator ERVIN. Legislation putting the end to dissemination of arrest records when there is no accompanying record of what disposition was made subsequent to the arrest, if it does no more than put an end to indiscriminate dissemination of mere arrest records, would be very worthwhile.

Mr. MIKVA. A great step foward, Senator.

Senator ERVIN. Thank you very much. You gave a most illuminating statement.

[The prepared statement of Abner J. Mikva follows:]

PREPARED STATEMENT OF HON. ABNER J. MIKVA, FORMER MEMBER, U.S. HOUSE OF REPRESENTATIVES

Mr. Chairman, first let me thank you for the opportunity to testify before this Subcommittee today.

Your service in the Congress, your leadership and foresight in the effort to safeguard individual rights and liberties, certainly exceed the contributions of any other Senator or Congressman. And, during my four years in the House of Representatives, it was a privilege to be able to work with you and this Subcommittee at times when government has threatened individual privacy—with no-knock laws, wiretapping, military surveillance of civilians and, now, computer data banks.

The legislation before the Subcommittee today represents an important and comprehensive effort to regulate the collection, storage, and use of criminal records.

Mr. Chairman, I hope that the Subcommittee accepts the substance and direction of your bill, but whatever its final form, I would hope that the Congress moves as expeditiously as possible. We cannot afford to wait for initiative or direction from the White House. We cannot afford to spend more months studying a problem that has been thoroughly studied before by so many qualified people. Too much is at stake for that.

This legislation is urgently needed, but its significance goes far beyond the question of computers and criminal data. It goes to the very heart of this society.

The fundamental character of a nation depends on the place of every individual within it. And with this legislation—and other bills like it—we will be deciding whether this will be an open, democratic country which welcomes debate and cherishes individual liberty or a secretive country marked by fear and intimidation.

Just about 200 years ago, Thomas Jefferson said that "Democracy is the only form of government that's not eternally at open or secret warfare with the rights of the people."

You don't need to be reminded, Mr. Chairman, that Jefferson might be a little bit worried about that today.

In many ways, the right of privacy has been under siege in this country over the last few years.

Illegal wiretapping, political surveillance and espionage, breaking and entering in the name of national security, searches of telephone records and bank accounts without a warrant, military spying on civilians and the litany of unconscionable activities that assault the individual's right to privacy. All of this has happened and with disturbing frequency and a disdain for the law.

Given that record, it was encouraging to learn that the Administration had listed "the right of privacy" as one of its 10 major priorities this year. The President's recent radio speech on individual rights also contained commendable language and commendable intentions, especially in regard to this legislation before the Subcommittee.

But the President's address was as notable for what it left out as for what it included. The others have said, privacy is a matter of definition, and the Administration's definition seems very, very narrow. It is important to regulate the

use of computer data banks, but as we have learned in the last 18 months, computer data banks do not represent the only threat to individual rights and liberties.

Mr. Chairman, in my judgment we are at an important juncture. There always has been—and perhaps always will be—a constant tension between government and the interests of individual privacy. But there must always be a balance. Over the last few years, the scales seem to have swung in the direction of government, and individual privacy at times has been compromised. These next years will tell if we can balance the scales again, or if, instead, we continue to sacrifice privacy for the convenience of government.

Since at least the concept of control for computer data has the support of the Administration, this legislation is a good place to begin to determine which way to go.

The need for legislation to control the dissemination of criminal justice data has been widely recognized. The nation's law enforcement agencies clearly must have information and criminal records, but the right of privacy is seriously threatened when that information and those records are improperly compiled or used.

Mr. Chairman, I suspect you share my wish that the National Crime Information Center (NCIC) system could be recast in the original mold contemplated by Project SEARCH. The original concept was for the Federal government, through LEAA, to help fund computerization of state criminal record keeping. A central index was to be maintained in Washington. From remote terminals, state law enforcement agencies were to be able to submit a subject's name to the central index, and would be advised what states or localities, if any, maintained criminal record information concerning the subject. This system would have promoted efficient sharing of criminal record information while diffusing the data itself among thousands of localities. Unfortunately, the F.B.I. wrested control of the project from LEAA and the states several years ago, and we are now faced with the job of placing effective controls on a dangerously large centralized data bank. The bill I drafted and circulated for comment in 1972, like the bills before this subcommittee, assumed the continuation of the existing NCIC system, and attempted to fashion controls on that system. Perhaps some consideration should be given instead to legislative restrictions which would force NCIC to return to the original Project SEARCH concept and return control of the data to the states, limiting the federal role to a coordinating, centralized index function.

In any legislative scheme to protect against invasions of individual privacy by government agencies maintaining data banks, there are several critical points where controls must be implemented. First, what kinds of information go into the system. Second, who shall be given access to the information contained in the system. And third, techniques for enforcing the restrictions on imput and access.

INPUT

To insure the relevance and the accuracy of information contained in the system restrictions must be placed on input. Information which is not relevant to the public purpose for which the data bank is authorized should be excluded from the system. This means that the kinds of data which will be allowed into the data bank must be tailored to the intended goals of the system. A general statute covering a variety of different data systems must inevitably sweep too broadly, in which case privacy is not adequately provided or too narrowly, interfering with the legitimate goals of one or more of the data systems regulated. For the same reason that the NCIC system must be regulated separately from the Social Security system, there should be separate treatment of criminal justice investigative information and criminal justice *record* information. In order to serve their purpose, investigative files must include information of questionable relevance and accuracy. Often they must be kept secret from the persons being investigated. On the other hand, criminal record files do not require secrecy, and do require strict accuracy and relevance of the data. All of my remarks today are directed toward criminal *record* information systems, and do not necessarily apply to criminal investigation files.

With respect to criminal record information system, input should be restricted to information about *criminal* conduct. There is no justification for inclusion of political views, political activities, or sexual conduct, so long as violations of the criminal law are not involved. The purpose of such a system is to record the criminal histories of the individuals involved. The only clearly relevant data is the fact of arrest, disposition of the charge, and any subsequent history of imprisonment, probation and parole.

Strict standards of relevance also require a judgment as to the relevance of stale data. How long should a person be saddled with the record of an arrest followed by acquittal? An arrest followed by conviction? If we accept the principles of rehabilitation and forgiveness, there must be provision for expunging the record of past convictions where the person has maintained a clean record for a meaningful period of time. I would recommend that records of misdemeanor convictions be deemed obsolete and be expunged, five years after release from supervision (or conviction, whichever is later). In the case of felony convictions, ten years should be the outside limit. As for arrests not leading to conviction, it may be questioned whether they belong in the system at all.

Moving from relevance to accuracy, data systems should be required to employ standard operating procedures to insure the completeness and accuracy of all data. A complete data trail should be required, providing a permanent record of all requests for information, what information has been provided, to whom, and under what authority. Whenever information is updated, corrected, or purged, identical action must be required both up and down the data trail.

Procedures must be provided enabling individuals to challenge the accuracy and propriety of information in their files. The statute should specify the grounds on which challenges may be based. Individuals must be given the right to inspect their files, accompanied by counsel if they wish. A copy should be made available at reasonable cost and in comprehensible form—not in code or in computer language. Once a challenge has been submitted, the subject's file should then be flagged so that any information disseminated will reflect the fact of the challenge. The agency maintaining the data bank should be required to re-examine the challenged information and either verify its accuracy and propriety or make the necessary correction or deletion within 30 days. The individual should be notified of the agency's action. If no response is received in that time, or if the individual is dissatisfied with the result, an administrative hearing should be available, subject to judicial review.

ACCESS

One of the gravest dangers of data banks is the risk of improper dissemination of data for uses inconsistent with the legitimate purpose for which it was collected. A common example is the dissemination of criminal record information to credit bureaus and employers.

The basic legislative approach should be to prohibit all dissemination except as specifically provided in the statute. Access should then be provided, with appropriate limitations, for two kinds of users—law enforcement agencies and non-law enforcement agencies.

Law enforcement agencies should be entitled to exchange information among themselves, so long as a need for the information is demonstrated and the data is used solely for law enforcement purposes.

Non-law enforcement agencies should be permitted to receive only conviction and post-conviction data—not arrests which do not lead to conviction nor other pre-conviction information. Access should be permitted only where [illegible] federal law *requires* that the subject's criminal record be checked. If the actual data is to be supplied, the recipient should be prohibited from engaging in further dissemination. In the alternative, it may be preferable to require that non-law enforcement requests specify the disqualifying criteria (for example, felony conviction), and to provide for a mere yes or no response by the system as to the individual involved.

Where possible, the subject should be given advance notice that his criminal record will be checked. An applicant for a job requiring a clean criminal record should be notified on the face of the job application that a record check will be made. Where the request for data is not generated by an application in which prior notice is feasible (e.g. consideration for judicial appointment), the requesting agency should be required to notify the subject of the request. In any event, persons should be entitled to notice of any adverse action based on criminal record information so that the subject has an opportunity to challenge and correct erroneous information.

Another category of users for whom provision should be made is criminal justice researchers. Presumably the only kind of criminal justice information restricted by the legislation would be *identifiable* data (including small samples from which individual identities could be ascertained). To the extent that identifiable data is required, provision should be made for administrative approval of research projects, conditioned on a showing of adequate precautions to minimize privacy risks, and the execution of a non-disclosure agreement. Persons denied

access to data for research use should be given an opportunity to challenge the denial.

ENFORCEMENT

In addition to civil and criminal penalties, a private right of action should be made available to injured or aggrieved persons. If necessary, sovereign immunity and official immunity restrictions should be modified to permit damage recovery.

The General Accounting Office should be required to conduct annual random audits of data systems, and to report to Congress.

Care must be taken to extend restrictions to include secondary dissemination. For example, a state law enforcement agency which obtains data from an interstate system should be prohibited from further dissemination, even intrastate, which would violate the statute if done in interstate commerce.

While it is important to insure that an individual can obtain a copy of his file, care must be taken to prevent abuse. Persons who would not be entitled to access to a subject's file should be prohibited from requiring the subject to obtain and provide the information for them. Of course this would not preclude an employer from asking a job applicant about his criminal record—merely from employing, indirectly, the resources of a federal or interstate data bank.

Mr. Chairman, these are the parameters of what I would consider the minimum requirements for responsible legislation restricting the flow of criminal justice information. The Chairman's bill, S. 2963, fully meets those minimum requirements. The Department of Justice bill, S. 2964, acknowledges all the appropriate concepts but fails to implement them with the necessary specificity. Too often S. 2964 leaves important legislative judgments to the discretion of future Attorneys General. We have learned that Attorneys Generals can be indiscreet.

In all of this, it is important to keep one thing especially in mind. When it comes to individual rights and liberties, when it comes to privacy, the threat of invasion is almost as dangerous as the invasion itself.

Just about three years ago, John Mitchell—then the Attorney General—coined a new phrase—"tapanoia." He said that it was a new kind of paranoia: the belief that your telephone was being tapped. Then—and now—there are more than a few people in Washington, D.C., who would not mind admitting that affliction. And that's my point.

In terms of effect, it doesn't really matter whether or not there is a wiretap or whether or not criminal justice information is abused or given to the wrong people. The result is the same: someone's intimidated, someone's afraid, someone is a little less brave, and that's the chilling part of it.

With strong legislation—like the bill you have drafted, Mr. Chairman—we can shed some light on the situation—and take some of the chill out of it.

Senator ERVIN. Counsel will call the next witness.

Mr. BASKIR. Our next witnesses are Sarah Carey and Carl Holman of the National Urban Coalition. They have been delayed slightly so we will now call Mr. H. C. Shaffer, who is vice president of the Retail Credit Co.

Senator ERVIN. Mr. Shaffer, I am delighted to welcome you to the committee and wish to express to you the committee's appreciation of your willingness to come and give us the benefit of your views with respect to this very important legislation.

Mr. SHAFFER. Thank you, Mr. Chairman.

Senator ERVIN. You might identify the gentlemen that accompany you for the purpose of the record.

Mr. SHAFFER. The gentleman to my right is Mr. A. Lee Lester, counsel from our home office in Georgia. The gentleman to my left is Mr. Francis M. Gregory, Jr., of Sutherland, Asbill & Brennan, our Washington counsel.

TESTIMONY OF H. C. SHAFFER, JR., REGIONAL VICE PRESIDENT, CHESAPEAKE REGION, RETAIL CREDIT CO., ACCOMPANIED BY A. LEE LESTER, COUNSEL, AND FRANCIS M. GREGORY, JR., SUTHERLAND, ASBILL & BRENNAN, COUNSEL

Mr. SHAFFER. I am H. C. Shaffer, regional vice president of Retail Credit Co. for the Chesapeake region, which includes Maryland, Virginia, parts of Pennsylvania, and the District of Columbia. Previously I was the regional vice president of the north-central region, which includes Michigan, Ohio, and Indiana. I am pleased to appear before the subcommittee on Constitutional Rights of the Senate Committee on the Judiciary in response to the chairman's invitation to Retail Credit Co. to testify concerning its experiences with the reporting of criminal justice information and the impact of S. 2963 and S. 2964 on the business operations of Retail Credit Co. With me are A. Lee Lester, an attorney from our home office in Atlanta, and Francis M. Gregory, Jr., of Sutherland, Asbill & Brennan, our Washington counsel.

At Retail Credit Co., our reports are based upon an actual current investigation concerning the individual upon whom a report has been requested. In this area of our operations, the use of file information, within the limits prescribed by the Fair Credit Reporting Act, is in aid of and ancillary to the current investigation. It is here that criminal justice information is sometimes obtained, where available, and reported to our customers. Retail Credit Co. has an affiliated credit bureau which consists of a number of local credit bureaus, all of which are members of the Associated Credit Bureaus, Inc., and operate as do other members of that organization. The credit bureaus do not obtain and report criminal justice information.

For the further information of the subcommittee, I have attached and labeled "Appendix" a more detailed statement outlining the organization of Retail Credit Co. and explaining the procedures we follow to insure accuracy in reporting and to preserve the confidentiality of business information gathered by us.

We understand that the subcommittee is interested in knowing essentially five things about our experiences with criminal justice information. What kinds of criminal justice information are currently available to us and from what sources? How do we go about obtaining such information? How do we use such information? What is our assessment of the impact of S. 2963 and S. 2964 on our business operations? What is our position on S. 2963 and S. 2964?

We have organized our statement to cover each of those areas of interest.

AVAILABLE INFORMATION

Various categories of information are available to us from public agencies at different levels of government. Not all of this information is criminal justice information within the meaning of that term in S. 2963 and S. 2964, but, to contribute to the subcommittee's understanding, we will not limit our discussion to formal criminal justice information.

Generally, we have access to criminal records only at the county and local levels. Here we have access to criminal justice information where the local authorities make it available. For example, sheriffs' records, police records, court records, and justice of the peace records are available to us in some jurisdictions. Retail Credit Co. branch offices in my current regional operating area and in the Detroit regional operating area have been asked to supply me with detailed information concerning the accessibility of criminal justice information in the local jurisdictions in which they operate. I stated on page 3 of my transcript that we were requesting that information, and I would like to supplement that at this time.

The branch offices were asked if criminal justice information was available and whether there were any restrictions on obtaining the information. The information supplied by those branches covers the availability of criminal justice information in 78 jurisdictions. We are able to obtain such information in 62 of those jurisdictions, or 79 percent, with 10 jurisdictions or, 13 percent, requiring authorization from the individual.

With some exceptions, we do not have access to criminal justice information at the State level. Individual State law enforcement agencies may allow us access to their records, depending upon the State law governing such records or the State's policy for making available such information. We do obtain traffic accident reports, which are public records, from State police departments. These reports may, of course, contain information concerning traffic violations.

We have access to motor vehicle records, maintained by State motor vehicle departments, which contain an individual's driving record, including a list of accidents and traffic violations. We also have access in several States to lists of drivers' licenses suspensions and revocations, also prepared by the State motor vehicle department.

We do not have access to any criminal record information at the Federal level. In some cases, criminal records and driver records at military bases are available to us, depending upon the policy adopted by the respective base commanders.

OBTAINING INFORMATION

Ordinarily, Retail Credit Co. does not seek criminal justice information until the existence of such information has been brought to its attention. For example, if a field representative is informed by the subject himself that he has a police record or has been involved with the police, or becomes aware of such information through newspaper clippings or through conversations with acquaintances, or employers, he will go to the local police department and verify the existence of the subject's police record if he is able to do so. Specifically, Retail Credit Co. does not engage in a general practice of monitoring police records or criminal justice information for the purpose of building files in anticipation of a future need for such information.

Other types of public records, such as motor vehicle records, are routinely available from State motor vehicle departments. Retail Credit Co. obtains these reports at the request of an insurance company for automobile underwriting purposes, whether or not we are made aware of the existence of traffic accidents or violations concerning the subject of the report.

USE OF INFORMATION

In the conduct of our business Retail Credit Co. does not itself use criminal justice information. My company's role is that of a conduit; we collect information when it is available, and we transmit it in certain types of our reports to our customers.

Criminal justice information would not be included in all of our reports. For example, a typical property classification report might concern the structural quality of a building, for example, masonry, frame, brick, et cetera, and might contain statistical information concerning the building as well as a photograph of the building. An automobile classification report contains information relating to the number and types of automobiles in a household, the uses to which they are put, and the identity and ages of drivers. Criminal justice information is not included in these reports. It is, however, included in the more detailed types of basic insurance and employment reports when it is brought to a field representative's attention.

Retail Credit Co. does not evaluate criminal justice information. We do not feel that we are qualified to make any such judgments. We simply forward the information, and our customers determine its significance, if any, to the transaction.

IMPACT OF S. 2963 AND S. 2964

S. 2963

As the members of the subcommittee are well aware, S. 2963 would impose severe restrictions on the access by noncriminal justice agencies, such as ourselves, to criminal justice information. Section 201(b) provides, so far as here relevant, that criminal justice information may be collected by, or disseminated to, only officers and employees of criminal justice agencies, and that such information may be used only in connection with the administration of criminal justice.

The only exception to this general rule which would make criminal justice information available to noncriminal justice agencies for other than research purposes is contained in section 201(c), providing that conviction record information, one of some six categories of criminal justice information, may be made available for purposes other than the administration of criminal justice. This exception is limited by a provision that the availability of such information for purposes other than the administration of criminal justice is permissible only if it is expressly authorized by applicable State or Federal Statute. We are unaware of the existence of any State or Federal statutes containing any such express authorizations.

We are aware that section 203 provides that identification record information may be disseminated to noncriminal justice agencies for any purpose related to the administration of criminal justice, and that wanted persons information may be disseminated to noncriminal justice agencies for the purpose of apprehending the subject of the information. However, it seems highly unlikely that this section would permit us to have access to such information in the ordinary course of our business.

There is one provision of S. 2963 which is unclear to us. Section 204 provides, with certain exceptions, that agencies and individuals having

access to criminal justice information cannot disseminate such information to any individual or agency not authorized to have it, nor use it for a purpose not authorized by the act. We assume that it is not the intention of the drafters to prevent businesses such as ours from relaying to our customers the criminal justice information to which we would have access. We suggest that this problem ought to be clarified.

In summary, regarding the impact, Senate bill 2963 would prevent us from obtaining all kinds of criminal justice information except conviction record information which we could obtain only when we were specifically authorized to do so by State or Federal statute. Of particular significance, we would be prevented from verifying information concerning arrests and convictions which we receive from other sources. Our inability to verify such information could be particularly harmful to the subject of the information.

S. 2964

The effect of Senate bill 2964 on our business operations would be essentially similar to that of S. 2963 through restricting the access by noncriminal justice agencies to criminal justice information. However, the restrictions it would impose seem somewhat less severe than those which would be imposed by S. 2963.

From the definitions of the three different categories of criminal justice information set forth in S. 2964, it would appear that criminal offender record information is the only one of those categories in which reporting agencies such as ourselves would have any interest. The general rule governing the access to and use of criminal offender record information is contained in section 5(e)(1). That section provides that criminal offender record information may be used for non-criminal-justice purposes which are expressly provided for by Executive order or State or Federal statute. It also provides that the Attorney General "shall determine with regard to the particular case or class of cases, whether such use is expressly provided for by statute or by Executive order, and his determination shall be conclusive." Presumably, this provision is intended to provide a mechanism for resolving disputes as to whether information should be available.

In any event, it is clear under S. 2964—as under S. 2963 with respect to conviction record information—that a non-criminal-justice agency may use criminal offender record information only if there is express authority provided by a State or Federal statute—or in this case also by an Executive order.

Section 8 of S. 2964 contains rules governing the dissemination of arrest records. It requires that the disposition, if any, of the case must be included if information concerning any arrest is provided. It further provides that arrest information may be used only for the purpose for which it was initially requested. Also, such information may not be used subsequent to the initial use unless a new inquiry of the criminal justice information system has been made to insure that the arrest information is up to date. Finally, non-criminal-justice use of any arrest record is, in general, not permitted if the individual concerned was acquitted for the charges for which he was arrested, if the charges were dismissed, if the prosecutor decided to abandon the charges, or if 1 year has elapsed from the date of arrest and no final disposition of the charges resulted and no active prosecution is pending, unless the individual was a fugitive during that 1-year

period. Thus, section 8 imposes significant additional restrictions upon those already imposed by section 5(e)(1) on the access to and use of criminal offender record information by non-criminal-justice agencies.

POSITION ON S. 2963 AND S. 2964

Regarding our position on these bills, since Retail Credit Co. does not use criminal justice information, but merely transmits it to its customers, we do not feel we are qualified to take a firm position on either Senate bill 2963 or Senate bill 2964. Recommendations for or against the enactment of this legislation ought to be sought from those who would be denied access to information that is currently available.

We do, however, feel qualified to reiterate to this subcommittee the position we have taken in the past with respect to Federal legislation that would have limited the information that is available to our customers.

The effect of S. 2963 and S. 2964 is to legislate a decision that certain information may not be considered by an employer determining whether or not to extend an offer of employment, or by an insurer charged with the responsibility of underwriting a risk. We suggest that attempts to regulate the flow of information will often materially slow or even shut off the extension of benefits now available to members of the public because of the assurance that businessmen presently have that all relevant information is before them. For example, we question whether it is in the best interest of consumers to foreclose access to records that would enable Retail Credit Co. to verify a consumer's statement that he had never been arrested. Similarly, our ability to clarify the circumstances surrounding an arrest that had been reported to us, or to determine what disposition had been made of that arrest, might enable a consumer to receive an offer of employment or other benefit that otherwise he might not have received.

That concludes my formal statement. I will be happy to respond to any questions.

[The appendix to Mr. Shaffer's testimony follows:]

APPENDIX TO STATEMENT OF H. C. SHAFFER, JR.

Retail Credit Company was founded in 1899 in Atlanta, Georgia, for the purpose of supplying local merchants with reliable information about people seeking to do business on a credit basis. In 1901, the Company began its association with the insurance industry. Since that time, the bulk of business handled by Retail Credit Company has been for underwriting, claim handling, employee selection, and statistical purposes for insurance companies. These lines of business constitute approximately 84 percent of our current volume and are divided about equally between the life and health companies and the property and casualty companies. Employment reporting accounts for about 9 percent; credit reporting about 6 percent; and marketing information, 1 percent.

Retail Credit Company is engaged in providing information for business decisions. Today, the Company serves the informational needs of legitimate business throughout North America, where we maintain offices in principal cities, and offer our services in most parts of the free world. We are an information gathering resource, serving as an aid to sound judgment in those business transactions where selectivity is essential in accepting good business, application of proper rating, and avoiding undue loss or fraud. In the absence of a service of our type, our customers would have to set up their own information gathering departments, or automatically eliminate from consideration cases that may appear boarderline for one reason or another. Our reports also enable business organizations to do business with individuals at distant points. The availability of facts about a person, wherever he is located, facilitates and speeds the intelligent issuance of all

types of insurance, the just settlement of claims, the extension of credit that is profitable to the grantor and the grantee, and the selection of personnel.

Retail Credit Company is not an organization of private detectives. We do not handle investigations in connection with divorce actions or industrial espionage. We refuse employment in any matters of a questionable nature. We do not report to individuals who may be merely curious. We do not use bugging devices, parabolic microphones, clandestine interception of telephone conversations, or any other electronic paraphernalia of eavesdropping or espionage. Prospective customers are screened by us to assure that they meet specific qualifications before reporting arrangements will be established with them. The users of our services must be reputable, responsible, financially sound firms with a legitimate need for business information. They must certify their need for information and further certify that such information will be used for no other purpose. And our experience with them must show that their use and handling of information is in the strictest ethical manner.

Our organization consists of our Home Office in Atlanta, and, throughout North America, 19 field operating regions with over 250 Retail Credit Branch Offices. In addition, we have approximately 1100 sub-offices, each reporting in a limited geographical area to its controlling branch office. A regional Vice President in each Region is responsible for: public, customer, and employee relations; the adherence to Company policies and practices as they relate to service and the gathering of information; the selection and training of field personnel; quality controls, etc. Each branch office Manager has essentially the same responsibilities within his branch office territory.

We use standardized report blanks for each line of service. The information sought and reported depends on the kind of business transaction involved. Insurance companies, for example, may ask for fairly detailed information concerning an applicant as one of the bases for evaluating the risk to be assumed. The nature of this information varies, however, depending on the type and sometimes the amount of insurance applied for. Life insurance companies want information which will be helpful in evaluating the applicant as a life insurance risk. This includes such matters as the applicant's duties, his finances, his health history, the extent of his use of alcohol, his mode of living, and hazardous avocations. Automobile insurance companies, on the other hand, emphasize other factors, among them the ages and abilities of the drivers, the uses and condition of an automobile, distance driven, prior accidents, and the history, if any, of driving under the influence of alcohol. Similarly, there are varying requirements for information in connection with other types of business transactions, such as property lines of insurance, prospective employment, claims investigations, and marketing information.

Basically, our systems emphasize a current, new investigation upon the receipt of each inquiry. Our function and our objective is to furnish a current report which accurately reflects up-to-date information and conditions. In the actual reporting process, we regard the insured or applicant himself as a primary source of information. In a majority of our cases, our field representatives will interview that individual or an adult member of his family. It is, of course, not practicable to conduct such an interview in every case, but through this procedure many consumers become informed of our function. Moreover, when a customer asks us to prepare an investigative report, the customer is required by the Fair Credit Reporting Act to notify the subject of the report that an investigation may be made. Furthermore, we encourage our customers and their representatives to inform applicants that there will be an investigation in connection with the business transaction irrespective of the type of report ordered. Our field representatives also call on other logical sources who are in a position to know the facts needed. Depending on circumstances, public records may be consulted.

Information which we may have in file is used in preparation for a current report, consistent with the requirements of the Fair Credit Reporting Act. Our files may contain such items as public legal records, newspaper clippings, and, of course, reports previously made. Over 80 percent of our files contain only one or two sheets of paper. Most of the material in our approximately 46 million files on individuals and businesses in the United States is favorable. Furthermore, our files are not centralized. In fact, they are dispersed in over 250 different locations throughout our branch office system, with files on individual consumers being kept in the branch office nearest to the consumer's residence. We have a regular system of file destruction. All files are reviewed over a 13-month cycle, and those having reached a certain age are destroyed. Under this system, the majority of

our reports are destroyed within two years at most. Under our destruction program, only files containing such items as claim history, or fraud and other serious information, are to be kept for more than 5 years. Our Home Office requires monthly reports on the destruction of old files.

Every practical precaution is taken to preserve confidentiality of information within our organization and in our customers' organizations. Retail Credit Company is fully aware of its responsibilities in this area. Employees are trained not to discuss report information outside the office. It is also our standard practice to emphasize to our customers the extreme importance of confidential handling of information they receive from us. Periodically, our field sales force re-emphasizes the customers' responsibility, and our Home Office writes to customers on this subject. Our report blanks are marked "confidential" to further stress this point. Evidence of mishandling of report information on the part of a customer would lead to strong efforts by us to prevent a recurrence and ultimately to cancellation of reporting arrangements if such mishandling continues. As a matter of fact, on the rare occasions that we learn that a user of our services has engaged in unethical or questionable business practices, we sever our relationship.

A service business such as ours could not have operated successfully for over 75 years, or received the widespread public acceptance that we enjoy, unless we had remained responsive to changes in public attitudes and social concepts. To this end we engage in a continuous re-examination of our policies and procedures, in constant awareness of our responsibility to our customers, to persons on whom we are reporting, to our sources of information, and the public generally.

Senator ERVIN. There is always a question in my mind as to how far Government should go in making criminal records, which it has accumulated for the purpose of assisting in law enforcement, available to persons not engaged in law enforcement.

Now, I take it the position quite naturally of your organization is that they would like to have access to these criminal records.

Mr. SHAFFER. We like to have access to complete information.

Senator ERVIN. You now have access to all court records.

Mr. SHAFFER. Yes, sir.

Senator ERVIN. Do you think that you should have access to other records that are collected by the Government primarily for the purpose of law enforcement?

Mr. SHAFFER. In the case of court records, Mr. Chairman, the filing varies a great deal by location. I know in my own personal experience in some areas it is almost impossible to check court records because of the manner in which they are filed. In some areas you need the date. Some places are filed alphabetically. The systems vary a great deal and quite often become quite awkward and cumbersome.

Senator ERVIN. There is no doubt that such records are available and there is no doubt in my mind that it is very expensive and very burdensome to acquire records of criminal convictions and criminal charges from original court papers, but I do seriously question whether it is the proper function of Government to permit criminal records which it collects for law enforcement purposes only to be made available to credit organizations. It would be a great benefit to the consumer, but also it could possibly be a great detriment to the individual with respect to whom the records are relayed.

Mr. SHAFFER. Of course, we want to act in a fashion that is positive for the consumer, and, of course, we do not use the information ourselves. We do serve as a conduit.

I would like to see, as much as possible, complete information available to favor the consumer. We use them largely in the interests of verification. This may be a little bit difficult just working with court records alone in some areas.

Senator ERVIN. Does counsel have any questions?

Mr. BASKIR. Thank you, Mr. Chairman.

In your supplementary statement, if I could add the percentages, there are a few jurisdictions, apparently, that you checked that are not listed in here. You inquired into 78 jurisdictions. I assumed you had responses from all 78.

Mr. SHAFFER. Yes.

Mr. BASKIR. There are six missing.

What were the results of the six that you did not list?

Mr. SHAFFER. They would be areas, I am sure, in which there were no police records at all available to us.

Mr. BASKIR. The other 8 percent——

Mr. SHAFFER. There were 62 of 78 jurisdictions permitting us to check the records; 10 of these 62 jurisdictions required authorizations, and I believe the remaining 16 jurisdictions were completely closed.

Mr. BASKIR. Completely closed?

Mr. SHAFFER. Yes.

Mr. BASKIR. That varies by local jurisdiction, as you say.

Mr. SHAFFER. Yes, it does.

Mr. BASKIR. In your testimony in discussing the various kinds of inquiries and reports that you make, you list quite a number which did not get any arrest records and did not even get to a personal review of the individual, such as assessments of building structures and the like.

With respect to those inquiries that you make that do involve court records of criminal activity, about what percentage of Retail Credit's total work would involve the possibility of this kind of information?

Mr. SHAFFER. That would involve the possibility?

Mr. BASKIR. Where it would be relevant, where it would come to your attention and would be reportable to your client.

Mr. SHAFFER. I would be hard pressed to come up with a precise percentage. I would say in all of our insurance underwriting reports and our personnel selection investigations. It would include such things as reports on prospective agents for insurance agencies, and so forth. It would be of some significance and would help us to clarify any questionable record that they may have indicated on the application. It would help us to get the full details and present a complete picture.

As far as what percentage of our total report volume that would be, I am afraid I really could not answer that.

Mr. BASKIR. Is it 3 percent, 30 percent?

Mr. SHAFFER. Larger than that.

Mr. BASKIR. 70 percent?

Mr. SHAFFER. That would possibly be an area, around 70 percent. We would not check records on that many of our reports, but that would be possibly the total flow of our inquiries that could benefit, where the consumer could benefit from the availability of records.

Mr. BASKIR. Criminal justice information you would say would be relevant or would be a proper kind of information in approximately 70 percent of the reports that you prepare.

Is that correct?

Did I state it properly?

Mr. LESTER. Let me state for the record, if I may, you were asking what percentage of our reports may contain criminal record information where we would think it would be pertinent. I believe the figure in this area would be about 50 to 55 percent. We would be happy

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get back to you with the definite percentages in this area, if that would be helpful.

Mr. BASKIR. I do think it would be helpful.

As I think you know, we are interested in this kind of information to get the idea of the impact on private operations such as your own, upon a limitation or some restrictions with respect to private access to these records. We would like to know the dimension of the impact.

Mr. SHAFFER. We would be glad to give you the additional information.

[Information subsequently submitted by the Retail Credit Co. follows:]

SUTHERLAND, ASBILL & BRENNAN,
Washington, D.C., March 21, 1974.

HAND DELIVERED

Hon. SAM J. ERVIN,
Chairman, Subcommittee on Constitutional Rights, Committee on the Judiciary, Washington, D.C.

DEAR SENATOR ERVIN: This letter will provide additional information requested by the staff of the Subcommittee on Constitutional Rights when Mr. H. C. Shaffer, Regional Vice President of Retail Credit Company, testified before the Subcommittee on March 13. We apologize for the delay in forwarding this information, but a significant amount of time was needed to develop it.

Approximately 73.9 percent of the reports prepared by Retail Credit Company potentially could contain information on arrests or other criminal records. However, it is the best estimate of Retail Credit Company officials that well below 10 percent of the total reports prepared by the Company would contain such information. Additionally, it is the best estimate of these officials that Retail Credit Company would lose approximately 2.5 percent of its total volume of business if it were no longer able to report concerning arrests or other criminal record information.

Respectfully,

SUTHERLAND, ASBILL & BRENNAN,
By FRANCIS M. GREGORY, Jr.,
Attorneys for Retail Credit Company.

Mr. BASKIR. For discussion purposes, it would be 50 to 55 percent where it would be relevant.

This is information that your clients would like to have or at least they feel is relevant or you think is relevant to give them.

Do you have any idea what the reaction of the clients would be if they could get nothing, let's say, but a complete record, nothing but conviction records, let us say, in this 55 percent of your work?

Would that mean that they would be dissatisfied with the kind of information that you are giving?

What kind of impact would it have on your company?

Mr. SHAFFER. Not being the users of the information itself, merely being the conduit, it would be difficult to answer that.

We should point out our service, the report that we submit, is merely a part of the input to the total decision in underwriting an insurance case or granting a job. There are many other areas of input, many other pieces of information, going to the person making the decision.

Conceivably this is something that the industries that we serve could answer better than I.

Mr. BASKIR. Certainly you would not be in the position, if you could not get current salary rates, if for some reason that would be

unavailable to you, the people that wanted that in order to give credit would find that such a gap in the information that they are getting from you, they would not ask you to do anything at all.

There is a certain kind of information, I would think, that you collect that is so critical to your work that if you could not provide it you would not have a service that anybody would buy.

Do you feel that criminal justice information of the kind we are talking about is at that level?

Mr. SHAFFER. We look at criminal justice information as any other information. We feel that to present a complete picture of a transaction, we not only have to have criminal justice information that is available, where there seems to be a need, but such things as bankruptcies, judgments, suits and so forth.

In my own mind I cannot distinguish the use of criminal justice information from the total matter of record information. I am sure that the users of this service would be able to tell just what the specific significance may be to them.

Mr. BASKIR. Let me give you another illustration. If you were not able to report traffic violations to insurance company clients of yours that are thinking of underwriting automobile insurance, they would not hire you to do it, that being such a critical area. You could not give them anything worthwhile.

What I am trying to say, in the employment, in the 55 percent of your work, do you consider—and you are the experts; you are providing a service—do you consider that that service would be so jeopardized if you were restricted only to conviction records that the service you provide would not be attractive to the people who pay you to provide it?

Do you have any judgment on that?

Mr. SHAFFER. I would say that it would probably become somewhat less attractive; yes. I do not know to what degree we are speaking here, though, really. I do feel that the criminal justice information availability, the inclusion of it where it is pertinent to the case, means a lot to that particular risk, and therefore to the person underwriting that risk, whether it be for a job, credit or what have you.

Our use of this information is largely in the role of verification. We do not monitor police records as such, and it is where we come upon the possibility of police records and arrest records that we will pursue this to determine if in fact there was an arrest or if in fact there was not. This is the importance from an investigative viewpoint of the availability of this information.

Mr. BASKIR. You do not as a matter of course go and seek out this information. It is only when it first comes to your attention that you attempt to verify it.

Mr. SHAFFER. Ordinarily this is true. We would be pursuing some type of comment or some type of lead.

Mr. BASKIR. When other legislation, the Fair Credit Reporting Act, was up before the Congress, you were able to make an assessment of its impact upon your business sufficient to comment in terms of your views on that legislation.

What we are seeking, of course, here is to get some firm idea from you as to what you think the impact of this legislation will be on your business. When I say your business, I mean not only yours, but business in similar circumstances.

It is a whole lot easier for the subcommittee to ask somebody that provides informational services to a whole range of businesses to make that assessment than it is to try to take care of that problem by asking the clients or the types of clients.

What I am seeking to get from you is some evaluation of the impact on your service and the service for which you get paid by your clients if you were restricted only to conviction records. From what I gather, you say while it may have some impact, it would have more impact on the individuals than it would be on you or your clients.

Mr. SHAFFER. It is very conceivable because the absence of record information, I think, is very important, very important in many of our cases. I have to look at the service as a total service and not as a service that just reports this as a single piece of information.

The use of the record where it is available helps us to determine the positives in addition to the fact of a record. I would be delighted to be able to report the fact of arrest always with final disposition, conviction, and so on, because I think this would be very important. As to its impact on our business, I really do not know what it would do to our revenue flow or anything of this nature. I have no thoughts on this whatsoever.

Mr. BASKIR. Are you prepared to let the record give the impression that insofar as Congress is considering a limitation on private access to arrest records and to acquittal records, as far as retail credit is concerned, speaking for the agency, speaking for the industry, you do not think this is of sufficient concern to you that the Congress should not take that into consideration, because I tend to get the impression that you view it as one part of a large mass of information; while it would be helpful to you, certainly, and certainly more helpful to the individuals concerned, you do not have strong feelings either way about this kind of limitation.

Mr. GREGORY. Let me answer if I could. Mr. Shaffer was brought here because he is an operating officer, and we wanted to be prepared to tell you exactly what we do and how. I think we ought to take the line of questioning of the past few minutes back to the policy officers of the company, and we would be happy to supplement the record within whatever period of time you suggest by getting the information that we can get in that time, and giving you a definitive statement as to our opinion.

As to precisely what this effect would be, I do not think Mr. Shaffer has the operational policy viewpoint that would be necessary to formulate an opinion of value to the committee at this time, but we would follow up on it, if that were desirable.

Mr. BASKIR. The subcommittee requested the testimony of Retail Credit with respect to this legislation on the question of its impact. It is not a new issue to Retail Credit that has just come out in this little conversation.

One of the major issues in this legislation obviously—and it goes back many, many years in Congress—is availability of incomplete records to non-law-enforcement or nongovernmental users, and I hoped that the record would be able to show that we could get some evaluation from Retail Credit.

If Mr. Shaffer is not in a position, perhaps the other two gentlemen are. Of course, it is very important to Congress in making this decision to know whether Congress is hurting, helping, or not affecting at all

private industry. This is something that ought to be on the record if we can get it.

Mr. Shaffer and the other two gentlemen are not prepared to give the subcommittee any evaluation?

Mr. GREGORY. If you want personal opinion, there is certainly no problem with that. I think what you are asking for is information that really would have required a market study to give any sort of answer with precision. We were not aware that the testimony before the subcommittee would be limited to people who gathered the information as opposed to the users. If we were deficient in being prepared to answer this question I will také the responsibility for that. We would be more than happy to try to get that information from the people who would be in a position to give it.

Mr. BASKIR. We hoped the testimony of Retail Credit could give the subcommittee some idea, some feeling of whether or not Retail Credit and its clients would find its services in their work injured if they were restricted only to complete conviction records or a complete record as another alternative, but were precluded from getting from official sources incomplete criminal justice information.

That is very important.

Mr. GREGORY. Mr. Lester and I will be in Atlanta tomorrow and we would be happy to take this up with the marketing sales and the operating vice presidents who together could give an answer which I think would have more meaning for you.

If you, at this time, want Mr. Shaffer's personal opinion, I think that is all he can give you. Otherwise by Monday we would be happy to give you a letter answering the question specifically which you could insert in the record at this point.

Mr. BASKIR. Unfortunately, of course, your testimony is now and not Monday. It might be good for the record just to get your personal opinion, understanding, of course, it is personal.

Senator ERVIN. It is obvious that a conclusive answer to that question would require quite an extensive and expensive survey and quite a lot of background. It would be helpful to the committee to have Mr. Shaffer's personal opinion. Of course we would be glad to receive any further information from any other knowledgeable source in the form of a letter or otherwise.

Mr. SHAFFER. The impact on our business I am sure would be essentially a negative impact in the sense that we would not be able to submit as complete a scope of information as we now submit in connection with the transaction involved. I think it is to be recognized that the percentage of cases on which we actually check records does not approach the 50 to 55 percent of the total volume that could benefit by such a check of records.

As to what impact this would have in the eyes of our customers, I would say it would make our service materially less attractive. I would hope, however, that the other parts of our investigative procedure and the report that we submit would continue the value that would be important to help us maintain a proper position in the marketplace. But I do feel thet there could be a negative impact.

Mr. BASKIR. The reason I pressed you for that kind of judgment is in informal conversations with the staff from organizations which are similar to the kind that use your service. They gave us the impression that such a legislation would have a very severe impact on their use, and indeed upon the attractiveness of your service, and they suggested perhaps a large amount of the services performed may not at all be valuable to them, and might indeed hurt your business quite severely if you were restricted to complete records or even to complete conviction records.

I was trying to get your judgment on something that was given to us in a very informal way.

Mr. SHAFFER. From our viewpoint in the field—and mine is a field job—I personally feel that is an important part of the service, and I am sure I feel that way because I have been working with the markets that we serve for many years, and I have seen the importance that they seem to place on it. I am not the user of the information however. That is why I find it a little difficult to come up with an answer to the impact question.

Mr. BASKIR. Thank you very much.

Mr. LESTER. If I may make one further comment with regard to your reference to complete conviction records. Certainly we are in agreement that when possible we should report and we do attempt to report full and complete records. However unfortunately, because of our court system today, a person might be arrested today and yet the final disposition might not be reached for 2, 3, and sometimes 4 years. During this time the person obviously has to function in our society, which involves many types of transactions. He would hope that perhaps in connection with this full information—and we would think that this informatin would be of importance to people who might be contemplating entering into the transaction with this individual to have this information available.

Mr. BASKIR. There is another problem, of course, that the reporting from courts is not as good as it might be. Even if that disposition does come in less than 3 years, it might be possible, as you said before, to find that the courts just did not report it in places where you might want to look for it.

Mr. GITENSTEIN. I just have a few mechanical questions as to how your reports are put together and the circumstances in which you might have to go to police records.

I am looking at your field representative manual which I assume represents more or less company policy with respect to investigations, the types of investigations that we are talking about. On page 43 of the report, this is under the heading confirmation note on unfavorable cases. It states, "A note should be placed at the end of the remarks showing that the information on a specific feature has been confirmed through two or more sources or record information." Then it gives some examples of how that might be stated.

Does that suggest that it is the policy of your company, at least in terms of the investigators, that when an arrest is brought to the attention of an investigator, that there be two sources to confirm that, or a public record or both?

Would you explain to me how that generally works in that situation?

Mr. SHAFFER. I think that particular area in the manual deals with the total subject of adverse information, not just police record information.

Mr. GITENSTEIN. Could you apply it to an arrest?

Mr. SHAFFER. When the information is available to us from the local jurisdiction we should under those circumstances check the fact

of arrest. It should come from the records. Where that information is not available but two or more sources indicate to us that there was an arrest, we would report it.

Mr. GITENSTEIN. Even though you did not have access to the record itself?

Mr. SHAFFER. Yes, sir.

Mr. GITENSTEIN. Assuming that you had access to an arrest record, the rumors from two sources, even from one source that the man was arrested, but you have access to the arrest itself. However, as is frequently the case at that local police department, you have an indication of an arrest but no disposition. Do you feel an obligation at that point to go ahead and find the disposition?

Mr. SHAFFER. We do feel an obligation where it is available to pursue it to obtain a disposition.

Mr. GITENSTEIN. Assuming you cannot get the disposition, do you still report it?

Mr. SHAFFER. We would report it if in fact we have obtained it through the police record as such, even though there was no disposition.

Mr. GITENSTEIN. Is there any effort in compiling these reports, to restrict the crimes for which you seek information and record information to crimes that are relevant to the report or the client?

In other words, if you are dealing with an auto insurance investigation and it came to your attention that the consumer had been arrested for indecent exposure, streaking in college, would you report that arrest even though it was probably irrelevant to auto insurance investigation?

Mr. SHAFFER. In those cases where we would develop a tip that there had been an arrest, we would pursue it through the record, and if it were shown as indecent exposure, hopefully we would have a disposition on it, and if it would, that would change the flavor of it entirely, but we would report it.

Mr. GITENSTEIN. Even if the disposition was "dismissed." Even if it was a dismissal or a nolle prosique, you would still report that, even though the crime in the case was irrelevant to the investigation.

Mr. SHAFFER. Yes, because I think it is important that we report the total record, all the facts.

You must remember that our information is only a part of the total process of underwriting or job granting. It is conceivable that this record of arrest may have been submitted in some other form to the person who is making the judgment on the case, and it is very conceivable that this source of information would have been the consumer himself, the subject of the investigation. If this be the case I think it important that the report show that this was dismissed, that there was indecent exposure and it was dismissed, because we are only a part of the input. I think this is very important. Conceivably the consumer himself indicated that he had previously been arrested.

Senator ERVIN. That kind of report might seriously impair the capacity of the former streaker to acquire clothing on credit, might it not?

Mr. SHAFFER. That might be a new insight, Mr. Chairman. We would hope not.

Mr. GITENSTEIN. If under the Fair Credit Reporting Act or as a matter of Government policy you could only report cases that you

could confirm in records, and you were also restricted only to conviction records, would that not indeed be a protection to the individual, since in that case nothing but conviction records could go to your clients?

Do you understand my question?

Mr. SHAFFER. I think I do; yes.

Not being the user of the information, I cannot really say. Not being the user, it is difficult for me to say exactly how that would affect the transaction. I think that it would be nice—in fact, I think it would be most desirable if we could submit any type of arrest information, including disposition.

Mr. GITENSTEIN. In terms of protecting the consumer, just looking at it from a consumer's point of view, the individual who has been arrested, he would be better protected if you could only report what you could confirm, and if you could only confirm conviction records. Wouldn't this be the case if only a conviction record could be reported on, and assuming that the consumer had only been arrested and never convicted, of streaking?

Mr. SHAFFER. The complete record would always favor the consumer; yes.

Mr. GITENSTEIN. In your statement you say ordinarily you would only use the records to confirm, yet in some situations you might go to the record without being prompted by a rumor. That suggests that there are situations where you would go to the record automatically.

Are there certain types of occupations where an arrest may be more frequent, where there is a possibility of criminal behavior, where you might automatically go to the police files?

Mr. SHAFFER. Yes; there is a segment of our business wherein the information may be of importance on certain types of occupations such as the operator of a pinball business, certain types of occupations in connection with the liquor industry and so forth, where experience has shown that it is desirable to pursue the police record if it is available, in order, again, to complete the full picture.

Mr. GITENSTEIN. In that case you would automatically go to the record, despite the fact that no one has suggested any specific criminal lines.

Mr. SHAFFER. In some areas where the information is available, we would go automatically. Some places where there is a tremendous cost factor involved and so forth, we may not do it systematically on the same occupations. The availability would enter into it.

Mr. GITENSTEIN. Thank you.

Senator ERVIN. I thank you gentlemen very much for your appearance and the help that you have given the committee in the study of this problem.

Unfortunately the Judiciary Committee is meeting at this moment, and under the rules I cannot hold a hearing of the subcommittee while the full committee is in session, and for that reason I think that we would probably save time by recessing until 2 o'clock. I hate to detain the witnesses, but it is unavoidable under the Senate rules.

[Whereupon, at 11:10 a.m., the subcommittee was recessed, to reconvene at 2 p.m., the same day.]

AFTERNOON SESSION

Senator ERVIN. The committee will resume.

Will counsel call the next witness?

Mr. BASKIR. Our next witnesses this afternoon are Sarah Carey and Carl Holman of the National Urban Coalition.

Ms. CAREY. Mr. Holman is not here. He is out of town.

Senator ERVIN. If we had to take a choice between the two, I would think we would much rather have you than him.

I would like to thank you for your willingness to appear before us and give us the benefit of your views on this legislation.

TESTIMONY OF SARAH C. CAREY, CONSULTANT, NATIONAL URBAN COALITION

Ms. CAREY. Thank you very much. It is a pleasure being here.

I would like to express a reservation about my expertise at the outset. I do not have familiarity with the technical or operational aspects of the information and intelligence systems under review. My major acquaintance with these systems is from the point of view of a person who has been watching the effect of the expenditure of LEAA moneys since its inception on State and local agencies. So I am coming at this particular legislation and problem from a particular angle.

In late 1973, the National Urban Coalition and the Lawyers Committee for Civil Rights issued a comprehensive report entitled, "Law and Disorder III," analyzing the impact of LEAA funding on the States and the Federal criminal justice systems. Chapter 2 of that report dealt exclusively with the computerized criminal history files and the NCIC/CCH system. A number of the observations that were made in that report bear repetition today, because they reflect problems that are still with us.

The primary observation is that these new systems are essentially a federally stimulated priority that would never have been launched without free-flowing Federal funding. The States had been told many times that the computerization of offender records was an efficient, effective, modern way to do things, but they had not made their own expenditures or taken steps in that direction. Clearly, it was an LEAA stimulated project.

Second, the evolution of CCH systems at both the State and national levels reflected executive level decisions without any involvement by the legislatures. This is true of the Congress. There has been discussion in appropriations hearings and appointment hearings in regard to these systems, but no legislative decision has been made approving their initiation or defining the nature of the systems themselves. At the State level, with the exception of one or two States, there have been no discussions about the development of the State computerized offender records or intelligence records.

Third, the systems, both the State centralized systems and the Federal system, were launched after inadequate research and analysis concerning the cost, the potential needs of the system, the benefits to the users, and what should be included in the files.

Another observation we made in "Law and Disorder III" 3 years ago was that the demonstration of this particular program through the SEARCH project was a conceptual success but not an operational success. Very few States participated. There was no capacity for updating the central index. Many critics thought the whole program should not be stated until you could transmit fingerprint facsimiles.

The test demonstration was not an overwhelming success. But since the people who launched it and carried out the demonstration were the very people who evaluated it, quite naturally a decision was made to go ahead and expand the system. Shortly after the demonstration, the system was transferred to the FBI, and its basic concept was changed from a rather loose association of States to a federally dominated, quite centralized system with a series of detailed files, rather than a bare index, as the SEARCH people had contemplated.

I think one other observation that we made in "Law and Disorder III" bears repetition. That is that this system, the offender records system, was developed at the same time that intelligence collection systems were being funded by LEAA, some of which were designed to be computerized.

In other words, to sum up, the key findings that we made were that: Highly centralized, federally controlled, computerized offender files were being created overnight, largely as the result of a Justice Department decision, without full and open debate at State and local levels. In fact, what lively debate that was generated through SEARCH was pretty much ignored when the FBI took over the operation of the system.

Two years have passed since the time that the report was issued, and very little has changed. The costs of the system remain unknown. The Comptroller General reported in January 1973 that estimates of $100 million had been made, but no one had determined what a fully operational system would cost, and the participants cannot determine whether they will be able or willing to meet the financial requirements of operating the system. In response to the inquiries that this committee has made of the FBI and the LEAA, no answers have been given concerning the costs of the system.

LEAA has indicated they have already spent $300 million in discretionary and block grants for criminal justice information systems. This has not been broken down, but most of the State expenditures, from our research, are related to the State-level computerized systems that comprise the user parts of CCH. Again, neither the funding agency nor the operational agency has undertaken any research or analysis to determine the needs of the users of the programs, the utility to the various agencies of the criminal justice system of the data being collected. Everyone assumes it is useful and that computerization is much more effective than manual systems and worth the cost, no matter what.

Clarence Kelley, in his response to this committee, made it quite clear they have not tried to assess the particular needs or uses of the various participants in the system.

Mr. Velde transferred documents to the committee indicating similar results.

I think this makes the GAO warning, that until this subcommittee knows how the information is going to be used and is used, it will have difficulty fashioning proper privacy standards, ever more relevant.

Finally, the situation still remains today of the information in the State counterparts of the system being inaccurate and incomplete.

This situation has not been addressed by the operators of the system, although to a lesser extent the grantmakers, LEAA, have encouraged efforts in that direction.

The whole picture of the evolution of the CCH system, which, as you know, is still fairly rudimentary in terms of the number of participants and the scope of the files, reflects bureaucratic decisions to go ahead and implement executive initiatives without proper research or assessment of the needs or dimension of the project. In many ways, I think it parallels some of the expenditures in the defense area, where people in the executive departments dream up an idea, go out and fund a demonstration, asking the people who demonstrate the project to evaluate their own work, and then go ahead and launch the whole thing on a national level without knowing how much it is going to cost.

Just the flow of money from the Federal system raises basic questions about State initiatives. The LEAA takes the position they are not affecting State policy, they are only handing out money. We have seen in other program areas, particularly the highway program, that distribution of Federal money is in itself a policy decision that really changes the direction and operation of local agencies. That is very much what is happening here.

I think in looking at the history, the brief history that I have traced, of the evolution of the CCH system, that there are two other systems that LEAA is funding or has funded that are moving on a similar track. The pattern of their development is useful from the point of view of the work that the subcommittee is trying to accomplish.

One is the development of intelligence files. I think Mr. Velde's written statements and his testimony were not entirely candid on the scope of LEAA involvement in intelligence. As this administration has consistently done, they always refer to organized crime as a justification for various invasions of civil liberties. LEAA has been giving out grants for broad intelligence usage at the State level. In the first few years—these grants still continue—money was given particularly in Southern and Southwestern States for intelligence files in the civil disorders field, where State attorneys general's offices were given money and technical assistance to set up files on people who were likely to be dangerous, or fit some other vague characterization.

Similarly, many States have spent money on organized crime intelligence files. The definition of organized crime is sometimes extraordinarily loose. One of the grants to Huntington Beach, Calif., described intelligence files in this category as encompassing "revolutionary activity, motorcycle gangs, or groups of two or more persons who engaged in assault or theft," a rather broad definition of organized crime.

Most of these files are not computerized. In Orange County, Calif., they are. And in a number of other places, they are trying to follow the Orange County model. The trend is toward computerization.

Very few States today have statutes prohibiting the commingling of intelligence files with information files. Many of them specifically allow it. For example, offender records in Wyoming may include intelligence data or any information relating to the accused person. In North Dakota police officials can collect any information on the arrested person, or suspicious people, or psychiatric reports or any other information that may be necessary. Legislation is now on the books in many States that allows the commingling of intelligence with information data and provides inadequate, if any, restrictions on distribution.

On the Federal level, although there is a policy practice against the commingling of intelligence and information files, the Attorney General has the authority to mix the files, assuming he has the authority to run any of these systems in the first place. There is nothing spelled out in Federal legislation right now that would prevent such a mixing.

One other LEAA-stimulated project in the intelligence area is the Interstate Crime Index that you have heard some comment about. This is a national registry of organized crime figures and their associates. Like SEARCH, it has run through the steps of being demonstrated with LEAA funds, being evaluated by the demonstrators with LEAA funds and surprisingly enough, the evaluators decided the project should continue.

Some of the issues raised in the evaluations are pertinent to the way these programs evolve. First, the IOCI evaluators have suggested that a nationally run index is the most efficient, most effective.

Second, even though the demonstration was not a very effective operation, the evaluators said we must get on, expand it, and enlarge it. Many of the police participants were reluctant to use the system, largely because they did not want to put their own intelligence files into a national index. Yet the response to combat this reluctance was to hand out more money; the evaluators suggested that the underutilization could be corrected by providing financial assistance to major police departments in compiling their investigative data for inclusion in IOCI.

Finally, many of the IOCI participants suggested that the registry ought to be expanded, the information was too limited, you would have to have more than record information on the organized crime individuals, and perhaps the files should include dissidents, revolutionaries, radicals, and other similar types.

The technology and design of IOCI could be readily transferred to other groups, whether international terrorists, youthful runaways, or persons of dissident political views who are threatening the national security. In fact, the administration reserves in this bill the right to collect such intelligence on national security risks.

I think it is interesting that registries have already been proposed in regard to terrorists and runaways, with LEAA and the FBI fighting again for control of the former, and HEW claiming it is the proper agency for running the latter.

The second emerging project area, that reflects some of the characteristics of the evolution of SEARCH is the NLETS system, the interstate message-switching system. This is similar to SEARCH in many ways, in that it originated as a State consortium of State-run operations that was funded by each State paying for its own costs. LEAA, once it lost SEARCH to the FBI, sought this as its new area of control and has put substantial research and direct expenditure money into the system to make computer exchange of information possible. Once again, the FBI is claiming that it ought to run the system because it is so closely related to NCIC activities.

The legal justification that has been prepared by the Justice Department to support LEAA or FBI control of NLETS shows how the agencies can get into very new and novel activity unless some congressional direction is exercised. Just as parts of the NCIC were developed without any new legislative initiatives and very unclear legislative authority, you could have a similar development in regard to NLETS.

LEAA relies in part for its authority to run the system on the fact that the Kennedy-McClellan amendments of last year were passed. It takes an extraordinarily ingenious legal mind, to transform a restraint on the operation of grantees into an authorization to go operational, particularly in view of LEAA's legislative history, which made it very clear that the agencies and sub-agencies in the States were not to run or get involved in local law enforcement activities. That is one argument.

The FBI on the other hand claims its authority to collect criminal records and investigative records clearly implies the ability also to control communications between the States in regard to law enforcement operations; again, a very strange construction of a fairly narrow statute.

To summarize the comments on the evolutionary process with these systems, I think the CCH system itself and the more recent efforts to set up national intelligence files in the organized crime field and to control interstate communications in the police area reflect a type of bureaucratic legislation based on very narrow grounds. They are precisely the kinds of decisions that ought to be brought out in the open with fairly broad public debate and legislative controls. I think that the bills that are before this subcommittee address themselves directly to this problem.

I would like to briefly touch upon the problems in the States as they exist today in regard to the CCH system.

As you know, current policies of the CCH system and the regulations recently proposed by the Justice Department rely heavily on self-policing by the States. The NCIC policies set fine-sounding objectives which depend on their implementation completely on State laws and regulations that do not exist. It is an emperor's new clothes situation.

For a long time, the FBI would answer to groups, such as this committee, and others, describing the wonderful policy, not airing the second part, that there is no vehicle for implementing those policies anywhere in the country. A recent survey of State laws shows that, although the Kennedy-McClellan amendments and the work of this subcommittee have stimulated some recent legislative activity, by and large there has neither been legislative review as to whether or not the computerized offender or intelligence information systems are appropriate, or how they should be run. I already gave some examples of the overly broad data collection provisions in some States.

In addition, there is a problem in many States of including in the central files essentially antisocial behavior that is not by any means serious criminal activity. Many State files currently include by statutory authorization, such categories as vagrants, transients, suspicious persons, well-known or habitual offenders, even violators of certain municipal ordinances. Although those offenses do not go into the

FBI index, inquirers to that index get referred to the State for additional data.

It would be a serious mistake if the LEAA funding were allowed to continue on its course of simply taking the files as they are and feeding them into a computerized State system. Many States, besides these rather loose categories of people, leave the kind of data collected up to the responsible State officials. Certain crimes are enumerated, and then there is a catchall phrase such as "any other type of person or offense deemed appropriate."

The matter of access to the State files by statute is overly broad. South Dakota, for example, allows collection of data that the State director thinks will be helpful to other public officials or agencies dealing with particular criminal offenders. It puts the law enforcement people in the position of collecting data on individuals for everybody else.

Idaho permits dissemination to any other public agency upon assurance that the information is to be used for official purposes only. In other States, the statute leaves dissemination to the discretion of the attorney general.

Like LEAA, the States by and large accepted the idea and the concept of new systems, went ahead and launched them without proper evaluation or review of the needs of the systems or their content. I think that ideally the States should be induced to reform their criminal statutes so some of the kinds of behavior now defined as criminal would be decriminalized and thus excluded from the files. Absent that, I think every effort should be made to get them to eliminate these minor, antisocial types of activities from their files.

The status of both the State and the Federal criminal offender files, as of 2½ years ago and pretty much today, was of a highly unregulated system, one that was moving at an accelerated speed to develop a comprehensive national file, but without imposing adequate safeguards. To try to correct this situation, last summer Governor Sargent and a number of other individuals and the ACLU and several other organizations, including the American Friends Service Committee, the Robert F. Kennedy Memorial, and others, filed an administrative petition against the Justice Department on August 3 to try to compel them to issue regulations to control the NCIC/CCH system. The Justice Department has always had the authority to do this but had refused to exercise it.

The lesson here is very instructive in terms of the administration bill. That bill gives extensive discretion to the Attorney General, in terms of developing regulations and setting standards. The history of the NCIC system shows that although the Attorney General had full authority to issue regulations in the past, he refused to do anything.

Senator ERVIN. The committee is going to have to suspend because there is a vote in the Senate, and I have got to go over there and cast my ballot.

[A brief recess was taken.]

Senator ERVIN. The committee will resume.

Ms. CAREY. I want to briefly add to the comment that I made about the Attorney General's failure to take the initiative in regulating his own system, despite calls from the courts and the Congress to do so. The petition for administrative rulemaking that was filed in August resulted, after a number of delays, in the issuance on February 14 of

regulations for the NCIC system on which LEAA and the FBI have conducted several days of hearings. These regulations reflect, interestingly enough, the bureaucratic split that has existed from the beginning in regard to this system, between the LEAA and the FBI. In regard to the regulation, LEAA relies on the development by State agencies of plans that would reflect rather general commitments to the protection of privacy and limitations on dissemination of records; and the FBI gives nothing. Their regulations which are separate and subsequent to the LEAA section simply lock in concrete what they have been doing to date, which is relying on the States for self-policing with an abdication of any responsibility for assuring the accuracy, completeness, or timeliness of the records maintained in the national system.

The FBI regulations also lock administration of the NCIC/CCH system into the current set-up which is administration by the FBI, by the Director, with guidance by a policy board of law enforcement officials, with token representation from other criminal justice agencies.

I think the regulations as they stand now are so confusing and noncommittal that they reflect, in the view of the petitioners, a very inadequate response, and that other forms of activity will have to be considered in the interim prior to the passage of the legislation under review.

I would like to make a few general comments on the provisions in the legislation without going into great detail. I applaud the statement of purpose in S. 2963 as pointing to the many problems involved in the systems, and particularly the question of legislative authority for their current operation.

One of the strongest points in S. 2963 is in my view the requirement of State legislative approval prior to the development of a statewide system that will interface with NCIC, CCH or other national systems. As I pointed out earlier, the State legislators, the elected representatives in the legislative bodies have been left out of deliberations about these systems almost entirely to date, despite their advanced development. Each State has to determine through the legislative branch its own needs, the investment that it is willing to make, and the configuration of its own system.

Building in this kind of safeguard will go a long way to preventing the centralization and potential national level interference that the original Project SEARCH participants were concerned with. In connection with that, the State preemption provision is important to the extent that it grants more stringent State provisions precedence over less stringent Federal provisions.

I think also the public notice requirements in S. 2963 are excellent. The proposals in S. 2964 and the Justice Department's regulations do not give enough information for the citizens to know what is really in a system or how it will be used. Anytime a new system is initiated or the character of an existing one is changed in any way, whether it be intelligence or information, it is important that the public be given notice.

It is also important that the public know the categories of persons and the categories of data maintained in a system, as well as a full description of the uses made of the information.

One of the constitutional deficiencies in the system as it exists at present is the failure to give persons notice of their possible involvement in a system that carries serious consequences to them, often without a right to due process guarantees. I think if you look at the history of the public relations releases from the NCIC to date, you will find them instructive in terms of the types of information that can be handed out without saying anything. S. 2963 gets around that.

In regard to the structure of the administration of this system, it is important to have an independent review or regulatory body. I would question whether the S. 2963 suggestion that the independent body should also run the system is a sound one. The same kinds of conflict that have arisen in the past within the FBI, of the people who use the data trying to regulate its dissemination and collection, would arise if the board ran its own system.

It is highly commendable that the proposed board goes beyond law enforcement, to include private citizens versed in the law of privacy and the constitutional law of information systems and it builds in an advisory system representing the States. This is a great improvement over the current NCIC structure.

Commenting once again on the board being operational, eventually, given its authority to collect information on other personal record keeping systems in the Federal Government, this board could conceivably be expanded to play a watchdog role at the Federal level in regard to information or intelligence systems, whether they be in the health, education or other fields, that threaten the invasion of privacy. If the board is ever to assure this function, it is better that it not be operational.

The effort of S. 2963 to deal with intelligence gathering practices is a good one, although I am not sure that it goes far enough. Certainly the nonmingling of intelligence and information data is important. I do not know if computerization or noncomputerization is determinative of the use of these files. In addition, I recommend consideration of a blanket prohibition against any national intelligence files that do not involve Federal crimes and perhaps even ban on Federal funding of State intelligence systems. I am not sure that we really ought to use Federal money to stimulate systems for which the States are unwilling to expend their own funds, particularly in an area as sensitive as intelligence. A ban on such funding would fit in with the tradition of regarding police operations as a local function.

Probably a legislative prohibition should be spelled out to prevent the Attorney General from ever altering the current policies of the Justice Department of not mixing Federal information and intelligence files.

I would like to make one recommendation with regard to the sealing provisions. They do not presently cover a situation that can be one of considerable hardship, particularly if the States do not get around to amending their criminal codes, which most of them need to. I would recommend that a record be completely expunged where an act that was previously criminal is decriminalized or modified from a felony to a misdemeanor or declared unconstitutional for vagueness. The best examples of the kind of hardship that exists now, come from the Southwest in regard to marihuana cases where young people who were picked up with a small amount of marihuana were convicted of

felonies and put in jail for 4 years or whatever. When they come out they have to continually pay a penalty because they cannot go to law school, they cannot qualify for certain jobs, et cetera, many options are closed to them even though, as in New Mexico, the State has changed the offense from a felony to a misdemeanor. That type of record should be taken out altogether when the crime is eliminated, and it ought to be subject to the more lenient sealing provisions when it is reduced from a felony to a misdemeanor.

I still have a problem in regard to the types of offenses that States can include in their own files. Even though such offenses as vagrancy, loitering, et cetera are not included in the Federal NCIC file, they are available to anyone who is keyed into the State by the National index. I do not know how you address the problem. Maybe your restrictions on the dissemination and use of records will be enough to alleviate the hardships that currently come from labeling those kinds of people, who are generally either hippies or people who are social rejects, who cannot hold a job or whatever.

In regard to sanctions, I think the proposals in both bills are a definite improvement over present practices. As you know, the only sanction available right now through the FBI is cutting off a participant in the system. This has never been done. You can conclude from that that it is not a terribly appropriate sanction. It goes too far and does not allow enough flexibility.

It is certainly important for individual responsibility to be insured in this kind of system, through the imposition of individual civil and criminal penalties. It is also important for the person who has been injured to be able to get attorneys' fees, costs, and those kinds of things that are spelled out in S. 2963.

I would also like to commend S. 2963 for the limitations that are spelled out on the composition and duration of the FBI-maintained files. As you know, from the history of SEARCH, the national index was initially conceived as a limited central index, with the complete offender files resting in the States. This got changed and there are certain bureaucratic imperatives now in force, to have the FBI retain the complete files, and for the majority of States, the Bureau is now collecting the whole range of data.

Once you have a Federal agency holding on to this type of information, it is awfully hard to take it away from them. I think the limitations in this bill are very helpful in that regard.

I would like to make a couple of negative comments in regard to the administration bill. My major problem with it is the one I mentioned earlier, that is reflected in the experience of Governor Sargent and the other petitioners: Too much discretion is given the Attorney General to decide when and if regulations are necessary. The history of this whole field shows that the decision that regulations are not necessary is the most likely one unless regulations are required in the legislation. I do not think we can count much on administrative initiative.

Also in the intelligence field, the grant of authority to the Attorney General to collect intelligence on national security threats is too broad and too loose. The past efforts of the States to broaden the definition of organized crime and the practices of this administration in regard to national security give us enough hard, demonstrative facts to suggest that this is not an appropriate exception.

I also object to the provision in the administration bill allowing dissemination of criminal offender records for criminal justice purposes when authorized by Executive order. We already have examples in regard to the Department of Defense, particularly; also perhaps even in regard to the Executive order requiring clearance of certain Federal employees, of overly broad exercises of executive prerogative. There are strong suggestions that some of the existing Executive orders go beyond statutory or constitutional authority. They should not therefore be relied upon to broaden record dissemination.

One final minor comment on the two bills. I favor the provision in 2963 allowing the individual under certain circumstances to look at the comments and evaluations of correctional people. The behavioral scientists are causing serious problems for individuals by unsubstantiated and unvariable classifications and assessments that they put in their files. An individual should be given access to that type of data in any situation where it might be prejudicial to him.

Those are my main comments. This is the first time that Congress has undertaken to provide a clear policy directive in regard to some of the files and operations of the FBI. I hope this signals the end to the authorization of program initiatives for that agency through the backdoor of the appropriations process, and instead represents a replacement by open review, followed by detailed enabling legislation.

Thank you very much.

[The prepared statement of Ms. Carey follows:]

Prepared Statement of Sarah C. Carey, Consultant, National Urban Coalition

In late 1973, the National Urban Coalition and the Lawyers' Committee for Civil Rights Under Law issued a report entitled "Law and Disorder III". The report reviewed federal and state performance under the LEAA program during the five years since its inception. Chapter 2 dealt exclusively with the stimulus that LEAA funding and leadership has provided to the rapid growth of the state and national computerized criminal history files that comprise the NCIC/CCH system. I would like to review briefly some of the findings of "Law and Disorder III" that pertain directly to today's hearings.

The Problem.—The report made the following conclusions concerning the evolution of the CCH state and national file systems:

(1) The new systems reflect a federally-stimulated priority; they would not have been launched absent free-flowing federal funding;

(2) The decisions to develop computerized criminal offender files were made by the executive branches of government alone, and involved no legislative review or public debate at either the national or the state levels (in fact, the legislative authorization of at least part of the federal system is subject to serious question);

(3) The entire system was launched after inadequate research and analysis concerning its ultimate costs, the potential needs of and benefits to the systems' users, and the potential injury or danger to the persons whose names were to be included in the system;

(4) After a demonstration period that was of questionable operational success,[1] the U.S. Attorney General decided to move toward full 50-state implementation of the system by July, 1975;[2] at the same time the basic concept of a skeletal national index with state control of complete offender files was abandoned in favor of a more centralized, federally dominated system run by the FBI.

(5) Finally, the computerized record files were developed conincident with the development of LEAA-funded criminal intelligence systems that could potentially be interrelated; no effort was made to deal with this eventuality.

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[1] Not only were many of the state participants in Project SEARCH unable to in-put or access the central index, the index itself lacked an updating capability. In addition, many critics suggested that the identifiers enabling access to the system were unreliable and that such a file should not be established until computer transmission of fingerprint facsimilies had been realized. (Datamation Magazine, June 15, 1971; "Comparative Analysis of Project SEARCH", October 23, 1970, Data Dynamics, Inc.)

[2] Recent statements by the Justice Department and analysis by the GAO suggest that this timetable will not be met.

To the authors of "Law and Disorder III", the key defect in the evolution of NCIC/CCH was not technical but political. A highly centralized federally controlled computerized criminal offender file was created overnight, largely as the result of Justice Department decisions, without full and open debate at state and local levels. In fact, as the history of the SEARCH project reveals, the lively debate generated in some states was largely ignored by the FBI when it assumed eventual control of the system.

Two years after the issuance of "Law and Disorder III", many of the original problems with NCIC/CCH persist, although, to the credit of this Subcommittee and a handful of state legislative leaders, we are beginning to see the first real legislative review of the program. The persisting problems include:

(a) The costs of the system remain unknown. In January, 1973 the Comptroller General reported estimates of around $100,000,000 but stated: "No one has determined what a fully operational system will cost. Therefore, the participants cannot determine whether they will be able, or willing to meet the financial requirements of developing and operating the system." Although LEAA reportedly had a cost analysis of the system underway at the time of issuance of the Comptroller General's report, to date that analysis has not been completed. LEAA can only report that it has already spent $300,000,000 on criminal justice information systems, a substantial portion of which has presumably involved CCH.

(b) The needs of users remain undetermined and the entire expansion of the system has proceeded on the basis of unsubstantiated assumptions concerning the utility of broad availability of offender records.[3] FBI Director Clarence Kelley in his recent submissions to this Subcommittee stated that the FBI has "conducted no surveys to specifically determine the nature of the use of offender record information by criminal justice agencies;" nor has it sought to "determine the criminal offender record information needs of non-criminal justice agencies, or to determine the current volume of noncriminal justice inquiries." LEAA Director Richard Velde was similarly unable to answer these important questions. And the GAO has reported that "data is not available at the national level to indicate for what purpose state and local criminal justice agencies use CCH information." (Letter Staats to Ervin March 1, 1974. The same letter stated: "We believe it is necessary to know what use is made of computerized criminal history information to determine what type of security and privacy provisions should be applied.")

(c) Neither LEAA nor the FBI has taken steps to insure that the data contained in the system is accurate or complete. The Comptroller General has warned "To put a system into operation without first insuring that the information it will process is complete, will result in a system that maintains and provides incomplete data to system users." (Report January 16, 1973). LEAA officials have reported that they prefer to "get the system operational" and deal with the problems later.

(d) Finally, until recently the systems have continued to evolve without appropriate public policy review.

Despite these rather serious gaps in knowledge and understanding, there has been an acceleration rather than a reduction of LEAA block grant and discretionary fund investments for both computerized offender files and intelligence files. And the FBI has earmarked millions of dollars in its FY 1975 budget for computerizing manual files.

The history of the CCH system is of direct relevance to the work of this Subcommittee, because, although presently of limited scope, the CCH will become a central aspect of FBI offender records within five years. Beyond that, CCH is important as a prototype of similar or related LEAA stimulated systems that are less advanced but that pose equally serious problems unless Congressional oversight is exercised. Two of these deserve brief mention.

New Developments—(1) *Intelligence Files.*—As of mid-1973 LEAA had invested millions of dollars in discretionary grants and the states had invested additional bloc grant funds in criminal intelligence systems. This is an area devoid of regulation and one where federal funds are "priming the pump" for more expanded, technologically more advanced files. The growth of criminal intelligence files should be of special interest to this Subcommittee because in many states, existing legislation[4] authorizes the inclusion of intelligence information in

[3] For example, many non-law enforcement criminal justice agencies complain that due to the FBI and NCIC orientation, the system is essentially designed to meet police needs; yet the Data Dynamics Inc. evaluation of the SEARCH demonstration, revealed that most local police felt that "criminal history is not vital prior to an arrest."

[4] For example, offender records in Wyoming may include intelligence data and any information "concerning or related to the accused person"; North Dakota records can include "all available information concerning the arrested person," and in Maine criminal files are kept on "any suspicious person" and can include any psychiatric report or other pertinent information which may be necessary.

criminal records files. And at the national level, there is no legislative bar against the Attorney General mingling such files, although under current policies they are reportedly maintained separately.

The LEAA funded intelligence systems have focused primarily on persons suspected of involvement in civil disorders and/or organized crime. In some states, such as California, the two categories overlap. For example, some organized crime intelligence grants have been defined so loosely as to encompass "revolutionary activity, motorcycle gangs and groups of two or more persons who continually engage in assault or theft."

In addition to single grant projects, LEAA has funded at least two regional and one national computerized intelligence projects dealing with organized crime figures. The national project, the Interstate Organized Crime Index (IOCI) is a national registry of organized crime figures and their "associates." This project has already been run on a demonstration basis and evaluated by its sponsors.[5] The development of IOCI is instructive in that it repeats many of the problems reflected in the development of the CCH system: IOCI was originated as a service to the states, yet the demonstrator-evaluators have suggested that it can best be run nationally; the demonstration was of questionable effectiveness, yet the evaluators recommend expansion of the system, even if the only way to get adequate state participation is to buy it by providing "financial assistance to major police departments in compiling their investigative data for inclusion of IOCI subjects".[6] Finally, the participants in the demonstration want to expand the system; many complained that the public record information included in the registry is too limited and that it should include "dissidents, radicals, revolutionaries, and other similar types".

The technology and design of the IOCI could be readily transferred to other groups, whether international terrorists or youthful runaways (registries for both of these groups have already been suggested by LEAA and HEW respectively) or to persons of dissident political views who are a threat to "national security".

(2) *NLETS.*—The National Law Enforcement Teletype System (NLETS) is an interstate message switching system that enables police departments in different states to communicate directly with each other. Originally the system permitted communications between teleprinters only; recently a substantial LEAA grant has made it possible to use computers to exchange information over high-speed communication lines. Further improvements are expected as the result of a $500,000 LEAA research grant. NLETS was created as an independent corporation of state officials and has been run on the basis of state contributions. Because of its recently enhanced potential for commuicating criminal record and other information, LEAA and the FBI are currently engaged in a bureaucratic struggle over its operational control.

The NLETS story is interesting for two reasons: it repeats the tendency toward centralization at the federal level already discussed in regard to CCH and IOCI; and it illustrates the "legislation by bureaucratic decision-making" that characterizes much of this field. Justice Department legal memoranda[7] show that LEAA bases its authority to run (or coordinate) such a system in part on the Kennedy-McClellan amendments of 1973, amendments that do not authorize program administration[8] but simply require the agency to encourage grantees to provide privacy safeguards in regard to computerized offender systems. The FBI, on the other hand, relies on federal statutes authorizing it to maintain criminal identification and crime records (a function quite different from interstate message switching) and on various appropriations bills that it claims constitute Congressional authorization of substantive activities. Neither agency makes a convincing case. Regardless of the eventual resolution of the contest, NLETS, with its great capacity for communicating all kinds of personal data between the States represents a potentially greater threat to privacy than CCH, with its formal record information.

Systems Without Controls.—The basic problem of CCH (and to a certain extent NLETS) is that it relies almost exclusively on self-policing by the states. The NCIC policies that currently govern the operation of the system deal with such problems as the data collected in the files, dissemination of file material, access to

[5] To the extent that LEAA has funded evaluations of new intelligence and information systems, it generally relies on "self-evaluation" by the program operators. This results in an assessment that fails to challenge the basic need for the program and instead deals only with how to make it better.

[6] Report by Project SEARCH, Organized Crime Task Force, January 1, 1973.

[7] See Memoranda to the Attorney General, dated July 11, 1973, August 6, 1973, September 5, 1973, January 15, 1974 and February 1, 1974.

[8] Both the legislative history of LEAA and the Act itself clearly prohibit the involvement of the agency in operational law enforcement (or other criminal justice) activity.

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the data and the right to individual review. However, each NCIC policy depends exclusively on state laws or regulations for actual implementation. A recent survey, not yet published, of state laws in this area shows that few states have legislation or regulations on the books to effect the NCIC policies. In fact, there has been almost no state legislative review concerning the appropriateness of various computerized criminal offender and/or intelligence files or their structure.

In many states existing legislation on its face violates NCIC standards. Besides the examples of overly broad data collection provisions cited on p. 396, footnote 4, many states include vagrants, transients, suspicious persons, well known or habitual offenders and violators of certain municipal ordinances in their files—despite the vague or non-serious nature of many of these categories. Many states leave the kind of data collected up to the discretion of the responsible state official. In addition, access to the state files is overly broad. South Dakota, for example, allows the collection of data that the State Director thinks will be "helpful" to other public officials or agencies dealing with particular criminal offenders; Idaho permits dissemination to any other public agency "upon assurance that the information is to be used for official purposes only"; other states leave dissemination to the discretion of the state Attorney General or the official in charge of the files.

Like LEAA, the states have by and large accepted the federal grants, and launched computerized file programs without proper evaluation or review. Apparently, they will try to correct the problems once the systems are underway. Until that is done, the present operations threaten serious invasions of constitutional liberties.

Federal Regulations.—Despite the lack of adequate legislation at the state level to implement the NCIC policies, the Justice Department has declined to take steps to impose controls. Since the inception of the NCIC/CCH system the Attorney General has had the power and the responsibility to insure through administrative regulations that the system operates in full compliance with constitutional standards. However, until legal proceedings were filed against him in August, 1973 he refused to take that action. On August 3 of last year, Governor Francis Sargent and other individuals and the American Civil Liberties Union and other organizations filed an administrative petition seeking a full hearing and rule-making proceedings for regulating the operations of the NCIC. (A copy of the Petition is attached). After repeated promises that the regulations would be issued imminently, the Justice Department finally published their proposed rules on February 14, 1974. (Fed. Reg. Vol. 39, No. 32 p. 5636). Hearings were held on March 1 and 4 and will be continued in April.

Because these regulations could be implemented considerably in advance of the legislation currently under consideration (by their own terms the regulations provide for implementation 30 days after final issuance), they deserve brief comment. In the first place, the regulations provide for inadequate public notice and review at the state level, without full disclosure of the nature and content of each state system and of the national system to which the states relate. Secondly, they formalize the current administrative structure of the NCIC policy board, without any expansion or modification, thereby insuring domination by law enforcement interests. Thirdly, they simply describe the current role of the FBI without defining substantive standards to guide that role; and finally they fail to provide for an integrated federal administrative structure or for adequately coordinated and sufficiently strong sanctions. Consequently, the original signatories to the Petition of August 3, 1973 are considering other legal remedies to correct the insufficiencies of the draft regulations.

The Proposed Legislation.—Both S. 2963 and S. 2964 are impressive legislative proposals; in general, I favor the more stringent provisions of S. 2963. (Many of these provisions correspond to recommendations made in "Law and Disorder III").

The requirement of state legislative approval prior to the development of a statewide information system that will interface with the NCIC/CCH or other national system is of primary importance. Each state must determine its own needs, the investment it is willing to make and the configuration of its own system; only such legislative deliberations can prevent over-centralization and national level interference in police operations.[9] I also support the "state pre-emption" provision, granting precedence to state privacy and other provisions where those provisions are more stringent than the federal standards.

[9] The approach taken by the Justice Department regulations of February 14, 1974 is inadequate because it retains decision-making authority in the state executive by requiring the Governor's office or the LEAA state planning agency to develop operational plans for LEAA review. Similarly S. 2963 avoids legislative involvement.

The public notice requirement concerning the initiation, the existence and the character of all information and/or intelligence systems maintained by a criminal justice agency is equally important for assuring public oversight. Key to this provision is the statement of categories of persons and categories of data maintained, as well as the description of uses made of the information. Unless the public is given sufficient information to understand the actual operations of such systems and their potential impact, they will be precluded from exercising any kind of political leverage. The history of the public relations releases from NCIC shows that absent detailed disclosure requirements, it will be impossible to understand the actual workings of any given system. (Note: unlike the Justice Department regulations of February 14, 1974 and S. 2964, S. 2963 establishes more comprehensive reporting requirements and imposes them on the federal as well as the state governments).

I favor the regulatory structure established by S. 2963 with both a broadly composed Federal Information Systems Board and a systems advisory council with strong state government representation.[10] The NCIC system is presently administered by a policy board that is for the most part limited to law enforcement representatives (the investigative files, on the other hand, are administered by the Director of the FBI and his staff without any outside assistance). The history of the policy board in regard to the post-SEARCH transformation of CCH and the Board's recent effort to absorb NLETS and related systems into the FBI is not reassuring. The S. 2963 Board not only assures important representation from "private citizens well versed in the law of privacy, constitutional law, and information systems technology," but by its independent structure militates against the evolution of a national police force or the type of "Big Brother" capability that caused the initial SEARCH participants so much concern.

However, I question whether the Board should be assigned both regulatory and operational functions. Such a dual role could lead to some of the same conflicts that have plagued the FBI. This is a particularly important problem if the Board is eventually to be assigned broader oversight responsibilities in regard to a variety of federal information systems, a possibility suggested by its broad investigating powers.

The effort of both bills to deal with the collection and dissemination of criminal intelligence information is commendable. The approach of S. 2963 to affect intelligence gathering practices by prohibitions on (1) the commingling of information and intelligence and (2) the computerization of intelligence is useful, although I'm not sure it is enough. Perhaps a prohibition should be placed on nationally operated files that include intelligence information (unless a federal crime is involved) or on federal funding of state intelligence systems. Certainly, some restriction should be placed on the use of federal funds to *stimulate* unregulated intelligence systems for non-federal offenses. In addition, a legislative prohibition should be enacted that would preclude the Attorney General from reversing the present Justice Department policy of segregating information from intelligence files.

The provisions in the Ervin bill limiting dissemination of information to conviction records and providing for expungement, sealing and individual access are all excellent. The requirement that disposition subsequent to arrest be included in the files should result in a major clean up effort at the state level where from 20–70% of criminal offender files are reportedly incomplete or inaccurate.

In addition to sealing records after the lapse of a specified period of time, I recommend that when a criminal law is repealed, held to be unconstitutional or modified to reduce the offense from a felony to a misdemeanor, any record of prior violations should be deleted from the system altogether or appropriately amended without having to wait the statutory period prescribed for sealing.[11]

Although the restrictions on dissemination and the provisions for sealing provide helpful protections, I question whether a prohibition against the inclusion of certain kinds of minor or non-specific offenses such as "vagrant," "transient," "suspicious person," "known and habitual offender," etc., isn't indicated. As stated above, many states currently include this kind of information in their

[10] The provisions in S. 2963 defining the composition of the Board correspond in part to the initial OMB recommendations to the Attorney General concerning the administration of the SEARCH system. On Sept. 30, 1970 OMB recommended a Policy Control Board that would report directly to the Attorney General and would include high level officials from the states (with a voice equal to the feds), as well as representatives of the FBI, LEAA and all elements of the Criminal justice system. This recommendation was ignored.

[11] I recently met a young man from New Mexico who had been convicted under that state's statute making possession of marijuana a felony (even though he possessed only a small amount); subsequent to his serving a four year sentence, the crime was reduced to a misdemeanor. The individual, however, has a felony record that has barred him from a legal career and other opportunities.

files and if not prevented from doing so, may well include them in the new computerized systems. In other words, the new technology shouldn't be allowed to preserve the constitutional and other deficiencies of more primitive record keeping systems.

Finally, I support the limitations on central index information and the length of time the national file can include complete state files as well as the strong sanctions included in S. 2963. As far as the former are concerned, unless a legislative limitation is placed on the national file's authority to maintain files for the states it is likely that the national file will evolve by default to a complete dossier system. In regard to sanctions, at present the only sanction available to the FBI in regulating the NCIC system is withdrawal of the right to participate in the system. Because this is so extreme, it has almost never been invoked. The Justice Department draft regulations do not add any new provisions, although they do point to the general cut-off provisions available in the Safe Streets Act, as amended for LEAA grantees that do not comply with the legislation or regulations issued pursuant thereto. (The regulations do not, however, provide for coordination of the LEAA and FBI sanctions in any manner). Insistence on personal responsibility on the part of the officials who operate or deal with information systems, together with a private right of enforcement are key to insuring the integrity of the system.

I oppose the broad discretion granted to the Attorney General in S. 2964. The experience with the NCIC/CCH system that gave rise to Governor Sargent's August 3, 1973 Petition demonstrates dramatically that absent a legislative mandate, we cannot rely on administrative initiatives in this area.

This legislation represents the first clear Congressional policy directive in regard to the criminal identification and criminal offender files maintained by the FBI. Hopefully, it signals the end to authorization of program initiatives for that agency through the back-door of the appropriations process and its replacement by open review followed by detailed enabling legislation.

Thank you.

Senator Ervin. I thank you for your very fine statements. As its author, I am particularly pleased by the kind comments you made with respect to the bill that I introduced.

Senator Gurney?

Senator Gurney. No questions.

Senator Ervin. Counsel?

Mr. Baskir. Do I understand, Ms. Carey, that you are consultant to the National Urban Coalition and you are familiar with these programs at the LEAA with respect to the work that you did on the reports that you mentioned?

Ms. Carey. That is right.

Mr. Baskir. Do I understand one of the points of your testimony to be that before Congress goes too far in terms of deciding what kind of legislative controls and administrative arrangements ought to be made with respect to these systems, there ought to be attention given to their usefulness and practicality in terms of cost and everything else?

These decisions have not been made as a matter of open public policy?

Ms. Carey. I feel that very strongly. From the first time that we started reviewing the LEAA expenditures and went over and asked the various officials there and in the FBI how much these data systems were going to cost, not only did the two agencies give totally divergent answers in regard to the numbers of records in the files and their projected costs, they were shifting all the time. The agencies still today do not have an ultimate estimate of the expenditures they are embarking on.

It is similar to many of the defense contract type situations. You are going to find that every year there is another couple million tacked on to the total cost because of unforeseen developments or additional costs.

Mr. Baskir. With respect to the usefulness and practicality of these systems, is there also a problem in terms of different participants in the decisionmaking, looking at these systems, thinking that they are going to be used for entirely different purposes than another participant participating in it?

Ms. Carey. There has been no analysis of the information each agency needs, or of the extent nationwide that the agencies say prefer computerized files to manual files or other systems.

One of the interesting things that has been brought out by this subcommittee is the fact that so often the police have stated that they need the files because it helps in apprehending a suspect. If you see a greasy looking guy speeding in a car or something, you can find out about his background, whether he is likely to be an appropriate candidate for arrest.

The SEARCH evaluation materials collected by the subcommittee have indicated, however, that the police cannot use this material until after an arrest has taken place. It is at that point, when they are trying to develop a case, when the prosecutor is taking over, that the additional information in the defendant's record becomes useful. That undercuts the whole original mythology.

Also, with regard to the courts, the people developing the criminal offender record systems want to give all information to all people, even though a sentencing judge should not have certain arrest information or parole people should not see certain things. There has been an assumption that all criminal justice agencies should have access to the data in the computer files without the necessary backup, research or analysis.

Mr. Baskir. One of the reasons your testimony struck my memory was because Director Kelley last week said he thought these systems would be especially useful for police purposes, where Mr. Velde testified yesterday suggesting that there were other uses like corrections that would find greater use. There seems to be a real divergence in the rationale for these systems.

Ms. Carey. The questions that you asked them showed that they never measured the use, even though they claim these systems are fairly well advanced. That is the problem.

Mr. Baskir. Also I understand from your testimony you believe neither the FBI nor the LEAA has sufficient legal authority granted by statute, if not to create these systems, certainly to have them run. Authorizing legislation is necessary, at least in the first instance.

Ms. Carey. It is a clearcut case on LEAA. The legislative history was adamant in terms of the nonoperational nature of that agency, either at the State level or national level.

You already have some problems in Alaska, for example. The SPA is running the information system, and I think that is subject to challenge under the provisions in the statute. There is nothing that would ever support LEAA's contention from time to time that it is an appropriate operational agency.

As far as the FBI is concerned, the question there is a little less clear. As you know, the statute, under which they operate NCIC is a general kind of housekeeping authorization for record collection that was passed many years ago and never modified, never changed, or never endorsed in terms of reflecting expanded operations. They also

expanded authority by riders to the appropriations process, which is a somewhat unorthodox way of proceeding.

I have never seen the legal theory for a challenge to their authority spelled out in detail, but I think there is a lot of questionable ground there.

Mr. BASKIR. Thank you.

Senator ERVIN. Thank you very much.

Counsel will call the next witness.

Mr. BASKIR. Mr. Chairman, Mr. Andersen, who is here from Omaha, has a plane to catch, and Mr. Lister, who is next listed on our schedule, has consented to let Mr. Andersen appear ahead of him.

Our next witness will be Mr. Harold W. Andersen, who is president of the Omaha World-Herald. He is accompanied by Mr. John R. Finnegan, who is chairman of the Freedom of Information Committee of the Associated Press Managing Editors, and Mr. Richard Schmidt, general counsel to the American Society of Newspaper Editors.

Senator ERVIN. Mr. Andersen, I wish to welcome you to the subcommittee, and express to you our appreciation for your willingness to come and give us your views on this proposed legislation.

I am glad to have the other gentlemen who accompany you.

TESTIMONY OF HAROLD W. ANDERSEN, PRESIDENT, OMAHA WORLD-HERALD, AND VICE CHAIRMAN, AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION, ACCOMPANIED BY JOHN R. FINNEGAN, CHAIRMAN, FREEDOM OF INFORMATION COMMITTEE, ASSOCIATED PRESS MANAGING EDITORS ASSOCIATION; AND RICHARD M. SCHMIDT, JR., GENERAL COUNSEL, AMERICAN SOCIETY OF NEWSPAPER EDITORS

Mr. ANDERSEN. Thank you.

My name is Harold W. Andersen. I am president of the Omaha World-Herald and vice chairman of the American Newspaper Publishers Association, whose 1,100 members are responsible for more than 90 percent of the daily newspaper circulation in the United States. I speak both for the World-Herald and for the American Newspaper Publishers Association.

I thank this committee, its chairman, Senator Ervin, and its ranking minority member, Senator Roman Hruska, a fellow Omahan, for the invitation to testify on this very important legislation.

Senator ERVIN. I might state to you that Senator Hruska was anxious to be here when you testified. Unfortunately he is on the floor. He is one of the floor managers of the bill that is now being debated by the Senate.

Mr. ANDERSEN. I understand that he is involved with a very important task. We do understand.

I would like to emphasize that I do not appear as an adversary witness. I am in wholehearted agreement with a number of the basic objectives of this legislation. But we do have certain serious concerns. I would not want this to be interpreted as opposition to other features of this important legislation. I would add here a word of sincere commendation for Senators Hruska and Ervin and others who have brought these very important considerations into this legislative focus.

First, let me indicate why we ask for more time to study these bills. I have in my hand a copy of a publication labeled Project SEARCH security and privacy publications, May 1973. I am informed, and a reading of this document tends to confirm, that a good many of the current proposals to restrict access to criminal records have both a philosophical base and detailed plans for implementation in the work of Project SEARCH. These restrictive proposals are pending not only before this committee, but also in some State legislatures and in the form of a proposed set of regulations of the Federal Law Enforcement Assistance Administration.

Reading of this Project SEARCH publication indicates that one section, Technical Report No. 2, "Security and Privacy Considerations in Criminal History Information Systems" was completed in July 1970.

So the documentation leading to these various proposals to restrict access to criminal records, many of which have long been considered to be public records, appears to date back at least to July 1970.

Yet, to the knowledge of my newspaper and of the American Newspaper Publishers Association, today, March 13, 1974, is the first occasion that anyone connected with this ambitious undertaking has sought the views of the Nation's news media as to how the public's right to know might be affected by these various proposals.

Against this background, you can see why I am very sincere in saying that I thank this committee for the opportunity to testify.

You can also understand, I hope, why I ask today that the Nation's news organizations be given time to evaluate these proposals which have been so many years in preparation and to work with your committee and its staff if revision or clarifying amendments seem in order.

May I offer this preliminary opinion today: The matter before you perhaps can logically be divided into two issues: First, the accuracy and completeness of what have come to be called criminal justice information systems and, second, access to this information.

As to the first issue, accuracy and completeness, we wholeheartedly endorse these objectives. No responsible news medium wants to publish inaccurate, incomplete information.

In the matter of access to criminal justice information, accurate, complete information, we have a very serious concern that the various proposals may go too far in an effort to convert public records into what is in effect a private record.

Such an effort, however well intentioned, should not become obscured by easy labels like the individual's right to privacy, important as that principle is. We are not talking here about intrusion into a man's home or personal affairs; that kind of privacy is simply not involved. We are talking about criminal records.

Crime is not a kind of private matter between the criminal and the state. I would urge the various legislative and administrative bodies to think carefully of all the implications of this matter before they attempt to convert public record into private record. In my opinion, it would be tragic if, however well intentioned, restrictions were enacted which would have the effect of keeping from the public information which is essential for the public to understand and evaluate the workings of the criminal justice system.

Just how this legislation would affect public access—the public's right to know—is something that needs further careful, detailed study.

We have seen in recent years a growing legislative expression of what I believe has always been the cornerstone of our democratic society: the public's right to know, to have access to information which will make it an informed public capable of self government.

Interestingly, there is a splendid statement of this principle in the Project SEARCH document. I quote:

> The laws of every state guarantee, and long have guaranteed, the rights of individual citizens to inspect and copy wide categories of public documents. These rules were recently extended by statute to many of the records and documents of the Federal departments and agencies. Public records are commonly not defined with any great precision, but in general they include all books, memoranda, and other documents either required by law to be kept or necessary for the effective discharge of a public duty. The various rights of access to these records are intended to permit public surveillance of the activities of government. It has been argued since the eighteenth century that popular control of government has as its principal prerequisite the general availability of timely and accurate information about the conduct of public affairs. Public business, it has been thought, is the public's business.

I find it interesting that I find such an excellent statement of our principles in a document that has been used as the source of proposals that seem to me to be contrary to those principles.

I must in candor add that Project SEARCH, after quoting this fine principle—"public business is the public's business"—finds reasons to set that principle aside in the case of criminal justice information systems.

Certainly when a citizen is arrested, tried and convicted and sentenced, the entire series of events, the entire transaction, if you will, is a public matter.

The law he violated—or allegedly violated—was passed by representatives of the public, in the interest of protecting the public. He is prosecuted by a public servant, tried before a judge representing the public, sent to a jail or prison administered by public officials and paid for by taxes collected from the public, released in a public probation or parole system.

It seems to us in logic there is no way to convert this public transaction—or any step in this series of public transactions—into a private matter, between an individual citizen and the State. A private transaction between a murderer and the State? How could this be?

There is a legitimate concern that data in so-called criminal justice information systems are too frequently inaccurate, imprecise, incomplete. Again we applaud any effort to correct these obviously dangerous conditions.

Another reason for attempting to drop a wall of secrecy around criminal justice information systems, I would speculate, is that some keepers of the records simply do not want to be bothered by so many people asking for access.

This desire not to be unduly burdened is understandable. Reasonable administrative procedures should be developed to assure that keepers of criminal records are not swamped in a sea of requests. But to deal with very real administrative problems, accuracy, completeness, reasonable regulations as to access, is it necessary to attempt to convert public records into private records?

I noted with interest the words used by some of the previous witnesses who have testified in behalf of this legislation. One indicated he felt the information in criminal justice information systems should be kept within the "law enforcement family." Another was reported

saying certain information should not be disseminated outside the criminal justice community.

May I suggest that there is a public interest here, the question of public access to public records, which should receive consideration along with the needs or desires of the "law enforcement family" or the "criminal justice community." This is not or should not be a matter of a family or community of public employees and officials in effect telling the public to keep their noses out.

In the interests of time, I will omit a few of the examples that I have detailed in the statement, but let me give you a few specific examples from my newspaper of the kinds of journalistic jobs which we feel would be impossible if these various proposals are enacted in their present form.

Perhaps this has been passed out and been made available, a page from the Omaha World-Herald of January 23.

Is that available there at the table?

Mr. BASKIR. Yes.

Mr. ANDERSEN. The headlines summarize the contents of that story: "8 Corner Multimillion Bookie Business."

[The articles referred to follow:]

[Newspaper articles from the Omaha World-Herald, Wednesday, Jan. 23, 1974]

POLICE: 8 "CORNER" MULTIMILLION BOOKIE BUSINESS

(By James Fogarty)

Profiles of eight life-long Omaha men:

Their average age is 53. The youngest is 41, the oldest 68.

They drive expensive cars. Most have families. They reside in upper-middle-income houses in the city's nicer neighborhoods.

From all indications, they are accepted members of the community and good neighbors. Some are supporters of public and religious causes.

In their frequent visits to Omaha courts over the years, the eight have been represented by some of Omaha's most expensive criminal attorneys.

The eight have been arrested on suspicion of gambling-related crimes 170 times and convicted 96 times. Four have records dating from the 1930s.

Police say all have been bookies at least a dozen years.

But many Omahans don't think of bookies as criminals, according to police who say they get complaints every time a bookie is raided or arrested.

SAMPLE

During a recent gambling raid on the edge of downtown, a World-Herald reporter and photographer who apparently were mistaken for detectives got a sample of this attitude.

One passer-by said, "Why don't you guys quit bothering honest bookies and do something about these people robbing bars?"

Another said, "You would think the cops could find something better to do with their time."

Police and federal authorities say the illegal bookmaking business now in the Omaha area amounts to $20 million to $40 million a year.

According to Lt. Jack Swanson and veteran Patrolman Melvin Berney of the vice and narcotics unit, eight men "have the corner" on most of the bookie business.

Each of the eight takes more than $100,000 in bets during an average month, police said.

Omaha's bookies take bets on horse racing, local and elsewhere, football, baseball, basketball and occasionally on other sports, police said.

More money is bet on horses and football than on other sports, they said.

RECORDS

Swanson and Berney said they base their estimate of business volume on evidence gained through investigation during the last three years, which includes information from informants and surveillance.

Seized financial records in the form of "bet slips" and "payoff records" provided the best clues to the size of the local action, the officers said.

Police have used wiretaps four times on bookies since the procedure became lawful in Nebraska. All have resulted in substantial but temporary disruptions of bookies' businesses and seizures of evidence, Swanson said. The content of wiretapped conversations cannot be revealed by law, he said.

According to the two officers, about a hundred "street bookies" work in teams of 12 to 20, serving seven of the eight major bookies. One of the eight works on a more direct system without using street bookies, the officers said.

Street bookies take bets up to thousands of dollars per bettor, but they cannot sustain major losses in the event bettors win heavily. Therefore they "lay off" (refer) to one of the major bookies the bets they cannot cover themselves, the police said.

INDEPENDENTS

Bookmaking usually is a side-job for a street bookie. His earnings are based on 10 or 25 per cent of his bettors' losses, Berney said. A good 10 percenter can clear $500 to $1,000 a week in profit, while a 25 percenter, who lays off larger bets, can make $1,000 to $2,000 a week, but there are losses some weeks, Berney said.

Beside the street bookies there are the numerous independents, police said. But independent bookies seldom can lay off the larger bets and often they are forced out of business when their bettors' wins outnumber losses over a period of time.

Most of the eight big bookies employ "runners" on salaries of about $300 a week who make deliveries and pickups of cash, betting sheets and bet slips, Swanson said.

In addition to lay-off money from street bookies, the major bookies accept bets directly from "preferred customers" and all have access to "gambling pipelines" to cities such as Denver, Kansas City and Las Vegas.

INCOMES

How much do the eight major bookies make?

"You couldn't name a figure high enough to surprise me," Swanson said. "They are extremely well-to-do men."

Some of the eight have given clues to their incomes over the years.

In a raid at the home of one of them in 1958, police Sgt. John Quist said, he found a federal income tax record in which the bookies claimed more than $450,000 in personal income.

The U.S. government claims that one of the eight did more than $1 million in betting business last November, and another took more than $4 million in total bets during portions of 1970 and '71.

A check of court records showed that efforts of bookies' attorneys have been effective.

In all 96 convictions, none of the eight has served a jail sentence, even though Omaha ordinances call for terms up to six months in county jail and/or $500 fines for gambling. Eighty-six of the convictions came in Omaha Municipal Court; 10 in Sarpy County or Washington County.

One of the eight served a federal prison term for perjury.

LIGHT FINES

Recently one of the eight was fined $500. Until then none of them had been fined the maximum, according to the records. The eight have paid an average of $101 per conviction, a total of $9,677 in fines.

Records also show that the eight never have received mandatory 30-day jail sentences under Nebraska's "common gambler" statute, which prohibits engaging in gambling "for a livelihood."

The charge has been filed at least once each against seven of the eight, records show.

In most cases involving the eight, the common gambler charge has been reduced to a lesser charge, but in a few cases the convictions under the charge have resulted in probations. In the latter cases, judges said probation supersedes mandatory sentence.

Federal law prohibits certain gambling activities involving five or more persons, which are conducted more than 30 days and have gross revenues of more than $2,000 a day. This law never has brought conviction to an Omaha area resident, federal prosecutors said.

TWO 'NO CASES'

Conviction under the federal law carries up to a $20,000 fine, five years in prison, or both.

Lt. Swanson, in a World-Herald interview in December, said five Omaha men were conducting bookie businesses of $100,000 a month or more.

Later he said he had failed to mention a sixth, due to oversight, and two others because police have been "unable to make a case" against them in recent years.

Police believe the two are "heavily active," Swanson said.

Who Places Bet? Might be Anyone

The heat is on the bookies today, according to several Omaha bettors, who asked not to be named.

It has been that way since a wiretap investigation and 25 arrests disrupted the operations of two of the eight major Omaha bet takers in November. A third bookie was arrested by federal authorities.

Who are the bettors in Omaha?

According to records of one of the eight major bookmakers seized in a raid last November, bettors include attorneys, government officials, physicians, teachers, businessmen, salesmen, clergy and many others.

"People find it fashionable and exciting to support their local bookies," said Police Chief Richard R. Andersen, "And many otherwise average Omahans tell us they don't like it when bookies get arrested."

Adding to the bookies' heyday are the "classy" people now willing to work part-time as bookies themselves, Lt. Jack Swanson said.

A review of gambling arrests in the last three years supports his statement.

Persons arrested have included vice presidents of a major insurance firm and an advertising firm; owners of businesses, including bars, a printing shop and a manufacturing firm. Others were a railroad official, an elected public official from a suburban community, a postal employee and an entertainer.

An IRS official, who asked not to be named, said the attitude of Omahans "is typical of the national schizophrenia on gambling. We're doing it, but we don't want to admit it."

No Recent Charges Against 2 Big Boys

Police say they have not been able to make sound legal cases in recent years against two of the eight men they say control Omaha's illegal bookie business.

One of the men is a 64-year-old south-central Omaha resident, and the other is the 66-year-old proprietor of a downtown pool hall, police said.

Because of the lack of recent convictions, the names of the two are not used in stories on this page.

The pool hall operator has a federal gambling charge pending.

In 1955, during a court battle with his wife over separate maintenance, the pool hall operator was accused of having an unreported net income between $15,000 and $20,000 a month from illegal bookmaking.

His first wife contended he "bought five Cadillacs in 10 months."

A review of court records showed that he has won dismissals on 13 of 15 gambling related charges since 1939. His latest conviction was in 1961.

The 66-year-old bookie, according to police, does not have an organization of street bookies under him.

Lt. Jack Swanson and Patrolman Melvin Berney say the man takes large direct bets and lay-off bets only. The officers described him as a bookie "near the top" of local gambling circles.

Swanson and Berney estimate that each of the two men does about $500,000 in total gambling business each year.

A reporter's efforts to reach the 66-year-old man proved fruitless. His attorney said the man "has been out of the (gambling) business for 10-15 years".

The pool hall operator, told that he had been named as one of the top bookies in Omaha, replied, "I have no comment to make a-nothin'."

World-Herald files show that the record of the 66-year-old man was reported missing from police files in 1965.
His record, which police say is incomplete because of the 1965 incident, shows three arrests which brought a dismissal, a $100 fine, and a jail sentence which later was tossed out on appeal.

ROSS DIMAURO

Ross John DiMauro, 41, of 9806 Charles Street says he is "just a businessman."
Police say DiMauro's business is bookmaking and he grosses about $200,000 a month in bets.
DiMauro said he would not challenge the police contention that he is a bookie but said "it's misleading."
"Right now I'm trying to sell some real estate," he said.
According to police records, DiMauro gave his occupation as "bookmaker" when arrested in September, 1972, after police said they took 18 bets for about $1,600 in a few minutes over DiMauro's phone.
The arrest, according to court records, brought DiMauro a $200 fine.
Federal records show DiMauro was one of 14 persons who refused to answer questions of a federal grand jury probing gambling in 1971. A month later DiMauro received a three-year prison term for criminal contempt of court. The sentence was reduced to three years probation.
Since then, three local gambling convictions have not resulted in violation of DiMauro's probation, records show.

ANTHONY MANZO

"I don't care to talk to you," Anthony Manzo told a reporter.
"On any subject?" the reporter asked.
"No subject," Manzo said.
According to police, Manzo, 50, of 6611 Vernon Avenue has been in the bookmaking business since 1942 and is now among the top eight bet takers in town.
Most of his business is in Omaha, but he has headquartered in Washington County, north of Omaha, off and on for about four years, police said.
Lt. Jack Swanson and Patrolman Melvin Berney estimated that Manzo's gross betting business averages about $250,000 a month.
According to World-Herald records, Police Chief Richard Andersen estimated Manzo's business between $8,000 and $10,000 a day in April, 1972, based on evidence seized in a raid which brought Manzo a $500 fine in Washington County court.
The Omaha City Directory shows Manzo's occupation as "bookkeeper."
A Washington County judge last week fined Manzo $1,000 on two counts of gambling in connection with an arrest last November.
Records show Manzo was fined a total of $1,435 in 13 previous convictions in Omaha and in Washington County.

CLARENCE MATYA

In May, 1963, two vice squad patrolmen watched Omahan Clarence Matya enter and leave a grocery store several times "and finally decided he wasn't just carrying a shopping list," according to a World-Herald story.
When the officers arrested Matya, they found $4,000 in checks and cash in his possession, plus gambling slips, police records show. The conviction brought a $100 fine in Omaha Municipal Court.
Today, Matya, 51, of 9012 Shirley Street is in more hot water with federal authorities than any of the eight men named by Omaha police as being the city's major bookies.
Presently, Matya is under indictment with 11 other persons on charges of federal gambling violations. The Internal Revenue Service contends Matya owes taxes on $4 million in wagers which the IRS said he accepted in 1970 and 1971. The titles to his home and various businesses, including a liquor store, are being held by authorities pending the outcome of court proceedings.
When asked by a reporter about his situation, Matya said: "I'm out of (the gambling) business. There will be no more comment."
Lt. Jack Swanson and Patrolman Melvin Berney say Matya's bookie business is in full swing despite his denial. The officers say he averages about $300,000 a month in gross bets.

During a gambling raid at a Southwest Omaha lounge a few days after Matya talked with the reporter, the lounge proprietor told police they had just missed Matya who had come by to pick up gambling records, according to police reports.
Matya's wife told a Federal grand jury in 1971 that her husband "has been a gambler 27 of the 29 years I have known him."

SAM NOCITA

Sam "Peggy" Nocita admits he is a bookie, but says he is "a small guy."
The only one of the eight men named by police as the city's major bookies who had much to say to a World-Herald reporter, Nocita, 58, of 924 Meadow Road said police have exaggerated estimates of the bookmaking business done by him and others.
Lt. Jack Swanson and Patrolman Melvin Berney estimated Nocita's total business at about $200,000 a month in bets, but Nocita said he doesn't do anything near that amount.
"I run a small cigar store down near the Pullman Hotel (Tenth and Pacific Streets)," Nocita said. "Guys come in there every day and play hearts (a card game)."
According to police records, several grocery sacks full of bet slips and payoff records were seized in a raid at Nocita's residence in April, 1973, showing he did a multi-thousand-dollar daily business. The raid brought Nocita a fine in court.
Nocita said he has been ill for about 10 weeks and has been working very little.

JOSEPH DIGILIO

Omaha's most arrested and convicted bookie is Joseph Digilio, 60, of 5101 Grover Street.
Since March of 1943, he has been arrested 66 times and convicted 36 times in Omaha and Sarpy County—more than twice as many times as any other bookie, according to records.
In 21 cases, Digilio was rearrested within a month of the previous arrest. He has four cases pending from recent arrests in which law enforcers said they seized substantial evidence of bookmaking.
In the early 1950s, Digilio was the first Omahan to be convicted in federal court for failure to pay a wagering excise tax. Two such charges brought fines.
Police, however, said Digilio runs the smallest bookmaking business of the eight in terms of total bets accepted. Lt. Jack Swanson and Patrolman Melvin Berney estimated Digilio's total business at an average of about $100,000 in bets each month.
Informed by a reporter of the police statement, Digilio refused to answer questions and said he "didn't care to say anything" about his business or his income.
The Omaha City Directory lists Digilio as the operator of the Leavenworth News Stand near Twenty-fourth and Leavenworth Streets, but police said Digilio has been running his bookie business out of residences in Sarpy County.
Douglas County records show that five automobiles are registered to Joseph Digilio at 5101 Grover Street. One is a 1973 model; the others are older.
The officers said they based their gross betting estimates on evidence from gambling investigations in the last three years, including Digilio's own records which were seized.

JOHN SALANITRO

The Internal Revenue Service contends that John J. Salanitro owes the government taxes on more than $1 million in wagers it says he accepted during a single month, November, 1973.
Salanitro, 41, of 902 South Eighty-eighth Street, is among the city's eight major bookies, police say, and he is handling an average of about $400,000 each month in illegal gambling, according to Lt. Jack Swanson and Patrolman Melvin Berney.
IRS officials said they based their tax claim on evidence seized in a raid last November in which FBI agents found more than $40,000 in cash. Papers filed in federal court for a search warrant allege that Salanitro told a person he recently lost $62,000 in two days and accepted more than $300,000 in bets in one weekend.
Swanson and Berney said their estimate was based on evidence seized in gambling investigations in the last three years, including financial records of the bookies themselves.
Federal prosecutors said the evidence will be referred to an upcoming federal grand jury. The IRS has filed tax liens against Salanitro's property for more than $131,000.

Swanson and Berney said evidence shows Salanitro has been operating one of the highest-volume bookie businesses in Omaha for more than eight years. Police said that during a 1964 raid they took nearly $3,000 in bets on Salanitro's phone in 40 minutes. The raid led to a conviction.

Salanitro's first gambling-related arrest came in 1956, records show.

According to federal records, Salanitro in 1971 served part of a one-year prison term for perjury after telling a grand jury in Denver, Colo., that he was not acquainted with members of a major Denver gambling family. Salanitro was sentenced to a federal prison in Minnesota after federal authorities produced evidence that he was acquainted with the family.

Through an attorney, Salanitro refused comment to a World-Herald reporter on his occupation or income. When arrested last Nov. 30, he told officers he was a "bookmaker."

IRS: Court Aid to Gamblers

(*"The only claim that those in the gambling business make is that they are entitled to have their activities shrouded in secrecy and shielded from disclosure. . . . It seems to me that the very secrecy which surrounds the business of gambling demands disclosure." Chief Justice Earl Warren—Dissenting Opinion, 1968.*)

Since a 1968 U.S. Supreme Court decision, Omaha's bookies and their counterparts throughout the nation yearly have been slipping farther from the reach of tax collectors, Internal Revenue Service officials said.

Over the strong dissent of former Chief Justice Earl Warren, the court ruled that even though no man has the right to violate state gambling laws, he cannot be compelled to give evidence against himself.

Enforcement of a 1950 law passed by Congress, which required a bookie to obtain an annual tax stamp and pay a monthly "wagering excise tax" of 10 per cent of the bets accepted, has suffered from the court's decision, according to Lowell Harris, head of the IRS Intelligence Unit in Omaha.

In the face of what Harris called strong evidence that more Omahans are placing and taking illegal bets each year, the number of bookies here who obtain tax stamps had declined from 50 the year before the decision to 30 in 1972, according to IRS annual reports.

Investigation by the FBI and Omaha police has uncovered substantial evidence that several major bookies are not accurately reporting or paying taxes on the wagers they accept, Harris said.

In removing criminal penalties for bookies who fail to obtain the tax stamp and pay the wagering tax, the Supreme Court has prevented the IRS from actively investigating bookies. Bookies, however, are still required to have the stamps and pay the taxes even though there is no criminal penalty for not doing so, Harris said.

When local or federal investigations reveal that a bookie has accepted more wagers than he reported, the IRS now uses the civil procedure of filing tax liens, Harris said.

In filing liens totaling nearly $900,000 against Omahans Clarence Matya and John Salanitro recently, the IRS contended that the two men have done more than $5 million in wagering business in two years, officials said.

LOCAL RECORDS[1]

Name	Arrests	Dismissals or acquittals	Convictions	Jail sentences	Total fines	Approximate average fine per conviction
Clarence Matya	22	6	16	0	$1,032	$64
John Salanitro	22	9	13	0	1,125	86
Omaha man, 64	15	13	2	0	35	17
Tony Manzo	18	4	14	0	2,435	177
Joseph Digilio[2]	66	26	36	0	4,015	111
Ross DiMauro	4	2	2	0	300	150
Sam Nocita	23	10	13	0	735	57
Totals[3]	170	70	96	0	9,677	101

[1] The table includes arrests and convictions in Omaha and in Sarpy and Washington Counties. The majority of cases went through Omaha Municipal Court. The table does not show Federal criminal cases.

[2] Digilio has 4 cases pending from recent arrests.

[3] The table does not include the record of 1 of the 8 which was discovered to be missing in 1965 and which police say is incomplete as a result. The 8th man's record is not included because he is not named on this page.

Mr. Andersen. As you can see, the stories tell of bigtime illegal gambling in Omaha, with pictures,[12] biographical information, and criminal records of several of the bookies.

We also tried to interview each of the bookies to get their side of the story. I probably do not need to tell you that we were less than successful in most cases.

These stories touched off a variety of reactions. The chief of police suggested that repeated bookmaking be made a felony. The mayor endorsed this proposal, which is now being considered by the judiciary committee of our Nebraska Legislature. We interviewed police court judges. We interviewed three district court judges, each of whom expressed a different point of view. Our editorial writers have called on police court judges to apply more vigorously the penalties available under existing law. One of our sports columnists has suggested consideration of legalizing offtrack betting. We have going on, in short, a robust discussion of the problem of illegal gambling in our community, and we simply could not have done this journalistic job if the legislation pending before you had been the law of the land. Access to criminal records was an essential ingredient.

To date we have not received one single complaint, not one, from reader or public official or anyone else who contends that we violated the constitutional rights or the right of privacy of these bigtime bookmakers.

Another example: In a recent election year we were told that one of the candidates for nomination, not a major candidate, I should add, had been convicted of draft evasion in World War II.

Through criminal records, we were able to confirm that this was true. We published a story. It seemed to us that along with all the other biographical information which we print about candidates for high office, it was entirely appropriate that we print this information about a candidate for the U.S. Senate. When I say he was not a major candidate, I do not mean he was not a candidate for a major office, but he was a rather minor candidate because I think his chances of winning were not very substantial.

In any case, we felt the public was entitled to know all the important facts from the life history of any candidate for high office. Again, to my knowledge, we received not one single complaint that we had violated this candidate's right of privacy. If the pending legislation had been on the books, we could not have told the voters of Nebraska the whole biographical story of this candidate for the U.S. Senate.

Another example: In 1972 an Omaha attorney was involved in an auto accident in which three people were killed. The evidence clearly showed that he was drunk. The judge sentenced him to 60 days in jail followed by 2 years on probation. Readers started writing the World-Herald and the judge complaining about what they considered an exceedingly light sentence.

Our newspaper interviewed the judge, who said the possibility of disbarment was a factor in his decision, as was the fact that before the accident, the lawyer had begun receiving treatment for alcoholism.

Our story pointed out that the accident was not the attorney's first traffic mishap. Police records showed 10 previous accidents and numerous violations—such things as driving 70 miles per hour in a 35-mile zone.

[12] Not printed in record.

We felt that our use of criminal records in this case was essential in telling the full story and allowing our readers to decide how the criminal justice system had worked in the case of this driver.

I might add that the attorney's probation subsequently was revoked and he was sentenced to 1 to 10 years after he was arrested in Oklahoma on a charge of driving while intoxicated. In the Oklahoma case, his driver's license was forfeited when Tulsa police said he refused to take a blood test after his car went off a street and struck a gas meter and a fire hydrant.

These examples illustrate our concern that access to criminal records not be cut off, that the public's right to know not be cut off by overly broad restrictions on the data in criminal justice information systems.

I thank you for the opportunity to testify and hope your committee will give us more time to work with our colleagues in the news media and with you and your staff in carefully reviewing this important legislation.

Our intent, certainly, is to work with you in improving criminal justice information systems but not to close those systems to all public access, not to turn public records into private records.

I would be glad to answer any questions.

[The prepared statements of Mr. Finnegan, and Mr. Schmidt follow:]

PREPARED STATEMENT OF JOHN R. FINNEGAN, CHAIRMAN, FREEDOM OF INFORMATION COMMITTEE, ASSOCIATED PRESS MANAGING EDITORS ASSOCIATION

Mr. Chairman, members of the committee: My name is John R. Finnegan. I am executive editor of the St. Paul Dispatch and Pioneer Press, St. Paul, Minnesota and chairman of the Freedom of Information Committee of the Associated Press Managing Editors Association.

I am speaking today on behalf of APME.

Our organization, which represents 500 managing editors of large and small newspapers across the country, asks that your subcommittee move very slowly in adopting any legislation which would restrict access to criminal justice information which currently is available to the public and the media.

I am concerned that the two bills which you are now considering, S. 2963 and S. 2964, would, unless amended, result in closing out criminal justice records now available at the local and state levels. My assessment of the pending legislation could be wrong. But, I have studied the proposals and can find no provision that would mean that arrest records in my state or any other state would be open as they now are. Nor is there any provision that I detect which would allow police officials to give us the criminal records of anyone on request. I do not believe that they would even be able to verify the accuracy of our own records under the two bills.

S. 2964 appears to prohibit release of any current arrest information under Section S. S. 2964 also puts much too much power in the hands of the attorney general to determine standards, rules and regulations on record access.

I want to make it very clear that neither I nor the organization I represent is opposed to legislation dealing with the handling of information by government agencies and the protection of individual privacy.

We believe there should be some controls on the exchange of confidential personal information between governmental agencies. We do not want government to collect and disseminate information to private agencies or individuals indiscriminately.

We applaud the general intent of the legislation. As Senator Ervin said in introducing his bill, ". . . if we have learned anything in this last year of Watergate, it is that there must be limits upon what the government can know about each of its citizens." It is clear that more and more information is collected every day about citizens at all levels of government. It is clear that unless some restrictions are put upon the access to and the exchange of this information, the personal privacy of many citizens may be jeopardized.

But it is also clear that in drafting any legislation to protect personal privacy, there is a danger that the public interest in dissemination of some specific information may be eroded.

There is a fine line between what should remain personal and private and what should be left in the public domain. And, it is not easy to draw such a line.

This past year I was involved at the state level with examining a proposed bill dealing with the general subject of information collection, storage and dissemination in Minnesota.

The original bill, passed by the Minnesota House of Representatives, was designed on the model bill suggested as a result of Project Search. It would have given the state commissioner of administration authority to draft rules and regulations for handling of all information handled by the state.

We, in the media, became concerned about the measure. It gave an appointed administrator the right to determine which information—what records in Minnesota—were public records and which were private or confidential.

In effect, it repealed our state's open records law.

The Minnesota Joint Media Committee of which I am chairman, asked that the bill be held up in the Senate until we could study it and make some recommendations. I was named to a special study committee to go over the bill and make recommendations for amending it.

We attempted to limit the bill's coverage to non-public information—that data which is not now open to public inspection. We also urged that a complete survey be made of what constitutes public and non-public information in our state.

The amended Senate version of the measure adopted some of our suggestions. It also excludes criminal justice information and provides that records which are now open will remain so.

A separate bill dealing with the criminal justice field is pending. It, unfortunately, contains no provision that records which are now public should remain so. To the contrary, it seems to prohibit release of any criminal justice information at any level of government in the state under rules to be drafted by the intergovernmental information services advisory council.

Criminal offender record information could be disseminated only to criminal justice agencies and to other individuals and agencies who are authorized access by statute. In addition, the council will set up regulations to assure that the information is disseminated only in situations in which it is demonstrably required by the individual or agency for purposes of its statutory responsibilities.

I submit that this legislation will effectively close out arrest records, jail records and criminal conviction records which are now generally open in Minnesota. We hope to get that bill amended to keep records open.

I submit that, combined with the proposals made in the national law, the public and media will not have access to much criminal information which it now can examine.

Under the national and state laws being considered, and the LEAA proposed rules, law enforcement agencies certainly would be reluctant to divulge any information concerning an individual who has been arrested and jailed. The present free press-fair trial guidelines on release of information to the media would be meaningless.

I would be surprised, in view of the restrictions and penalties put into the laws, if any law enforcement officer or clerk would give a media representative any data unless it had been cleared previously by one of the state or national boards or councils.

Let's say that a man who had been convicted of embezzlement was running for an elective office which involved the handling of large sums of money. I believe it would be in the public interest to publish that fact. Today, we can verify such facts before we print them. Under the proposals, as I read them, such verification would not be possible.

This type of legislation needs to be carefully thought out. All of its ramifications must be examined thoroughly. I would be distressed if we had other examples of the problem that developed in Iowa where the recently adopted statute seems to have done precisely the opposite of the intent of the lawmakers. It appeared to prohibit the release of current arrest records; permit the release of arrest records of innocent persons and required the destruction of computerized arrest records of those found guilty.

We need to be certain of the impact of the national legislation combined with state legislation and LEAA regulations.

The APME urges you to go slow. Remember that the public has an interest in the dissemination of some criminal justice information. Let us work with you in the study of the impact of such important legislation.

Thank you for the opportunity to appear before you today.

PREPARED STATEMENT OF RICHARD M. SCHMIDT, JR., COUNSEL FOR THE AMERICAN SOCIETY OF NEWSPAPER EDITORS

Mr. Chairman the American Society of Newspaper Editors is deeply concerned with the implications for the free flow of information to the American public as contained in the legislation which is now before your Committee, S. 2963 and S. 2964, respectively, entitled: "Criminal Justice Information Control and Protection of Privacy Act of 1974," and "Criminal Justice Information Systems Act of 1974."

These bills, introduced on February 5, 1974, as well as the proposed regulations of LEAA concerning privacy of criminal records, as announced in the *Federal Register* of February 14, 1974, no doubt have worthy objectives, but also deserve careful study and consideration, lest they become vehicles under the guise of "right of privacy" of censorship and the creation of a highly-secret governmental network.

Upon reading in the *Congressional Record* of the introduction of these bills, the ASNE forwarded them to its officers, directors and members of its Freedom of Information Committee, along with the regulations proposed by the Law Enforcement Assistance Agency, as announced in the *Federal Register* of February 14, 1974. The comments on the LEAA legislation, incidentally, are due no later than March 29, 1974. We urge you to go slow in adopting any measures that impose the cloak of government secrecy, regardless of how appealing the motives for doing so may be.

Among other provisions of S. 2963 which give editors of this country great concern is Section 201(a): [after defining "Criminal justice information" in Section 102(7)] [13]

"Criminal justice information may be maintained or disseminated, by compulsory process or otherwise, outside the criminal justice agency which collected such information, only as provided in this Act."

Section 201(b):

"Criminal justice information may be collected only by or disseminated only to officers and employees of criminal justice agencies: . . ."

Section 201(c):

"Except as otherwise provided by this Act, conviction record information may be made available for purposes other than the administration of criminal justice only if expressly authorized by applicable State or Federal statute."

Section 201(d):

"Criminal justice information may be made available to *qualified persons* for research related to the administration of criminal justice under regulations issued by the Federal Information Systems Board created pursuant to Title III. . . ."

We note there is no definition of "qualified persons" but leaves it up to regulations adopted by the Federal Information System Board as to who should be qualified to receive the same.

S. 2964

Section 3(c) defines "Criminal Offender Record Information" as meaning:

". . . information contained in the criminal justice information system, compiled by a criminal justice agency for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrest, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status."

Section 3(g):

"'Criminal Justice' means *any activity* pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities."

[13] "'Criminal justice information' means information on individuals collected or disseminated, as a result of arrest, detention, or the initiation of criminal proceeding, by criminal justice agencies, including arrest record information, correctional and release information, criminal history record information, conviction record information, identification record information, and wanted persons record information, . . ."

Section 5(b) provides:

"Direct access to information contained in the criminal justice information system subject to this Act shall be available *only* to authorized officers or employees of a criminal justice agency."

It further provides generally in Section 5(c) that criminal intelligence information may be used only for criminal justice purpose, and only where need for the use has been established in accord with regulations issued by the Attorney General.

It leaves to the discretion of the Attorney General the information to be released.

Section 5(e)(1) states:

"Criminal offender record information may be used for criminal justice purposes or for other purposes which are expressly provided for by Federal statute or Executive order or State statute. The Attorney General shall determine, with regard to the particular case or classes of cases, whether such use is expressly provided for by statute or by Executive order, and *his determination shall be conclusive.*"

Section 8(b) provides:

"No information relating to an arrest may be disseminated without the inclusion of the final disposition of the charges if a disposition has been reported. Any agency or person requesting or receiving information relating to an arrest from a system subject to this Act shall use such information only for the purpose of the request. Subsequent use of the same information shall require a new inquiry of the system to assure that it is up to date."

Section 8(c) has broad exemptions of prohibiting the use of criminal record information but the most disturbing of all is (4) which states:

"an interval of one year has elapsed from the date of the arrest and no final disposition of the charge has resulted and no active prosecution of the charge is pending;"

What constitutes an active prosecution of the charge? Is the mere fact that the charge is pending make it active, or does this mean that there has to be continued courtroom activity?

It is interesting that the prohibitions set forth in Sections 6 and 8(c) do not apply with regard to the appointment by the President of a Judge or a Civil Officer whose appointment is subject to the advice and consent of the Senate, but they do apply to candidates for elective office at the state, federal and county level. Is it not just as important to know about the past record of a candidate for the United States Senate as it is for a cabinet officer or that of a Judge?

This particular bill makes the Attorney General of the United States a czar controlling the release, or keeping secret, criminal record information. This bill, in effect, makes the Attorney General the ultimate censor of all records concerning criminal activities. One must ask "What would happen if an attorney general for one reason or another wished to cover up criminal activity?" There is no system of checks and balances under this particular measure.

Both of these measures appear to be in direct conflict with the voluntary press-bar guidelines which the American Bar and the media groups have been working to adopt throughout the United States and which are moving toward adoption in a majority of the states.

Mr. Chairman, I would like to offer for the record at this time the American Bar Association's Legal Advisory Committee on Fair Trial Free Press Composite State Voluntary Fair Trial-Free Press Agreement and a state-by-state analysis of 22 of the voluntary bench-bar-press principles which have been adopted in 24 states, as they concern prior criminal records. The only two state guidelines not available to me at the time of preparation of this were Arkansas and Pennsylvania.

As to candidates for public office, let me quote to you from a statement made by an editor on the west coast concerning this:

"There are times when prior criminal records should be disclosed, in the public interest. As one example, in a recent election in this state, the prior record of a candidate for important public office became a campaign issue. It was possible, through Federal Court and prison records and the Office of the Pardon Attorney to corroborate this information. The proposed Act, as presently drafted, would make such records unavailable."

"Newspapers generally are not interested in publishing information from so-called "rap sheets", but they are interested in having available to them records of prior arrests and convictions on felony charges."

"Open justice, including records of arrest, is a cornerstone of our freedoms. Otherwise our situation would be as that which prevails in the Soviet Union."

Another one of our editors states:

"While the proposed regulations call for the compilation and protection of information only on 'serious' offenses, I can foresee the danger that this would be expanded at the local level to encompass all offenses. And there are times when it can be important to secure and publish the record even of traffic violations. As I say this I have in mind a recent incident in our country where a bus full of Mexican farm workers went off the road into a ditch, killing 19. The driver had a record which included numerous traffic violations within the last few years, a sufficient number that one might wonder at the wisdom of having him drive. I think that this information was a worthwhile part of the story and should be helpful in any effort to avoid similar accidents."

He continues:

"For my part, I would like to see those attempting reform in this area concentrate for the present on moves to insure that criminal records are accurately maintained, and that the subjects of the records have access to them. For I don't think that the benefits of keeping accurate records from the eyes of busybodies outweights the disadvantages of denying newsmen access to them."

These comments have just been received by me within the past few days, and I am certain that as journalists throughout the country have the opportunity to study these matters more carefully, I will be hearing from more of them.

As always, Mr. Chairman, I stand ready to work with you and your staff to attempt to reach an equitable solution to these problems that we have raised, but we would ask for adequate time to properly study the matter in depth and to make our proposals.

I am also authorized to state that the remarks which I make today on behalf of ASNE are also made on behalf of the Society of Professional Journalists, Sigma Delta Chi.

The American Bar Association's Legal Advisory Committee on Fair-Trial and Free-Press has prepared a Composite State Voluntary Trial-Free Press Agreement. It states:

"The following is a distillation of the principal features incorporated in the Voluntary Fair-Trial Free-Press agreements which have been entered into by the bar and news media in approximately half of the states. It is offered for the convenience of the bar and media organizations in other states wishing to consider adoption of such agreements.

This composite of existing agreements has been approved by the Legal Advisory Committee on Fair-Trial and Free-Press of the American Bar Association, as encompassing basic elements of fair-trial and free-press safeguards."

It states, in Section 2:

"All concerned should be aware of the dangers of prejudice in making pre-trial disclosures of the following types of information, which lawyers for the prosecution are forbidden by the Code of Professional Ethics from releasing publicly: . . .

(f) prior criminal charges and convictions, *although they usually are matters of public record.* Their publication may be especially prejudicial immediately preceding trial." (emphasis supplied)

A state-by-state analysis of 22 of the voluntary bench-bar-press principles which have been adopted in 24 states, as it concerns prior criminal records follows:

ARIZONA

The Arizona statement of principles provides:

"5. Except where limited by law, as in juvenile matters, all hearings and court proceedings and records of the same must be open to the news media in order to protect the rights of the accused and to observe the right of the public to know justice is being administered."

Other pertinent provisions are:

"2. As a trial approaches, or during the trial, law enforcement personnel, the bench and the bar shall not make disclosures for public dissemination of the following, and the news media should be aware of the dangers of prejudice in making public disclosures of the following:

(f) Prior arrests and convictions.

(Exceptions may be in order if information to the public is essential to the apprehension of a suspect, or where other public interests will be served. Such disclosure may include photographs as well as records of prior arrests and convictions)."

CALIFORNIA

In a "Joint Declaration Regarding News Coverage of Criminal Proceedings in California," the bench, bar and news media have adopted the following:

"7. The public is entitled to know how justice is being administered, and it is the responsibility of the press to give the public the necessary information. A properly conducted trial maintains the confidence of the Community as to the honesty of its institutions, the competence of its public officers, the impartiality of its judges, and the capacity of its criminal law to do justice."

The California Statement of Policy sets forth the following:

"In some circumstances, as when a previous offense is not linked in a pattern with the case in question, the press should not publish or broadcast the previous criminal record of a person accused of a felony. Terms like 'a long record' should generally be avoided. There are, however, other circumstances—as when parole is violated—in which reference to the previous conviction is in the public interest."

"*Records of convictions and prior criminal charges which are matters of public record are available to the news media from police agencies or court clerks. Law enforcement agencies should make such information available to the news media upon appropriate inquiry.* Public disclosure of this information by the news media could be prejudicial without any significant contribution toward meeting the public need to be informed. Publication or broadcast of such information should be carefully considered." (emphasis supplied)

COLORADO

In the Compact of Understanding of the Bar and Press in Colorado it is stated:

"*Prior Record*

3. *Prior criminal charges and convictions are matters of public record and are available to the Press through police agencies, court clerks, and the files of the Press. Law enforcement agencies should make such information available to the Press after a legitimate inquiry.* The public disclosure of this information may be prejudicial, particularly if it occurs after filing the formal charges and as the time of trial approaches, and should be carefully considered." (emphasis supplied)

IDAHO

A Statement of Principles and Guidelines Adopted by the News Media, Law Enforcement Agencies, Bench and Bar in the State of Idaho states:

"3. *Prior criminal charges and convictions of a defendant are matters of public record and are available to the news media through police agencies or court clerks. Law enforcement agencies should make such information available to the news media after a legitimate inquiry.* If formal charges have been filed, the public disclosure of this information by the news media may be highly prejudicial to the defendant without any significant addition to the public's need to be informed. The publication of such information should be carefully reviewed." (emphasis supplied)

It further states in its "Guidelines on Public Records:"

"1. Free access to public records is of paramount importance if the public is to be fully informed, and the bench, bar and press have an equal interest in and responsiblity to see that this is maintained."

"2. Except where confidentiality is specifically provided for in statutes, all records which must be maintained by law are clearly open to the public."

It further states:

"8. The signatories urge that public records by arresting officers, whether state, county or city, be kept in numbered sequence."

KENTUCKY

The "Statement of Principles of the Bench-Bar-News Media of the State of Kentucky" state:

"3. *Prior criminal charges and convictions are matters of public record and are available to news media through police agencies or court clerks. Law enforcement agencies should make such information available to the news media after legitimate inquiry.* Public disclosure of this information by the news medium may be highly prejudicial without any significant addition to the public's need to be informed. The publication of such information should be carefully reviewed." (emphasis supplied)

It further states under "Guidelines on Public Records:"

"1. Free access to public records is of paramount importance if the public is to be fully informed, and the bench, bar and press have an equal interest and responsibility to see that this access is maintained.

"2. Except where confidentiality is specifically provided for in statutes, court rulings or court order, all records which must be maintained by law are clearly open to the public."

"4. Any effort by an individual or a group to suppress or conceal a public record should be resisted and exposed by the Bench, Bar and Press."

"8. The Committee urges that public records by arresting officers, whether state, county or city, be kept in numbered sequence."

MASSACHUSETTS

The "Massachusetts Guide for the Bar and News Media" adopted by the Massachusetts Bar Association, the Boston Bar Association, the Massachusetts Newspaper Information Service and the Massachusetts Broadcasters Association states:

"The following should be avoided:

"2. Publication of the criminal record or discreditable acts of the accused after an indictment is returned or during the trial, unless part of the evidence in the court record. The defendant is being tried on the charge for which he is accused and not on his record. (Publication of a criminal record can be grounds for a libel suit.)"

MINNESOTA

The recommended guidelines of the Fair Trial-Free Press Council of Minnesota do not mention prior criminal records.

MISSOURI

The "Statement of Principles on Fair Press Free Trial" adopted by the Missouri Advisory Committee on Fair Press Free Trial state:

"News media have the right and responsibility to collect, publish or broadcast the truth of criminal proceedings while guarding against the deliberate release of prejudicial information. Judges, lawyers, newsmen and law enforcement officers must cooperate in the search for the truth so that justice results;"

"Objectivity and accuracy are necessary in reporting the truth so the public may be informed, the accused tried in an atmosphere free from prejudice and the victim's rights preserved. *To attain this, the news media have the right to report concurrently what is contained in the public records* and any testimony or action taken in courts of any jurisdiction;" (emphasis supplied)

NEBRASKA

The Nebraska Bar-Press Guidelines state:

"Generally, it is appropriate to disclose and report the following information: . . .

"7. Information disclosed by the public records, including all testimony and other evidence adduced at the trial."

They further state concerning prior criminal records:

"Lawyers and law enforcement personnel should not volunteer the prior criminal records of accused except to aid in his apprehension or to warn the public of any dangers he presents. *The news media can obtain prior criminal records from the public records of the courts, police agencies and other governmental agencies, or from their own files.* The news media acknowledge, however, publication or broadcast of an individual's criminal record can be prejudicial, and its publication or broadcast should be considered very carefully, particularly after the filing of formal charges and as the time of trial approaches, and such publication or broadcast should generally be avoided because readers, viewers, and listeners are potential jurors and an accused is presumed innocent until proven guilty. (emphasis supplied)

NEW JERSEY

The New Jersey Supreme Court, on March 8, 1972, adopted a Statement of Principles and Guidelines for reporting criminal procedures as drafted by that Court's Committee on Press Relations in conjunction with the New Jersey Press Association's Committee on the Courts. It states:

"3. *A criminal charge and conviction are matters of public record and the court records thereof are available for public inspection.* However, such information might be prejudicial especially as the time for trial approaches and should be carefully considered prior to publication except where public safety or security may be involved." (emphasis supplied)

It further states:

"8. *Accessibility of public records.*

Except where confidentiality specifically provided for by statute or court rule, *all records which must be maintained by law are clearly open to the public. Any effort by an individual or group to suppress or conceal a public record should be resisted and exposed by the judiciary, bar and press.*" (emphasis supplied)

NEW MEXICO

The "Statement of Principles for the Bar and News Media" provides:

"a. It is usually appropriate to make public the following information concerning the accused:

"1. The accused's name, age, residence, occupation, family status and similar background information. There should be no restraint on biographical facts other than accuracy, taste and judgment, but the Bar and News Media should consider the danger of causing harassment, intimidation, or physical harm to the family or employers of the accused."

The statement goes on to say:

"b. It is usually inappropriate to make public the following information concerning the accused:

1. The prior criminal record (including arrest, indictment, or other charges of crime), or the character or reputation of the accused."

NEW YORK

The "Free Press-Fair Trial Principles and Guidelines for the State of New York" state:

"3. *Prior criminal charges and convictions are matters of public record and are available to the news media. Police and other law enforcement agencies make such information available to the news media on request.* The public disclosure of this information by the news media may be highly prejudicial without any significant addition to the public's need to be informed. The publication of such information should be carefully considered by the news media." (emphasis supplied)

It further states:

"Except where confidentiality is specifically provided for in statutes, all records which must be maintained by law are clearly open to the public. Any effort by an individual or a group to suppress or conceal public records should be resisted and exposed by the bench, bar and press."

NORTH CAROLINA

The Fair-Trial Free-Press Council of North Carolina's "Recommended Guidelines" make no mention of prior criminal charges.

NORTH DAKOTA

The Guidelines make no mention of prior criminal charges.

OKLAHOMA

Guidelines adopted by the Oklahoma Bar Association Bar-Media Relations Committee state:

"3. *Prior criminal charges and convictions are matters of public record and are available to the press through police agencies, court clerks and the files of the press. Law enforcement agencies should make such information available to the press after a legitimate inquiry.* The public disclosure of this information may be prejudicial, particularly if it occurs after the filing of formal charges, and as the time of trial approaches, and should be carefully considered prior to publication." (emphasis supplied)

OREGON

Oregon State Bar-Press-Broadcasters Joint Statement of Principles states: "It is generally not appropriate to disclose for publication or to report prior to the trial the following:

7. Prior criminal charges and convictions."

SOUTH DAKOTA

South Dakota Fair Trial Free Press Principles provide under the provisions of "The Duty of the Lawyer:"

"From the time of arrest, issuance of an arrest warrant, or the filing of a complaint, information, or indictment in any criminal matter until the commencement of trial or disposition without trial, a lawyer associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement, for dissemination by any means of public communication relating to that matter concerning:

"1. Prior criminal record (including arrest, indictments or other charges of crime), or the character or reputation of the accused, except that the lawyer may make a factual statement of the accused's name, age, residence, occupation, family status, and if the accused is not apprehended, release any information necessary to aid in his apprehension or to warn the public of any dangers he may present;"

They further state under the provisions of "The Duty of Law Enforcement Officers and Judicial Employees:"

"It is the duty of Law Enforcement Officers and Judicial Employees from the time of commencement of investigation of any criminal matter until final disposition of the matter by trial, or otherwise, not to release or authorize release of any extrajudicial statement, for dissemination by any means of public communication, relating to that matter and concerning:

"2. The prior criminal record (including arrest, indictments, or other charges of crime), or the character or reputation of the accused, except that the officer may make a factual statement of the accused's name, age, residence, occupation, and family status, and if the accused has not been apprehended, may release any information necessary to aid his apprehension, or to warn the public of any danger he may present;"

Under the Section "Duty of News Media," it is stated:

"The News Media should not disseminate news of any criminal proceeding concerning:

2. The prior criminal record (including arrest, indictments, or other charges of crime), or the character or reputation of the accused, except that the News Media may make a factual statement of the accused's name, age, residence, occupation, family status, and if the accused has not been apprehended may release any information necessary to aid in his apprehension, or to warn the public of any danger he may present;"

The code further states:

"Generally, it is appropriate to disclose and report the following information:

"7. Information disclosed by the public records, including all testimony and other evidence adduced at the trial."

Under the Section "Prior Criminal Records" they state:

"Lawyers and law enforcement personnel should not volunteer the prior criminal records of an accused except to aid in his apprehension or to warn the public of any dangers he presents. *The news media can obtain prior criminal records from the the public records of the courts, police agencies and the governmental agencies and from their own files.* The news media acknowledge, however, that publication or broadcast of an individual's criminal record can be prejudicial, and its publication or broadcast should be considered very carefully, particularly after the filing of formal charges and as the time of the trial approaches, any such publication or broadcast should generally be avoided b[illegible]se readers, viewers and listeners are potential jurors and an accused is pr[illegible].ed innocent until proven guilty." (emphasis supplied)

TEXAS

The statement of principles for members of the State Bar of Texas and for members of news media organizations states:

"7. Editors should exercise discretion in reporting prior criminal charges and convictions, particularly on the eve of the trial. *Prior criminal charges and convictions are matters of public record and are available to the press through police*

agencies, court clerks and the files of the press. Law enforcement agencies should make such information available to the press after a legitimate inquiry." (emphasis supplied)

UTAH

The "Statement of Principles of the Bench, Bar, News Media and Law Enforcement Agencies of the State of Utah" recites:

"3. Prior criminal charges and convictions are, in some areas, matters of public record and in some instances may be available to the News Media through police agencies or from court records. The publication of such information should be carefully reviewed because it may be inadmissible as evidence, and publication might result in prejudice to a fair trial."

They further state:

"Free access to public records is of paramount importance and the Bench, Bar, News Media and Law Enforcement agencies have an equal interest in responsibility to see that this access is maintained for the full information of the public."

"Except where confidentiality is specifically provided for by law, all records which must be maintained by law are open to the public."

VIRGINIA

The Free Press Fair Trial Principles and Guidelines for Virginia state:

"4. The release and publication of certain types of information may tend to be prejudicial without serving a significant function of law enforcement or public interest. Therefore, all concerned should weigh carefully against pertinent circumstances that pre-trial disclosure of the following information, which normally is prejudicial to the rights of the accused.

"(g) Prior criminal charges and convictions, although they are usually matters of public record. Their publication may be particularly prejudicial just before trial."

WASHINGTON

The statement of Principles of the Bench-Bar-Press of the State of Washington provide:

"3. *Prior criminal charges and convictions are matters of public record and are available to the news media through police agencies, or court clerks. Law enforcement agencies should make such information available to the news media after a legitimate inquiry.* The public disclosure of this information by the news media may be highly prejudicial without any significant addition to the public's need to be informed. The publication of such information should be carefully reviewed." (emphasis supplied)

WISCONSIN

Statement of Principles of the Wisconsin Bar and News Media state:

"*Prior criminal charges and convictions are matters of public record, available through police agencies or court clerks. Law enforcement agencies should make such information available upon legitimate inquiry*, but public disclosure may be highly prejudicial without benefit to the public's need to be informed. The news media and law enforcement agencies have a special duty to report the disposition or status of prior charges." (emphasis supplied)

Ten of the states mentioned, California, Colorado, Idaho, Kentucky, New Jersey, New York, Oklahoma, Texas, Washington, and Wisconsin, have virtually identical provisions concerning prior criminal charges and convictions and all state unequivocally that these are matters of public record.

Two other states, Nebraska and South Dakota, state that prior criminal charges and convictions are matters of public record but utilize slightly different wording than the other ten. The Nebraska Guidelines provide:

"The New Media can obtain prior criminal records from the public records of the courts, police agencies and other governmental agencies, or from their own files."

The South Dakota code provides:

"The News Media can obtain prior criminal records from the public records of the courts, police agencies and the governmental agencies and their own files."

Four state codes make no mention of prior criminal records, these being Minnesota, North Carolina, North Dakota and Missouri.

In two states, Utah and Virginia, the declaration concerning public records is qualified. Utah states:

"Prior criminal charges and convictions are, in some areas, matters of public record and in some instances may be available to the news media through police agencies or from court records."

Virginia states:

"Prior criminal charges and convictions, although they are usually matters of public record."

Four states, Arizona, Massachusetts, New Mexico and Oregon clearly imply that prior criminal charges and convictions are matters of public record but they do not so specifically state. The codes and guidelines from each one of these four all discuss restraint in disclosing these items as the time of trial approaches or after an indictment.

Senator ERVIN. I just do not quite understand. You say the pending legislation, had it been on the books, we could not have told the voters in Nebraska the whole biographical story of this candidate for the United States Senate.

Why could you not get that information off the public records of the trial? They would still be public records, and available, even if the criminal records were withheld from the press.

Mr. ANDERSEN. It is possible. On the other hand, you would have quite a difficult time tracing a particular case or particularly if you had a series of violations involved, as we did not in this case, going through court dockets and court records.

Senator ERVIN. There is nothing in either of these bills that would deny the press access to public records in the courthouse or access to police officers who had knowledge of the facts.

Mr. ANDERSEN. That, Senator, is one of the anomalies of the legislation, it seems to me. You are suggesting that if there is a violation of privacy or constitutional rights involved, it is all right to do it as long as you do not get it from the criminal justice information system.

Senator ERVIN. I have been a great champion of the first amendment rights and freedom of the press but there are a number of areas where Government is entitled to keep information secret, relating to national security, matters relating to negotiations with foreign nations.

Despite the fact that I am a great champion of the press, I am somewhat at a loss to see why criminal information which is collected for the specific purpose, namely, to assist in the enforcement of the law, should be made a matter of public record.

Mr. ANDERSEN. Are you speaking of intelligence, so-called information in that category?

Senator ERVIN. I am speaking of that, and also of criminal history records. I do not think that intelligence information should be made public because it could create much havoc. It is wholly unverified. It consists of rumors. We cannot hope to see it rise above the dignity of raw records of the FBI. I have seen some of those. It would be rather dangerous to release these records because they are wholly unverified.

On the contrary, criminal history records are pretty well verified, or should be, and should be made complete. But I cannot frankly see where it is a function of those who collect and have custody of criminal records merely for the purpose of enforcing the law, have an obligation to assist the press in getting information from that source, because if I was a member of the press I would see where it would be very helpful to them.

Mr. ANDERSEN. We are talking here, I think, Senator, of public access to public records. This should not be a matter of convenience for the press. It may be convenient for us. That would be incidental to the fact that we would have the right of access.

In the case of the senatorial candidate, your question prompted me to search my memory. I did not handle that story myself. As I recall there was a difference as to the spelling of the name. A court docket obviously would not be as revealing as a criminal record in helping us to verify that the candidate was indeed the same man who had been tried and convicted of draft evasion. In this case it was a matter of verification as much as anything else. We could have printed the rumor or we could have perhaps found it in the court record. I really do not know.

We could verify it by access to criminal records, and he did have a criminal record. That is how we verified it.

Senator ERVIN. Where did you get the record in that case?

Mr. ANDERSEN. From the police department.

Senator ERVIN. Excuse me. I do have to go and vote.

You can continue with counsel if you wish to, but I do want to thank you very much for your appearance.

Mr. ANDERSEN. We got it through the Lincoln, Nebr. Police Department, who verified through, I believe, access to their records that this candidate was the same man that we had been told had been convicted on draft evasion.

Mr. BASKIR. Concerning your example that you submitted, the argument you submitted on the bookie operations in Omaha, does Nebraska or the city of Omaha have any rules that govern whether or not arrest records or criminal history records are either public or confidential, or is there a practice with respect to that?

Mr. ANDERSEN. I think a policy generally frowning upon the release of the records at the administrative level in the police department. In cases such as the case I just cited where the local vice squad is quite interested in correcting what they consider to be a problem of law enforcement, access to those records is available.

Mr. BASKIR. I notice from the article itself, it appears that both the arrest records and some intelligence information, what we are colloquially calling intelligence information, background information about the individuals and their activities, seemed to come from the police because many of the articles start off with "police say," "police informants." You have two members of the vice squad, I believe it is the vice squad, mentioned by name as the sources. Apparently whatever the policy is or whatever the statute or regulations might be with respect to this kind of information, you found at least two members of the police department who felt it important enough to talk to you and give the information to you.

I guess your problem with this legislation is, if the cost of that may be some criminal penalty or even if it were some departmental discipline, those kind of sources would dry up.

Mr. ANDERSEN. I believe that is right, and it is also being cut off from the national criminal justice information system that is a real problem. I understand from reading one or both of these bills that there would be a penalty if someone released unauthorized information.

Mr. BASKIR. If these computer systems were in operation, these two patrolmen conceivably could have either gotten the arrest records not only for Omaha, but all of Nebraska and all over the country, and they would have been taking the chance of incurring penalties in the legislation. They have that higher risk, and of course you have the opportunity for greater amounts of information.

Mr. ANDERSEN. That is true. That is one of the reasons for the legislation, that you are raising the efficiency of these criminal justice information systems to a new high level.

Mr. BASKIR. That means information either authorized or given, as this was, certainly larger amounts of information and completely comprehensive amounts of information are now available for the use of the press and other people. I notice a lot of this information is what we have been describing as intelligence and involves investigations that may or may not be substantiated.

I do not know any of these gentlemen who were listed. Conceivably, some of these gentlemen would not be bookies. They would be innocent people who had been hurt, perhaps not because of the informations in the press, but because somebody in the police probably gave it to the press, grand jury records or the like.

Mr. ANDERSEN. Our attorney thought it was reasonable that a man who had been arrested 60 times for bookmaking would probably not sue us for our describing him as a bookmaker.

Mr. BASKIR. You had to make that decision.

Mr. ANDERSEN. That was probably one of the easier decisions we referred to our attorney.

Mr. BASKIR. We have had hearings on problems like this in the past, and certainly other committees have had similar hearings. I am trying to strike the balance between the press printing information and availability to it. The person can be hurt severely. Many Senators were reluctant either to criticize the press or write legislation which disciplines the press. There is still this feeling that the information ought to be held a little bit tighter by the government when it could be so highly prejudicial like intelligence information.

Mr. ANDERSEN. The reference to intelligence information by Senator Ervin, that is a category under this legislation which I think we need to talk to you about. My primary concern is not with unevaluated intelligence information, but with records that can be properly documented, connected with the right individual and which show his official involvement with the criminal justice system.

Senator GURNEY. I did not hear all your testimony, Mr. Andersen. But I am interested in access to the criminal intelligence information, particularly grand jury information. We have heard a lot of evidence of that in recent times, particularly this past year, and the press again and again publishing stories on sources leaked from grand jury investigations.

What is your opinion on that?

Do you think this is the proper thing for the media to do?

Mr. ANDERSEN. It is really not involved in this legislation. I do not believe that grand jury testimony and that sort of thing would go into the criminal justice information system.

Senator GURNEY. It would not, but it is very similar to criminal intelligence. It is exactly the same, really. A lot of the information given grand juries, much of it is obtained in Federal cases, of course, through FBI investigations and it is the same sort of thing that you find in criminal intelligence files. So I think an opinion on that would be appropriate to our proceedings.

Mr. ANDERSEN. As far as the criminal justice information section of this legislation is concerned, that is, as I suggested, a matter that we should talk about amongst ourselves and with the subcommittee staff.

It seems to me the case for using that kind of information is much less clear than it is for using documented records of people involved with the law. As far as grand jury proceedings are concerned, this is a problem that has bothered grand juries and people under questioning by grand juries and newspapers for a good many years. The control of that information is basically supposed to be in the grand jury and the people in charge of the grand jury.

If information comes out of that system which an individual newspaper considers to be newsworthy and important, it has been printed, and I am not in a position to question the judgment of the individual newspaper that has made that kind of publication because I do not have access to all the facts that they had. But to close the grand jury proceedings so there are no leaks is a difficult thing to do, just as it is indeed difficult to keep closed sessions of congressional committees, as, I believe, the special Watergate Subcommittee found it difficult to keep its proceeding, which was supposedly closed proceeding, closed, and usually it is because someone on the inside is leaking the information.

Senator GURNEY. I grant you that is true. My question is, because somebody does something, why should the newspapers exacerbate the problem by printing it?

Or should they exercise some restraint on what to publish?

Mr. ANDERSEN. Indeed, they should exercise some restraint.

Senator GURNEY. They have not a lot of the time. That is for sure.

Mr. ANDERSEN. Then it becomes a question, I suppose, as to what constitutes proper restraint. I can see how anyone who is the subject of a leak from a congressional committee, the Senate Watergate Committee, or a grand jury proceeding, would understandably and properly, from his point of view, question the newspaper's judgment in printing that information. It does not necessarily follow that what the newspaper did was wrong.

Senator GURNEY. Not necessarily. Suppose, for example, and you probably could document many instances in the past year, sources telling newspaper reporters certain things. They are published and later on they are found to be totally false. Of course, they have been very damaging to the person they were published about.

Mr. ANDERSEN. Anything that is totally false and published, obviously it should not have been done.

Senator GURNEY. How does one prevent that?

Why should grand jury proceedings be described in the media, anyway?

Mr. ANDERSEN. I really do not know how you prevent news tips, news leaks by people who think they are serving some purpose by leaking or providing the tip. I do not think that there is a system of law that would be watertight to prevent that.

Senator GURNEY. Of course, England does not permit it at all under their criminal justice system. In fact, I am not saying they are right or wrong. I am simply saying there is a system that we derived our common law from to a large extent. They not only would not permit any publication of grand jury proceedings. They do not permit publication of what happens during a trial. They only permit the final publication of whether the man was innocent or guilty.

I am simply saying that there are some systems that treat this quite differently than we do, and do it, of course, for the purpose of

protecting not only the innocent but also evidence that may be presented against whomever may be found guilty later.

Mr. ANDERSEN. Perhaps I should say that if a system can be devised, I question whether it would be consistent with the American traditions and the American way of informing the public under the first amendment. While the English may have such a system, I wonder if it is one that we would want to adopt in this country.

Certainly, to prevent a relatively few abuses by spreading a blanket of secrecy over broad areas of public business is, I think, to throw the baby out with the bath water, as the old saying goes. It is too drastic.

Senator GURNEY. There is certainly a difference of opinion on that. I think you have a very prominent example in the grand jury proceedings that are going on now. Here you have a sealed envelope that is presented to the judge and then there is countless speculation on sources about what the envelope contains.

To me this is an abomination and an abortion of the criminal justice system. I think it was done, probably deliberately, so these stories would be leaked and printed by the media. I must say I am not alone in that opinion. A lot of people feel that same way.

All I was really asking was, from a person who certainly is a leader in your field, what you thought about it.

Do you think it is right?

What should we do about it?

Even if you do not have a solution, and I must say I do not myself, I am just curious as to how you may feel as an American citizen whether this is just or unjust.

Mr. ANDERSEN. In this particular case we really do not know what is in the sealed envelope.

Senator GURNEY. No, we do not. That is the whole point of it.

Mr. ANDERSEN. Maybe that is the injustice. I think that there have been some injustices done in the whole proceeding involving the Watergate and the impeachment proceedings. On the other hand, a good deal of the information that has come out and properly surfaced and, I think, not been questioned by very many people would not have come out, I think, if you had not had a press digging for facts.

I asked in that connection, Vice President Ford, who was in Omaha a few weeks ago, if he felt on balance, taking the whole picture into consideration, whether the press had been a helpful influence or not a helpful influence in the Watergate matter, all the things that have come under that label. He said he felt that he thought it had been a helpful influence. He went on to say that he disagreed with stories that go too far in interpreting facts that have been brought to the surface. I would agree with him. We are not perfect in that respect. Too often we do let opinions come into our stories under the heading of interpretive reporting.

Senator GURNEY. My question is not directed to the importance of investigative reporting. Obviously it is extremely important. The public does have a right to know if there is corruption in Government, if you have people in the public office that are not carrying out their duties in that job. It really had gone beyond that.

After investigative reporting has uncovered corruption and the criminal justice system starts to work—certainly it is working on Watergate as it has never worked before in the history of the U.S. Government—then I wonder if a point is not reached where it might

be a good idea if the media exercised some restraint and let criminal justice proceed in its normal course, rather than some sort of a circus atmosphere.

Mr. ANDERSEN. I would hope the right to exercise restraint would remain with the media and not be restricted by legislation in an effort to prevent what you would consider unjustified disclosures, thereby creating a mantle of secrecy that, in my judgment, would be unhealthy for the country.

Senator GURNEY. Propaganda is an unhealthy thing, used wisely or unwisely. I think when the dust settles on this particular Watergate situation we are talking about—I was really talking about grand jury proceedings in broad perspective because I could give you other examples, too, where I think great injustices have been done—but I think one of the best proofs of what has gone on, most of the facts of Watergate, I think, were developed probably last summer and in this room and by the grand jury that operated up until that time. Very little has been accomplished since then, really, to shed any new light on it. But 9 months ago very few people in the country wanted the President to be impeached. They wanted him to resign.

Now, of course, there is a total turnaround of public opinion. That has been done by propaganda, the constant barrage, day after day, night after night, things like that, which is one reason that I think that we do have to be careful, perhaps, of what comes out of grand jury proceedings, so people are not injured.

Mr. ANDERSEN. I would agree. We should exercise good judgment in all things, including the use of information which comes to us perhaps from someone who is not authorized to release the information. To say in all instances that it should not be used or not published would, I think, be a mistake. It is interesting to me, the question of whether you should concentrate on the medium that may carry this information or on the sources that made the information available to the medium. Probably the source is more easily controllable, or one would expect it to be, than the medium.

Senator GURNEY. I think it is a matter of both. I certainly would agree with you that it is a question that goes across the spectrum. I certainly do think it is.

Thank you, Mr. Chairman.

Senator ERVIN. I had a little difficulty accepting your theory that all information collected for the public should be public property. As Senator Gurney just suggested, Government has in its files the testimony before the grand jury, it has the raw files of the FBI where the FBI was investigating to see whether somebody ought to be prosecuted for a crime or whether somebody had committed a crime. I do not think that either one of these bills prohibits disclosure to the press of any information that is now available to them.

Mr. ANDERSEN. I would disagree.

Senator ERVIN. What information does it deny them that is now available?

Mr. ANDERSEN. Information that we can now get from the local police department as to their criminal record.

Senator ERVIN. You can still get that.

Mr. ANDERSEN. They would not be authorized to give it to us under this legislation.

Senator ERVIN. They can talk to you about it. They can point out the records in the courts. I do not see why it impinges on that at all.

Mr. ANDERSEN. As I read the legislation, there would be a question, a serious question, whether they could give us information in the form that they have compiled it, accurately and completely, for feeding into the criminal justice information system.

Senator ERVIN. It is not the intention of the bill to keep you from getting anything that is in the local records at the courthouse or any such information.

Mr. SCHMIDT. Senator, if I may, in your section 102(7) you describe and define criminal justice information. Specifically it says, "criminal history record information, conviction record information." In your section 201(b) it says criminal justice information may be collected only by or disseminated only to officers or employees of criminal justice agencies.

Senator ERVIN. That may need some clarification. It is not the intention of either bill to deny anybody access to anything that they could get otherwise by going to the records that are collected.

Mr. SCHMIDT. I would certainly read that on the face of it as barring any newspaper reporter getting his hands on it.

Mr. ANDERSEN. This is the reason, Senator, that we suggested time to study and consult with you and your staff so there could be clarifiaction.

Senator ERVIN. That is not the intention—we have a State bureau of investigation in North Carolina. They have FBI records. I do not know anybody, any newsmen that can go to them and get their records that they have collected.

Mr. FINNEGAN. In regard to that, the way I look at the problem you have a law on the national level, you have a law on the State level, and ultimately that is going to get down to the local agency. In many cases now they are dealing with computers and squad cars in which the car can call in to the central office and say we have so and so, John Jones here under arrest, and within a few seconds there comes a printout back to him outlining the information that is available.

I submit that this bill would cover that kind of situation and that police officer is in no way going to tell our reporters anything at all, because he has a $10,000 fine staring him in the face and/or a gross misdemeanor. I think it does have an impact, Senator. I think it would block out that kind of information that is now available to the media in current arrests right now.

Senator ERVIN. I will certainly review the language carefully. It is not the intention for you not to have anything that you have now. I do not know anybody who can get information from records now collected by law enforcement officers.

Mr. FINNEGAN. We have a bureau of criminal apprehension in Minnesota which has had a central collection function for a number of years. We do not depend on them for information. We do use local agencies for information on arrests, jail records, convictions, things of that kind. I believe this legislation, if it does not prohibit, does not discourage any cooperation on what we now consider public records.

Mr. SCHMIDT. In my prepared statement I do have an addenda, an analysis of 22 States that have bar-press guidelines, many sanctioned by the highest courts in the land. It includes the American Bar Association's legal committee. Their section 2 says prior criminal charges and convictions, although they are usually matters of public record.

I have given a State-by-State analysis there. Most of them refer to uniform and typical of them would be California. State records of convictions and prior criminal charges which as matters of public record are available to news media from police agencies or court clerks. Law enforcement agencies make such information available to the news media upon appropriate input. That is rather uniform language that is in effect in at least 10 of these States, and other language in 15 or so.

Senator ERVIN. I am not familiar with that. That is not the interpretation that I believe the witness from California placed on the laws that are governing the collection of records for the purposes enumerated in these bills. Of course, you can go to public records. Some records, although they may be collected by the government, are not public records.

Mr. ANDERSEN. My testimony was not intended to suggest that. I was concerned more that those records which have been considered public records traditionally for perhaps all of our history would now become private records. Not the suggestion that everything gathered by a public agency is therefore a public record.

Mr. BASKIR. Mr. Chairman, the Library of Congress did for the subcommittee a review of public records statutes, which is a very complex area that many people have tried to do reviews on because it is so diffuse and so hard to get a hold of. There is a lot of confusion about it.

At least in the summary that we were provided late last night, it turns out that some 24 different States have statutes which either explicitly or implicitly foreclose public access of criminal justice records of one or more of the following type: identification records, criminal identification records, identification files, arrest records, or other kinds of police records. Some more, some less.

Of course, the stautes are subject to a lot of investigation. But I think a number of the States have determinations that things like police information, police identification records are not public and open up to the public at large, even if in one case or another that they do give the information out. It is a separate question from what the law permits. It might be helpful for the record if these summaries were put into the record, Mr. Chairman.

[The State-by-State summaries appear in the appendix, Volume II.]

Mr. ANDERSEN. It would be important to analyze State by State what the statutes do say. A summary such as that, if it implies that half of the country currently does not allow access to information, criminal record information, I would like to see the details of the legislation or the statues.

Mr. BASKIR. What you are saying is quite true. We are under the impression the District of Columbia closes arrest records, that the police have a policy of not giving out arrest records, and the summary says that indeed they are open.

What you say about the summaries is probably quite true.

Mr. ANDERSEN. There might be a policy.

Senator ERVIN. I would be opposed to denying access to anybody any records in the court. I think it is a fundamental principle of our law that courts should be open and that people should have access to anything in the court records. But I think it is quite a distinction between that and records which law enforcement officers collect to enable them to enforce the law.

But we will read the bills carefully to see if there is anything that could be misconstrued, because language is a very elusive thing. Legislators have often found that to be true.

Thank you very much.

Mr. Schmidt, I will read your statement very carefully.

Mr. SCHMIDT. I would like to call your attention to this compilation from the American Bar Association that covers prior conviction. North Carolina is not mentioned.

Mr. ANDERSEN. We indicated earlier, we represent the American Society of Newspaper Editors, Sigma Delta Chi, American Newspaper Publishers Association, and the Associated Press Managing Editors Association. We share the common concern that we would like more time to work with you and analyze the legislation.

Senator ERVIN. That is what we want. The reason we are holding these hearings is so we can receive suggestions to amendments to improve the bills and also suggestions to eliminate provisions in the bills. We want to accomplish the purposes, doing the least injury to any segment of American life.

Mr. SCHMIDT. I might say, Mr. Chairman, you are known as a champion of the first amendment. We are sure you are not going to deliberately destroy it with any legislation that comes out of this committee.

Senator ERVIN. Thank you. It is not the purpose to deny you of any of your existing rights.

Mr. ANDERSEN. That is basically what we are concerned with. Thank you.

Senator ERVIN. Counsel will call the next witness.

Mr. BASKIR. Mr. Chairman, Mr. Ken Orr, who is scheduled to testify today, was unfortunately taken ill and cannot appear. But he has submitted his statement.

Senator ERVIN. Let the record show that his statement that he filed with the committee will be printed at this point in full in the body of the record.

[The prepared statement of Mr. Ken Orr follows:]

PREPARED STATEMENT OF KENNETH T. ORR, DIRECTOR, ADVANCED SYSTEMS, LANGSTON-KITCH AND ASSOCIATES

Mr. Chairman, members of the committee.

I would like to thank you for the opportunity for being allowed to testify today on such an important subject. The legislation that results from these deliberations will set the stage for how our government deals with people and with information about people for the rest of this century. While criminal justice information is perhaps not the most sensitive or critical or dangerous kind of information that government must deal with, its handling is currently the most advanced. It is the one with the most obvious potential for the creation of personal dossiers. No doubt it's the public's fear of such dossiers that makes political action to protect privacy possible today, where it was unthinkable a few years ago. I hope, though, that these hearings do not lose sight as they are dealing with criminal justice of those other critical areas such as health, welfare, and housing which are also in need of federal privacy regulation.

However, criminal justice systems do serve particularly well as a prototype for developing privacy legislation, and certainly there is a pressing need for federal guidance in this area. The FBI's NCIC system is probably the most advanced, cooperative, interstate system for the transmission of information in operation today. But, then this is no accident. Law enforcement lives by communications—by the rapid dissemination of information. Law enforcement agencies have a history of being among the first groups to make practical use of civilian telegraph, teletype and radio. Law enforcement has used and continues to use advanced methods for mass record keeping and for the positive identification, storage and retrieval of information about people This process has been accelerated many-fold by the infusion of the large amounts of monies made available to law enforcement and other criminal justice agencies by the Safe Street Act of 1968. In some respects, though, the development of the nationwide criminal justice information system we see evolving today bears similarities to a kind of Department of Defense mentality that has often led to the development of systems of great technical sophistication without a balanced regard for practicality or economic costs involved.

Over the past 8 or 9 years I have worked closely with municipal and state governments in developing and managing governmental systems in social, health, financial, and criminal justice areas. In developing many of these systems, it seemed both desirable and feasible to bring together information which had never previously been combined. In many cases we were required to collect information which had never even been collected; information which many times spanned the previous organizational boundaries of many agencies. But with these new technical tools came the recognition of a whole new class of privacy and security problems which seemed increasingly likely to occur, either through overt misuse of the information, or simply from our lack of understanding of how to deal with this new environment. And at the same time we were being encouraged to take on bigger and more delicate applications.

In 1970, I became a member and then chairman of the data security and privacy committee for the National Association for State Information Systems (NASIS). As the committee is no doubt aware, NASIS is made up of the directors of data processing of the fifty states and represents some of the best minds in governmental systems. At that point, the NASIS data security and privacy committee was attempting to determine the scope as well as the magnitude of the privacy problem as it related to state and local government. For one thing, NASIS members frequently dealt with other state and local officials trying to determine how to organize their state or locality's computer systems, attempting on the one hand to obtain vitally needed information and on the other to meet conflicting privacy and security guidelines being promulgated by various federal agencies. We saw the urgent need for privacy and security guidelines we could meet and live with. Moreover, as the custodians of larger and larger amounts of sensitive state level information, NASIS directors were becoming quite concerned with their own liability with respect to the privacy, confidentiality and security of the information they held.

Because their responsibility was also to promote economy and efficiency, (which in many states meant an executive or legislative policy of sharing) NASIS members were especially concerned regarding any privacy or security requirements which would require dedicated computers managed by only law enforcement. They felt this was not required simply to process sensitive criminal history information, for they already processed other information they felt to be equally sensitive.

I personally became convinced at the time that dedication had little at all to do with any of the major issues of privacy, security or confidentiality. My feelings regarding shared vs. dedicated computers were based largely on the kind of technology I saw envolving within government and I felt at times as if privacy and security were being used to exert political pressure by local law enforcement agencies on those responsible for central administration. My feelings are still basically the same as they were then, but as a result of working closely with law enforcement people during the last few years, I can sympathize much more readily with their desire to control their own systems than I could earlier. I believe now that many of them are truly concerned about privacy and security of the information they handle, and feel that others would not be. However, the principal problem before us is not to discuss the technical superiority of dedicated or shared computers from a security standpoint, but rather to develop regulations for criminal justice systems.

By this time, you may have already heard individuals and agencies explain that the FBI's Computerized Criminal History System (CCH) system is either the

greatest contribution to criminal justice since the fingerprint, or the most serious threat to civil liberties since the alien and sedition laws. Gratifying, it is neither. CCH is not the greatest boon ever to law enforcement because its usefulness in its present form is highly overrated. Neither is CCH the kind of threat it has been advertised to be, again because in its present form it is likely to collapse of its own weight long before it ever works well enough to become that threatening.

I doubt seriously there is much information that I can provide to the committee that others who are law enforcement administrators, criminal justice experts or civil liberations have not already provided. But perhaps I can fill in some gaps left vague in your minds, for I find people are intimidated by technology, especially computer technology.

A technical manager such as myself is faced generally with implementing what others have already specified. In a public environment that often means implementing legislation. In terms of developing a system based on the legislation before this committee, for example, I see some rather large difficulties. And unless proper recognition is given to the seriousness and the nature of these obstacles, I seriously doubt whether the legislation which comes out of these hearings will produce anything approximating the model criminal justice information system envisioned. While I consider the bills under consideration significant privacy milestones, they both represent considerable problems for those who must attempt to make them workable.

Most computer systems fail not because of the computer or some malfunctioning computer program. Rather, most systems run aground on procedural rocks in those areas where the computer system must deal with people, laws, or habit.

One of the principal issues raised so eloquently over the past few years by Senator Ervin and others has been the legality, even the constitutionality, of disseminating criminal history records which show arrests without corresponding dispositions, and the complete elimination of records where a subject was arrested but was either not brought to trial or was found not guilty. Unfortunately, given the condition of the current criminal history record keeping systems which exist in this country today, such a limitation is probably unattainable within the foreseeable future. And I doubt that there is anyone who is more disturbed by that fact than I. However, wishing to see something occur does not mean it will. Wishing, legislation, or even an entry in the Federal Register will not make it so if the real world lacks the incentive or manpower to do so.

If we are to attain the goal, which I support, of complete, accurate criminal histories, we must first recognize that that kind of system does not exist today and will only be attainable at the cost of hundreds of millions of dollars; an unparalleled cooperation of the courts, prosecutors and others; and perhaps a decade of sustained effort.

By now, many of the people who have testified before this committee have no doubt given you an excellent history of how the criminal history project evolved under the FBI and Project SEARCH. However, I think it's important to ask why, aside from the political problem, the so called CCH project has been less than an exciting success, either in attracting users or in maintaining the continued excitement within the various state identification bureaus which is instrumental in order to make any criminal history system work. It is my own opinion that many of CCH's problems stem from the fact that there are simply too many police, court and prosecution jurisdictions involved which must cooperate in order to provide the required information and which lack the manpower or interest or discipline to support such a system.

Another class of problem with CCH arises from the administration of criminal law. For the most part, subjects are arrested, tried, and convicted for crimes committed in states and under state laws. While estimates project that as many as 30% of subjects of criminal histories are interstate offenders, it's doubtful that anyone really knows what these percentages really are. But clearly, most offenders specialize in their home state. Their histories therefore, are histories of activities within a single state. But those individuals whose criminal activities cover many states represent another set of problems. As everyone in this room is aware, there has been historically very little uniformity between the laws of one state and those of another, even on such major crimes as murder or manslaughter. Moreover, laws change as time changes. While criminal histories reflect that someone committed a crime, they often give no clue to the statutes that were in force at the time and place that the crime was committed. The states involved in Project SEARCH and CCH started developing their initial data banks of criminal histories using information only having to do with current offenders. It was concluded that for reasons of efficiency and resources not to go back and

attempt to create up to date histories for everyone on file, many known to be long inactive, reformed or dead. But these same states, with considerable outside funding, have found that developing criminal histories even for current offenders is still a monumental problem. But why should this be the case? Perhaps because the persons making the conversion often have no clear idea from the rap sheet or criminal history sheets (primary sources of information) what the crime shown really meant in the state it was committed when the crime was committed. In addition, CCH records require fingerprints be coded, another significant problem in creating histories especially in finding and training fingerprint technicians.

These hearings are intended to create a reasonable and rational approach for regulating interstate transmission of criminal justice information, one which protects as best it can the privacy of all our citizens, even those who have been unfortunate enough to warrant inclusion in the criminal justice system. If we are to do this, we must be willing to accept that some information which has been collected in the past will be poor, incomplete, and inaccurate; and secondly that the task of creating a system which contains all of the features we are most concerned to have; will cost hundreds of millions and take decades to complete; will require much more stringent reporting laws by all elements of the criminal justice community, state and local courts and prosecutors in particular; and will require stringent penalties on those who misuse the system at any level, especially aimed at the weakest link in the system, the terminal operator.

When the original Project SEARCH was first established it was called by many the computerized rap sheet project, the rap sheet being the document that has circulated for decades with the photograph, fingerprints and criminal histories of subjects and which is maintained by the FBI. But early in the project it was decided that to simply computerize the rap sheet as it existed was not enough. Various difficulties existed with the existing rap sheet, and many felt, rightly, that it would be subject to serious legal attacks on privacy and confidentiality grounds. Moreover, it was concluded, again rightly, that the rap sheet could not serve the future needs of the criminal justice community, defined now to include courts, corrections, probations and others. However, there was a fundamental question that was not asked often enough: "why were the rap sheets so often lacking in complete history information?"

The answer to that question is the same one we pointed out above: manpower, interest, and thousands of jurisdictions. In the last half dozen years since the advent of the Safe Streets Act of 1968 and LEAA it has become fashionable to think of the various groups of people acting in courts, corrections, probation, police, and police associated agencies throughout the nation as a single unified criminal justice system. The fact that we have come to use the phrase criminal justice system has itself added to our problems, for the American criminal justice system is not a single system at all but a number of interacting systems which deal with many of the same people.

The concept we've given the name interstate criminal justice system to is just that today, a concept. In order to make that concept into a reality we must understand completely the magnitude of our problem. Some of my friends will probably accuse me of making these people appear so great that Congress will be persuaded not even to authorize such a system, but that is not my intention. I've said here what I've been saying for some years, namely that our objectives and time frames were unrealistic. Unfortunately, we've not even come as far today as I expected.

My observations to this point have been directed to make the committee aware of the problems latent in the existing computerized criminal history program today and which will continue to exist regardless of which of the two bills before the committee is adopted. I hope I have encouraged the committee to see that the final legislation provide for the sufficient resources to ensure the system will work and strong incentives to state and local jurisdictions for collecting, coding and capturing criminal history information. If we are truly concerned to protect individual rights, we must also be willing to accept the cost and responsibilities. For example, states ought not be allowed to participate until they can demonstrate that the criminal histories they contribute meet stringent criteria, and also that the percentage of criminal histories contributed represent a sufficiently large percentage of the state's total criminal activities. Otherwise, we will be operating with a system of limited usefulness forever.

The criminal justice information system of the future will be made up of a network of computer networks. But if where we are today, technologically, astonishes nearly all of us who were in this field only a decade ago, then where we're going in the next decade is likely to surprise all but the most venturesome science

fiction writers. Some of these networks I mentioned will connect criminal justice systems to other systems, many of which will not be non-criminal justice ones.

On another practical front, the committee must decide how to deal with criminal intelligence files. It is unfortunate that both the Justice Department and Ervin bills fail to deal realistically with intelligence files. The Justice Department bill confuses the issue by lumping criminal investigation files with criminal intelligence files (which I would limit to organized crime), and appears to support the concept of unregulated transmission of such information to criminal justice agencies alone. The Ervin bill on the other hand prohibits the collection and interstate transmission of such information at all. I think that it is wholly unrealistic to expect that local, state and even federal officials will not some day transmit criminal investigation information over some network or other.[14]

It would seem to me much more realistic rather than simply banning criminal investigation and criminal intelligence files to set specific limitations and severe penalties for maintaining and using either. This is particularly true if we are to deal with the public's fears of personal dossiers, for that is what criminal intelligence means to a large segment of our population.

When the framers of the constitution enacted the Bill of Rights, they set the balance of public vs. private interests in favor of private interests. Perhaps they did so because they anticipated the natural shift of power from the individual to the government. We are still in the process of reestablishing that balance somewhat.

I am not a particular fan of boards and commissions, however, after reading the legislation before the committee, I am persuaded that the organizational arrangement for regulation of criminal justice information systems proposed by the Ervin bill is clearly superior to that of the Justice Department's. First of all, a Federal Board with appropriate staff could do a far superior job of monitoring the operation of such a system (auditors ought not to work for the bookkeeping department). Secondly, the Ervin bill provides for a membership which is more likely to be drawn from a broad cross section than is the one proposed by the Justice Department. Thirdly, the Ervin bill provides for regular inputs from the states through an advisory board, which seems to be an extremely encouraging sign—a recognition that this system is primarily a state and local one. Many of the difficulties that the FBI has had with the CCH system, has been the result of attempting to impose the FBI's concept of what the CCH system should be on the states. Such a system, we now know, must involve the active participation of state, local and federal people. After working closely with a number of the groups which have brought CCH to this point, I am totally convinced of the greater effectiveness of such state-oriented groups as Project SEARCH over the federally-oriented groups such as the FBI's NCIC. But whichever agency is given the responsibility for regulating the system, it must also have the resources to do a good job.

One omission I find in both the Justice Department and the Ervin bills has to do with authorization and compacts governing regional systems spanning two or more states.[15] Clearly such systems fall under the provision of interstate transmission of criminal offender information. However, such systems have the character of local rather than state or federal systems, and as such ought to have different regulations. Although a number of such systems exist throughout the country, there is little enabling legislation either to support or regulate the operation of these systems. In point of fact, most interstate crime occurs in just these areas, i.e. where a single metropolitan area spans more than one state. I would strongly recommend that the committee amend the final legislation to deal with the issue directly, in order to give the states guidance and encouragement to develop and support such systems.

Somewhere in the dealing with matters of privacy, confidentiality, and security there are important lessons to be learned. One of them surely is that the quality of the answers we receive is largely a function of the quality of the questions we ask. And if we ask our questions in the wrong order, then our answers will confuse

[14] NOTE.—For example, there is increasing use of the national law enforcement teletype system (NLETS), a system which is used for the transmission of administrative and criminal investigation information without regard to content. In addition, Project SEARCH has funded research to determine whether future demands for transmission of information such as fingerprints, photographs and even in-house television pictures could justify the acquisition of part or all of a communications satellite—dedicated solely to criminal justice uses. I think that gives you some idea how sophisticated criminal justice technology has become as well as how much more so it is likely to become. But the same is true of all government agencies so we must become accustomed to startling changes in our times.

[15] NOTE.—Probably the most successful example of such a system in the country is the Kansas City ALERT system which FBI Director Kelley was instrumental in developing when he was chief of police in Kansas City. I know, because it provides excellent service not only for Kansas City, Missouri but for a large number of Kansas communities, including my own.

as much as they will clarify. If we ask whether something is technically possible before we ask whether it is wise, then we are apt to find ourselves committed to programs which no one really wants but which no one knows how to terminate.

I've tried to deal with the practical matters relating to the legislation before this committee. I did this because there is a danger in our society to let narrow, technical interests assume a kind of pseudo-reality. We give something a name like criminal justice, because it sounds more sophisticated than police or prison or night court. We pay far too much attention to sophistication, such as a network of giant computers, and far too little to actual practice, such as an underpaid court clerk filling in the blanks on a disposition form correctly. The problem with being able to transmit correct criminal histories instantaneously across the country is that we may transmit incorrect ones with equal speed.

We have reached a stage where our ability to collect and process data has far outstripped our ability to analyze that same information. Russell Ackoff has said that organizations suffer not so much from a lack of relevant information as from an excess of irrelevant information.

But, we have come a long way since the first hearings on national data banks some eight years ago. For one thing, we now have the proven technology to do many of the frightening things the doomsayers were predicting then. But either through wisdom or incompetence we have not done them yet. Perhaps with wise legislation from the Congress we will move one more step back from that closed society we all fear.

In the meantime, we have learned a great deal about personal information and how it should be handled if we are to control the technology at hand. Last summer, in the HEW report "Records, Computers and the Rights of Citizens", a "code of fair information practice" was recommended which represents a major step toward providing a practical philosophy for government handling of all personal information.

There is not quite enough of the "code of fair information practice" in this legislation but hopefully that will come. For there will be other privacy bills—bills regarding regarding health, education, welfare, housing, and many others. And there will be new freedom of information laws introduced which press closely upon many areas of privacy and confidentiality, for there is a natural conflict between such concepts and the freedom of the press.

If we are truly concerned to do more than pass cosmetic legislation, then we must accept the concept of restraint, restraint by the bureaucrats, restraint by the press, and restraint by the Congress. Too often, the issue is posed as one of the individual's right to privacy vs. the government's need to know. And while the courts have ruled that the individual certainly does not have an absolute right to privacy, there is coming a day when the shoe will be on the other foot, when agents of the government will have to show why they need so much information from our citizens. And perhaps this will lead not only to more trust of governmental officials but also to more effective and efficient government. It is rare, at least in my experience, that information collected without a clear purpose is ever useful, but it is often dangerous.

For its own part, if Congress is to convince the public that it is truly concerned about privacy, it too must restrain itself—it must avoid forcing agencies to engage in punitive data collection, where the mere collecting of information is a form of punishment, and it must also be increasingly vigilant in granting administrators and bureaucrats unlimited freedom to collect personal information in any area.

None of us have all the answers, but I hope the committee will consider the importance of keeping the process of regulating this system open, as surely as it attempts to keep the information within the system confidential. Few things flourish in the dark or when associating only with their own kind. It is often the simplest question which adds the most to a learned discussion, as it is often the outsider who provides the most penetrating analysis. Let us regulate this system not as the private property of any one group or fraternity, but rather as a public trust, the first of many such valuable but potentially dangerous ones.

Once again I would like to thank the committee for the opportunity to present this testimony. I wish you well.

Mr. BASKIR. Mr. Chairman, our final witness today is Mr. Charles Lister, an attorney from Washington, D.C., and a former consultant for Project SEARCH.

Senator ERVIN. Mr. Lister, I want to welcome you to the committee and express our appreciation for your willingness to come and give us

the benefit of your views with respect to these bills. Also, I want to express our regret that so many things have happened since we started the hearing this morning that we are so late in reaching you.

TESTIMONY OF CHARLES LISTER, FORMER CONSULTANT, PROJECT SEARCH

Mr. LISTER. Mr. Chairman, I have submitted a written statement for the record. Perhaps in view of the hour, it would be sensible if I tried simply to summarize it and pick up one or two points that have come up in the course of the day and ask that the statement itself be entered in the record.

Although there are many questions which warrant the attention of Congress these days, few of them deserve more urgent attention than the right of privacy, particularly with respect to criminal justice records. Recent events have made clear that the right of privacy is an essential ingredient of freedom in the 20th century, an ingredient that has not received adequate attention from Congress, the executive branch of the Government, or lawyers or judges, for that matter. It is a subject to which the law comes breathlessly and late. It is a subject to which all of us are going to have to give more attention if we are going to preserve many of the things that we consider to be characteristic of our system of government.

One of the principal threats to individual privacy interests is the increasing network of recordkeeping systems that are now maintained by various public and private agencies. A variety of assessments may be made of the consequences of those recordkeeping systems. As a general matter, it can be said that more information is now being collected about more individuals, used more widely, and disseminated more widely than ever before in our history, and that those changes in recordkeeping may have important consequences for the whole fashion in which we organize society.

The problems which may be created by such recordkeeping systems are vividly illustrated by criminal justice recordkeeping. I do not think it is possible to deny that recordkeeping about criminal offenders is an important and essential ingredient of any criminal justice system. I do not think it could be sensibly claimed that such recordkeeping should be cut back in any severe fashion. But at the same time, there is extensive evidence now that criminal justice recordkeeping has been carried on in some places and at some times by methods that are unfair, unnecessarily injurious, and, indeed, contrary to the basic interests of the criminal justice system itself.

The problem that is faced by this subcommittee and by the public as a whole is to find a way to place limitations on such recordkeeping systems which will preserve their essential functions while at the same time making at least more difficult the kinds of injuries to individual privacy interests and civil liberties that have gone on and continue to go on now.

As my written statement indicates, Mr. Chairman, my view is that S. 2963 is, for a variety of reasons, a much more preferable form of legislation than S. 2964. I think, however, that both bills represent significant steps forward over the current law and that both of them deserve prompt and sympathetic attention from Congress. I would like to try to identify the six or seven essential ingredients of a more

adequate system for the regulation of criminal justice recordkeeping systems. As I describe those ingredients, it will become clear why I think that S. 2963 is preferable to S. 2964.

The first such ingredient is that we are now in need of national standards for the organization and the conduct of recordkeeping systems. Until very recently, it could be said that criminal justice recordkeeping was essentially a local activity which could be sensibly regulated on a local basis. I do not think that is true now. I think that it will become increasingly untrue as time goes on. Over the next several years, criminal justice recordkeeping will become increasingly national in its organization and consequences. It is important that the national features of that recordkeeping be recognized and be regulated by Congress on a national basis. If they are not, local regulation will become increasingly ineffective and inconvenient.

Second, it is important that any new system for the regulation of criminal justice recordkeeping create mechanisms for the continuing evaluation of that recordkeeping. If we have legislation which creates standards, as 2963 and 2964 attempt to do, without any mechanism to review the systems, those standards and principles will soon become inadequate. This is an area that is changing very rapidly. Five years ago we could have said a number of things about criminal justice recordkeeping which by and large would now be untrue. Things that were of concern to the SEARCH Committee on Security and Privacy even 3 years ago are now significantly altered.

It is important that a mechanism be created which can take a series of fresh looks at recordkeeping and which is capable of suggesting changes as changes become necessary. One of the important advantages of S. 2963 is that it creates such mechanisms. The absence of such mechanisms in S. 2964 is an important deficiency.

The third thing that is necessary is a balanced consideration of all the forms of criminal justice recordkeeping. These two bills are described and styled in ways which suggest that they cover the whole gamut of forms of criminal justice recordkeeping. I do not think that that is, in fact, true. In substance, these two pieces of proposed legislation are about criminal history recordkeeping. That is important; that is justifiable. Both bills should be applauded by all of us who have an interest in those issues, but it has to be remembered that there are other issues which are not covered by these bills which should be covered. I have in mind in particular criminal justice investigatory and intelligence records. I realize that the bills refer in part to issues raised by those records. I suggest to the subcommittee, however, that the treatment given to those records is inadequate, and that, indeed, if there is a risk presented by these two pieces of legislation, it is that they may cause the public to believe that there is nothing to be concerned about in these other areas. Investigatory and intelligence records create problems that in many ways are more severe, more troublesome, and more urgent than criminal history records. I urge the committee, once it has completed its work with respect to criminal history recordkeeping, to turn next to the problems of intelligence and investigatory records. We need comparable legislation with respect to those records.

The next ingredient of an improved recordkeeping system is a series of severe restrictions on the power to disseminate criminal justice records by criminal justice agencies. There are many lines which are

appropriate here, but one appropriate place to begin is to impose very severe restrictions on the dissemination of arrest records.

One of the problems to which I do not directly refer in my prepared statement is the propriety of dissemination to other criminal justice agencies of arrest records or criminal history records in general prior to the initiation of criminal proceedings. It seems to me very important to take the position, as S. 2963 does, that criminal history records should not be disseminated from one criminal justice agency to another criminal justice agency prior to the initiation of criminal proceedings without an arrest or something comparable. Unless such a line is drawn, it is very difficult to protect individuals who may have arrest records from unwarranted invasions of privacy, harassment, and losses of civil liberties. This is, however, an area about which we know very little. We do not know how often these records are used for prearrest purposes, but we do know that it may create a number of significant dangers. I think it is important to start, as S. 2963 does, by placing severe restrictions upon prearrest uses of the records.

If I may, I would also like to say a word about some of the testimony this morning with respect to credit records. As I understand the position that was taken this morning, it was that unless credit data agencies are given access to criminal justice records, they may be compelled to include in credit reports rumors about arrest records or other criminal justice records, and to save the embarrassment and injury that may be caused by the inclusion of such rumors, they should be permitted to verify such rumors through access to criminal justice records.

It seems to me that a variety of answers may be made to that argument. The most sensible is that the proper response on the part of the credit data reporting agencies is that they will not include information that cannot be verified in some satisfactory fashion. Indeed, I would have thought that, under the Fair Credit Reporting Act, the inclusion of such rumors is prohibited. Now, if it is not prohibited, it seems to me that that is an appropriate subject for the subcommittee to investigate. If that is not a violation it ought to be, and the statute should be amended appropriately.

Senator ERVIN. On that basis, you could give access to criminal records to everybody, because that would keep even individuals from spreading false rumors. They would have accurate information.

Mr. LISTER. That is quite right.

I want to touch on one final problem. It is one about which I have not heard very much today, but I understand that there may have been some testimony concerning it last week. That is the question of purging and sealing of criminal records. As the subcommittee is aware, this involves some terrible problems, and not the least of those problems is the fact that we know very little about the factual basis for purging requirements. Some of the SEARCH material includes suggestions for time periods for the purging and sealing of criminal records. In candor one has to say those time periods are not much better than inspired guesses. There is no reliable evidence about when you should begin to abandon criminal history records in order to protect the interests of the individuals and at the same time to minimize the risks to society.

It does seem to me, however, that if we are serious about the notion of rehabilitation as the goal of the criminal justice system, we must begin to find some means of cutting off our institutional memories,

of forgetting some things which our institutions know. In the criminal justice area, that involves at some point purging, sealing, destruction, however it is styled, criminal justice records about individuals.

The provisions of S. 2963, although I am not sure that they are susceptible to empirical support in terms of their time limits, nonetheless, they are good lines to draw and are appropriate places to start. This is an area, like the dissemination of criminal justice records prior to an arrest or prior to the commencement of criminal justice proceedings, to which the committees which would be created under S. 2963 should give prompt and serious attention. Programs of research and experimentation are essential if we are going to find out what the correct answers are. Nonetheless, the lines drawn by S. 2963 are a sensible place to start, and, on that basis, I urge that they be adopted.

Let me say in closing that this is an area in which there are a great many difficulty problems, not least of them constitutional problems, as the previous set of witnesses suggested. I do not think that this subcommittee believes, and I certainly do not believe, that all the answers are now available. It seems to me, however, that S. 2963 is an excellent place to start. On that basis, I urge that it be given prompt and sympathetic attention.

Thank you.

[The prepared statement of Charles Lister follows:]

PREPARED STATEMENT OF CHARLES LISTER, FORMER CONSULTANT, PROJECT SEARCH

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to appear before you to testify regarding S. 2963 and S. 2964, each of which is intended to regulate the interstate exchange of criminal history information. Although, for reasons stated below, I urge the passage of S. 2963, both bills deserve prompt and sympathetic attention from Congress. Both bills represent significant steps forward in our continuing efforts to achieve both more effective systems of criminal justice and more nearly adequate forms of protection for individual privacy interests. S. 2963 is, in particular, another important contribution by the Subcommittee and its staff to the solution of a significant national issue.

It may be helpful if I first summarize my own experience with respect to issues of individual privacy and criminal justice records. I first became involved in such questions in connection with a seminar I taught regarding the right of privacy at Yale Law School. In January, 1970, I became the consultant on privacy and civil liberties matters to the Security and Privacy Committee of Project SEARCH. During the period in which I served the Committee, it prepared a detailed statement of the privacy implications of criminal history recordkeeping, a model state statute and model administrative regulations for the control of such recordkeeping. I have also served as a consultant regarding various matters of criminal justice recordkeeping to the Department of Justice, the New York State Identification and Intelligence System, and other agencies and organizations. I was a member of the staff of the National Academy of Science's Project on Computerized Databanks. I have for some years written, performed consulting work, and participated in litigation regarding juvenile justice recordkeeping, public school records, recordkeeping concerning "exceptional" children, and other issues of individual privacy.

I

Few questions warrant more careful attention from Congress and the public than the more adequate protection of individual privacy interests. Privacy remains a notion of formidable obscurity, but it essentially represents a conviction that, unless there are compelling social policies to the contrary, individuals and groups should be assured an important measure of control over the release to others of information regarding their personal beliefs, characteristics and activities. This is an idea of genuine significance. There is persuasive evidence that personal and organizational privacy is a prerequisite of a genuinely open society.

A society intolerant of privacy would be one in which diversity and even creativity might be stifled. As Alan Westin has warned, and as recent events have confirmed, privacy has become an indispensable condition of freedom in the twentieth century.

An important source of danger to individual privacy interests is the gradually increasing network of recordkeeping systems now maintained by public and private organizations. For good reasons and bad, we have become a nation of recordkeepers. Institutions have moved in different directions at unequal speeds, but more information is now being collected from and about more individuals, and disseminated more widely, than ever before in our history. We now devote significant national resources to the collection and maintenance of detailed information regarding our individual attributes and behavior. Computerization and other new information technologies have contributed to the seriousness of the threats to privacy by making some forms of recordkeeping more efficient and less costly. The important problem here is not, however, the machines by which we now perform certain of our recordkeeping tasks. The technology of recordkeeping offers both advantages and dangers, risks and opportunities, but the central problem here remains the purposes for which, and policies under which, we have undertaken to maintain detailed information regarding individuals. No solution to that problem is possible until we begin to place reasonable restrictions upon the length and depth of our institutional memories.

The issues of criminal justice recordkeeping vividly illustrate the problems presented by the maintenance of extensive records regarding individuals. There can be no doubt that the collection and maintenance of information regarding criminal offenders is a legitimate and important function of any system of criminal justice. Under proper restrictions, such recordkeeping may contribute significantly to the fair and effective administration of criminal justice—which is itself an essential prerequisite to the adequate protection of individual privacy interests. Unfortunately, criminal justice recordkeeping—like the recordkeeping activities of many other institutions and agencies—has often been abused. There is compelling evidence that such recordkeeping has frequently been conducted by methods which are unfair, unnecessarily injurious, and contrary to the best interests of the criminal justice system itself. Such recordkeeping has often been performed *ad hoc* and sometimes *ad hominem*, without adequate consideration for the genuine issues of public policy involved. The task now before Congress, the public, and state and local criminal justice administrators is to create sensible rules under which proper recordkeeping activities may be fairly and efficiently conducted. The two bills now before the Subcommittee represent significant steps toward the performance of that task.

II

I shall indicate later various specific matters with respect to which S. 2963 might be significantly improved and strengthened. Preliminarily, however, it may be helpful if I briefly describe certain essential ingredients of a more adequate system for the regulation of criminal justice recordkeeping. This listing of essential ingredients will indicate the basis of my belief that S. 2963 is clearly the preferable form of legislation.

First, such a system must create minimum national standards for the collection, maintenance and use of criminal justice records. Criminal justice recordkeeping is no longer local in its consequences and implications. As the Subcommittee is aware, many forms of criminal justice records now are disseminated widely and rapidly throughout the nation. It may reasonably be anticipated that criminal justice recordkeeping will become increasingly national in organization and operation over the next several years. As this process of nationalization accelerates, state or local regulatory mechanisms will become increasingly inadequate. Indeed, as the controversies surrounding the application of the Massachusetts regulatory statute indicate, such state and local systems will also become seriously inconvenient, as criminal justice agencies stuggle to satisfy the disparate requirements of different jurisdictions.

I do not believe that the SEARCH proposals, all of which were focused on the state level, should be taken to discourage national legislation. The SEARCH proposals were formulated in that fashion in part because it then appeared that progress could most readily be made through state agencies and legislatures. What we now need is a careful mixture of national, state and local legislation. If one of the bills now before the Subcommittee were to be adopted, it would nonetheless represent only the first of many steps which are needed. State and local legislation would still be essential to respond to many detailed and specific problems of criminal justice recordkeeping. Both of the bills before the Subcommittee would help to provide the national standards which are needed, but I believe that the detailed and specific provisions of S. 2963 will be likely to prove more effective than the relatively broad and conclusory generalizations of S. 2964.

Second, such a system must create machinery for continuing review and evaluation of criminal justice recordkeeping, both to enforce existing rules and to formulate additional guidelines as they become necessary. The control committees suggested by the SEARCH materials, and included in S. 2963, should be regarded as essential ingredients of any criminal justice recordkeeping system. The absence of comparable machinery in S. 2964 is a serious deficiency. Recordkeeping has commonly been a low visibility activity, to which judges and legislators have rarely given detailed consideration. Unless a detailed evaluation of recordkeeping activities is carried on by a mechanism at least partly independent of existing criminal justice agencies—a mechanism which consists in part of qualified representatives of the public—it must be anticipated that the rules imposed by these bills, or any other legislation, may in many places be enforced haphazardly and without full effectiveness. Moreover, criminal justice recordkeeping is a rapidly changing area. As its technological and other features change, it will be increasingly important that machinery be available to evaluate the changes and to suggest new recordkeeping guidelines. The work of the SEARCH Security and Privacy Committee illustrates the value of an independent mechanism with broad responsibilities to formulate regulatory suggestions.

Third, an adequate system for the regulation of criminal justice recordkeeping must give balanced attention to the problems of all forms of criminal justice recordkeeping. In one important respect, the work of the SEARCH Security and Privacy Committee may have blurred the significant issues which are presented here. As the Subcommittee is doubtless aware, Project SEARCH was itself exclusively concerned with issues of criminal history recordkeeping, and the Committee's proposals were limited to that area of concern. No detailed effort was made to treat the problems of investigatory and intelligence records. Such records create, however, fundamental issues of policy, to which balanced and careful attention should immediately be given. Investigatory records are important for the effective achievement of certain goals—entirely proper goals—of the criminal justice system, but they may also create severe dangers for individual rights and interests.

Neither of the bills before the subcommittee makes any significant effort to give appropriate attention to the issues created by investigatory and intelligence records. The provisions included in the bills with respect to those records are incomplete, preliminary and inadequate. For reasons which I describe later, one of those provisions in S. 2963—which forbids the use of automated systems for the handling of criminal justice intelligence files—is at best an irrelevant restriction. Despite their titles and findings, neither bill represents a significant step toward better control of investigatory and intelligence records. Indeed, I am frankly afraid that those bills, which essentially address only criminal history recordkeeping, may cause the public to overlook the need for additional efforts. I urge the Subcommittee to undertake immediately to examine the specific and important problems created by intelligence records.

Fourth, any system for the regulation of criminal justice recordkeeping should afford individuals effective rights of notice, access and challenge. Such rights are minimal due process commitments which should be made applicable to all recordkeeping systems, particularly those such as criminal justice systems, which may have significant consequences for the rights and interests of individuals. Moreover, such rights draw upon the most consistent and effective of motives, individual self-interest, to help assure the accuracy of criminal justice records. The right to notice should guarantee the provision of concise and easily understandable information concerning the contents and uses of criminal justice records relating to individuals. The right to access should be protected against burdensome restrictions. The right of challenge should involve uncomplicated, expeditious and inexpensive administrative proceedings, accompanied by rights of appeal to appropriate state and federal courts. The inclusion in both bills of such rights of notice, access and challenge is an important step toward fair and effective criminal justice recordkeeping.

Fifth, any such system should place rigorous restrictions upon the agencies and organizations to which criminal justice records are made available. There is extensive evidence that at many times and in many places virtually all categories of criminal justice records, including even juvenile records, have been provided

to a wide variety of agencies and organizations outside the criminal justice system. In some instances, state statutes or executive orders have created requirements that criminal justice records be made available to various licensing and occupational agencies. Welfare and other social service agencies have frequently obtained such records, particularly those concerning children. The public schools, military services and other agencies have also obtained access to criminal justice records. In many other situations, such records have been informally provided prospective employers, private investigators and others. The dissemination of conviction records to certain licensing agencies may be defensible, but no justification exists either for the dissemination of arrest records or for making even conviction records available to prospective employers and other private persons and organizations. The strict controls suggested by the SEARCH proposals, and incorporated in S. 2963, are well-designed to protect both individual privacy and society's legitimate interest in controlled uses of conviction records. The relatively loose provisions of S. 2964, although more satisfactory than existing law, are inadequate for those purposes. Those provisions appear to contemplate the dissemination of all categories of criminal offender record information, including records of arrests without convictions, to non-criminal justice agencies. Those provisions would also permit such dissemination on the authority of a federal executive order. The terms of S. 2963 are clearly preferable.

Another important limitation upon the dissemination of criminal justice records should be rigorous restrictions upon efforts to obtain access to such records on a class or category basis. Where criminal justice records are maintained in automated systems, it becomes feasible for investigators to search the records for the names of individuals grouped by broad categories. Such searches may be thought by some to be helpful in certain law enforcement situations, but they may also create severe hazards for the constitutional rights of those about whom records are maintained. The SEARCH Committee suggested that those hazards could be ameliorated if class access warrants were required to be obtained from an impartial magistrate. The device has all of the practical deficiencies of the warrant system, but it is at least a useful initial step toward the solution of a potentially serious problem. The inclusion of the device in S. 2963 is a significant advantage of that bill. The absence of any comparable device from S. 2964 is an important weakness.

Sixth, an effective program of data purging should be included in any system for the regulation of criminal justice recordkeeping. It has become customary in any statement or report regarding the administration of criminal justice to reiterate that we seek the rehabilitation of criminal offenders. Here, as elsewhere, we appear to be more committed to the platitude than to its achievement. Rehabilitation is an extraordinarily elusive goal, but there can be little doubt that it will be achieved only if, among other steps, we are prepared to limit the time periods during which, in the absence of new offenses, criminal records are made available even to criminal justice agencies. Rehabilitation suggests the full restoration of an offender's prior status and opportunities, and that cannot be assured so long as an injurious stigma of wrongdoing is perpetuated by criminal justice records. Society will genuinely forgive only when it undertakes to forget.

Data purging is, however, surrounded by severe difficulties. There is no reliable evidence to support the adoption of any particular time periods for purging. The SEARCH proposals, which have now entered into widespread use, were based merely upon reasoned conjectures. Moreover, if purging requirements are created, they will prove difficult to enforce. State rules for closure and purging, except where actual destruction of records is demanded, have generally proved to be ineffective. The complex web of state and local rules for the protection of juvenile records is widely circumvented. The only effective method of purging may well be destruction.

The provisions regarding purging and sealing of records in S. 2963 are substantially similar to the rules suggested by the SEARCH materials. I believe that those suggestions are sensible and well-designed to protect all of the relevant interests. The absence of comparable provisions from S. 2964 is a significant deficiency. Nonetheless, it should be understood that this is an area in which progress may only be made slowly and with caution. Programs of research and experimentation are desperately needed. If S. 2963 is adopted, the various federal and state regulatory committees should regard such programs as a matter of immediate importance. I urge the adoption of the purging and sealing provisions of S. 2963, but we should understand that those provisions represent only a first effort, based upon modest information.

III

I propose now to describe various specific matters with respect to which I believe that S. 2963 may be improved and strengthened. Some of these matters are significant; others are questions largely of detail.

First, Section 201(d) should be modified in two respects. I believe that it goes too far to provide without further explanation that regulations regarding programs for research "shall" require preservation of anonymity. Many useful programs of long-term behavioral research may be conducted only if information regarding individual subjects can be added to the study's data through the period of research. Such additions will at least require the maintenance of a code or key to the subjects, which may be regarded as inconsistent with their anonymity. The important point is that the identities of the subjects should not be ascertainable by outsiders, and this result may be achieved by proper forms of protection for the code or key. In addition, the appropriate control of programs of research is a matter as to which local experimentation should be encouraged. It would be helpful for this purpose if Section 201(d) were to recognize the propriety of state regulations, provided always that they are consistent with any regulations issued by the Federal Information Systems Board.

Second, Section 208(b) prohibits the inclusion of criminal justice intelligence information in automated systems. I believe that this is an unnecessary and probably pointless restriction. My experience in this area suggests that automated systems are, and will in the foreseeable future be, employed for intelligence and investigatory records chiefly for purposes of providing a rapid index to materials which are otherwise maintained manually. I find it difficult to see how such indices can be thought to be contrary to the public interest, at least in the absence of more detailed and comprehensive restrictions upon the collection and usage of intelligence and investigatory records. To the extent that automated systems are in fact used as more than an index, it may even be argued that their results will be salutary, since they are likely to cause more careful screening of the information retained by a system. There is certainly evidence that the costs of computerization have caused some information systems to assess more rigorously the categories of data they collect. The important point is that the Subcommittee should, as I have suggested above, undertake immediately to formulate comprehensive rules for the collection and usage of intelligence and investigatory records. In the absence of such rules, Section 208(b) serves merely to blur the important issues involved here.

Third, Section 305(a) provides that public notice of the establishment or enlargement of an automated system shall be given by agencies so as to permit persons "who may be affected by its operation" an opportunity to comment. It seems to me proper also to require that public hearings should be conducted with respect to such proposals, at which interested members of the public may appear and offer testimony and argument. A reasoned public statement of the content and uses of any new or enlarged system, as well as the reasons justifying its creation, should be provided by the agency after such hearings. Moreover, any doubt as to the right of interested members of the public to offer comments regarding such proposals should be removed by deletion of the "affected" language and by inclusion of language designed to guarantee all interested persons and groups reasonable opportunities to participate in the consideration of such proposals.

IV

The two bills now before the Subcommittee are important steps toward the better resolution of an urgent national problem. They warrant the prompt and sympathetic attention of Congress and the public. Much remains to be done, but the adoption of S. 2963 is an appropriate place to begin.

Senator ERVIN. Let the record show that the complete written statement submitted by Mr. Lister to the committee will be printed in full in the body of the record after his oral remarks.

You have submitted a very thoughtful paper. I think the committee and the Senate should have the benefit of the statement in full. That is why we are putting it in the record.

Senator Gurney?

Senator GURNEY. I do not have any questions, Mr. Chairman.

Senator ERVIN. Does Counsel have any questions?

Mr. GITENSTEIN. You have done considerable scholarly research in the area of privacy and security, and your work with the privacy committee of Project SEARCH, of course, is well known.

When the Project SEARCH's policy committee considered these issues, did it consider the issue of press access to these records?

Mr. LISTER. Before I answer that, let me interject for the record the views I have expressed today are obviously mine and not those of anyone else connected with SEARCH or the committee or whatever, and, indeed, as far as that goes, I am no longer a consultant to SEARCH.

The question of press access was an issue before the committee at the time of the formulation of the model statute and regulations. Obviously, it raises some difficult issues. I do not think that I can fairly summarize for you the committee's views on that set of issues; I can give you my own views.

They are essentially as follows. I think it has to be conceded that any legislation which regulates criminal justice recordkeeping will at the same time place some limitations upon the sources that are sometimes now used by newspapermen. There is no doubt that, whatever State and local laws and policies may suggest, newspapers in many places now have informal access to records maintained by criminal justice agencies. Any legislation trying to do a job in this area would restrict that kind of access. That does not bother me.

As Senator Ervin suggests, there are other sources to which the newspapers can go to get the kinds of information which we all think that they are entitled to. I do not see why it is necessary for them to go directly to the files of criminal justice agencies. I think that the records provided by the courts, the views of individual policemen, and a variety of other sources can provide them with the information that they need and deserve to get.

This is an area in which one has to be candid and say that principles have jagged edges, and that this is a place where two jagged edges rub together. I balance that problem by saying that this is an area in which one source of the press' information should be restricted in a reasonable fashion.

Mr. GITENSTEIN. Do you think perhaps one compromise, one way to read this legislation, is as follows. The public, including the press of course, can have access to records such as police blotters that are generally arranged chronologically, so-and-so was arrested on such-and-such a date, and court records that are arranged in the same manner, so-and-so was arraigned, so-and-so was indicted on such a date, so-and-so's trial took place on such-and-such a date, but the public would not have access to filing systems that are built on those records which are those we are most concerned about, and which are organized by someone's name. In other words, the public could have access to the former type of records but not to the latter. Is that the sort of distinction we should be looking for?

Mr. LISTER. That is a sensible organizing principle. I have some doubts. My doubts arise from the fact I am not sure what other kinds of criminal justice records are organized in that way. I think that the critical point is to focus on the kinds of information they are getting rather than the way in which it is organized. If it comes out the same way, then I think that is a very sensible answer. If it does not come out the same way, then I would pay more attention to the kinds of facts that they are getting than to the category of file from which they are getting them.

Frankly, the most severe problems in this area arise not from the criminal history information, although certainly there are problems there, but from investigatory and intelligence files, which contain all kinds of information, some verified, some unverified, some reliable, some unreliable, and some of it extremely dangerous to the privacy rights of the individual, and exceedingly unfair.

There was discussion earlier in the day about organized crime intelligence systems. They obviously raise a number of problems. Ms. Carey asked how can you define organized crime, and that is a genuine problem. Such systems also raise problems because they lend themselves to a variety of abuses that criminal history recordkeeping does not. It used to be fashionable to talk about other forms of strategies against organized crime, including publicity. If you have information on a fellow and he is doing something that was inappropriate and you can not get at him by prosecution, the way to do it was to go out to the nearest newspaper and put it on the front page. That is very dangerous, not only for privacy but also for civil liberty in general. That is the kind of activity those files suggest, the kind of thing they make possible.

Just to complete the circle, let me say that those possibilities are among the reasons why I think the committee should turn its attention to that set of issues next.

Mr. GITENSTEIN. Thank you.

Senator ERVIN. I concur in your opinion that we need to do some work with respect to investigatory and intelligence information and have some more regulations on that.

Chief Kelley suggested when he testified that information of this kind should be retained by the law enforcement agency which accumulates it, or the one which takes over its records, and not even released to another law enforcement agency unless they make a showing of entitlement to it.

As you pointed out, if the press had a right and access to this investigatory and intelligence information, not only would it pose a great threat to the privacy of individuals, but it would also hamper law enforcement officers in identifying or apprehending parties they have reason to believe committed a crime. Also, if it were exposed, it could be used as evidence in a trial. We are concerned about administration of justice itself along with the privacy of individuals.

Mr. LISTER. In my written statement, I said that I have some problems with section 208. That is not based on any great enthusiasm for intelligence systems, but instead on the conviction that section 208 is not an adequate or sensible way of approaching intelligence and investigatory records.

Senator ERVIN. Your opinion is that computerization where you are accumulating a great deal of investigatory or intelligence information is not just the only way you can store it, but also the only way you can actually retrieve it.

Mr. LISTER. If you really look at the systems which claim to be computerized intelligence systems, by and large they are not. What is computerized is a list of names. It is a fast index in substance. I have a lot of problems concerning those systems, but the absence or presence of a fast index is not one of them.

It seems to me whether the index is computerized is just not very important in terms of what you ought to do about a system. One of the reasons that section 208 bothers me is that it may suggest to the public that these systems are adequately regulated. I do not think that they are. I think that the question of what to do about the computerization of those files ought to await a broader, more comprehensive study of the problems presented by records of that kind.

Senator ERVIN. Thank you very much for your assistance to the subcommittee. We appreciate it very much.

Mr. LISTER. Thank you.

Mr. BASKIR. Mr. Lister, if I may ask one question.

The development of this legislation with respect to criminal history records follows a number of years of thinking and work on the development of possible standards to control the dissemination of criminal histories, so there is some kind of foundation of thinking behind the legislation that has now come to pass.

Mr. LISTER. Yes.

Mr. BASKIR. It is my feeling, and I wonder if your experience agrees with it, that our sophistication with respect to intelligence is considerably less. We do not know, really, what to do about intelligence, computerized or not, the standards that might be used, or the like.

Mr. LISTER. I think that is so. I think intelligence and investigatory files include a number of very disparate kinds of records, some of them dangerous to privacy interests, some not significantly dangerous to privacy interests. We are not now able to sort out what is in each category. We do not really know how such records are used. We do not really know how they are disseminated. I think it is important to start the process of finding out. I think that we know enough so that we could identify a few things that ought to be imposed as limitations on the use of those files. By and large I agree with you. We do not know enough. We should now begin to find out.

Mr. BASKIR. Rather than permit the development of computerized systems before we have an adequate basis for what controls might be required on them, do you think it would be a wise legislative policy to just sort of call a halt temporarily, a moratorium, and say, until Congress addresses the question of computerizing intelligence information controls, perhaps controls on noncomputerized information, at least, we ought not to permit the creation of new computerized systems, sort of willy-nilly, unless they are, for example, specifically legislated for or authorized by Congress or by States?

Mr. LISTER. I do think that that makes a great deal of sense.

Let me say, though, that since computerization is such a small part of the problem, you are not really going to be halting the kinds of hazards that we are all concerned about, so I would hope that if such a moratorium were to occur, that it would not be supposed that the problems have stopped. All that would be stopped would be one form of the system, a rather unimportant form.

Let me add one more thing. That is, I think that section 208(a), which would require the separation of criminal intelligence and criminal history records, is a very sensible and good idea and certainly should be included in any legislation adopted by Congress in this area.

Senator ERVIN. Thank you very much.

The committee will stand in recess until 10 o'clock tomorrow, and we will meet in room 1202 in the Dirksen Building.

[Whereupon, at 4:35 p.m., the subcommittee was recessed to reconvene at 10 a.m. on Thursday, March 14, 1974.]

CRIMINAL JUSTICE DATA BANKS—1974

THURSDAY, MARCH 14, 1974

U.S. SENATE,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:15 a.m., in room 1202, Dirksen Senate Office Building, Senator Sam J. Ervin, Jr. (chairman), presiding.

Present: Senator Ervin.

Also present: Lawrence M. Baskir, chief counsel, and Mark Gitenstein, counsel.

Senator ERVIN. The subcommittee will come to order.

Counsel will call the first witness.

Mr. BASKIR. Mr. Chairman, our first witness this morning is Jane Hardaway, commissioner of personnel of the State of Tennessee.

Senator ERVIN. I am delighted to welcome you to the committee and want to thank you for your willingness to come and give us the benefit of your views on this very important proposed legislation.

Ms. HARDAWAY. Senator, I am very happy to be here. I think we have a mutual friend in Howard Baker.

Senator ERVIN. He has done a very fine job.

TESTIMONY OF JANE L. HARDAWAY, COMMISSIONER OF PERSONNEL, STATE OF TENNESSEE

Ms. HARDAWAY. Senator, I have a brief statement. If it is your pleasure, I will read that.

Senator ERVIN. That is fine.

Ms. HARDAWAY. I am most appreciative of the opportunity to appear before you today to discuss the right of privacy as it relates to the gathering and dissemination of criminal justice data. It is my strong conviction that the protection of individual privacy by effective and proper legislation is sorely needed and long overdue.

As commissioner of personnel for the State of Tennessee, I am charged with the duty of maintaining personnel records on approximately 33,000 State employees. These records contain not only work-related information, but also a certain amount of personal data.

Much of this information, of course, should be a matter of public record. A State employee's name, the title of the position he holds, the county or city in which he works and the salary range within which he is paid, should not be withheld from the citizens who pay his salary.

On the other hand, information concerning his home address and telephone number, his voting precinct, his marital status, whether or not he has been treated for alcoholism or mental illness, whether or not he, at some point in his life, served a sentence in prison, and other purely personal data should not, in my opinion, be arbitrarily open to the public view through his personnel file.

Tennessee, like many other States, however, has maintained an open-door policy with regard to the personal data which has been collected on its employees. At the present time, the Tennessee Code requires that the personnel files under my control be left totally open for public inspection.

Last year, legislation was submitted to the 88th General Assembly of Tennessee, by the present administration, that would have limited the types of information which could be obtained from personnel files and also would have regulated its use. However, that legislation failed to receive the necessary approval for adoption.

I understand that the States of Ohio and California are presently considering even broader regulatory legislation for the protection of personal privacy. Tennessee, however, has made one important change which I believe to be significant.

When the present Governor, Winfield Dunn, came into office, the application for State employment required that an applicant seeking State employment list all charges which had ever been filed against him for violations of law, other than traffic offenses, whether or not such charges resulted in conviction.

Governor Dunn and I both felt that this constituted an invasion of personal privacy. Arrest without subsequent conviction should not be an employment consideration. Consequently, the Governor authorized me to change the State employment application so that it now asks applicants to list only convictions and disposition of those convictions.

By this action, at least, the State has ceased to be a storehouse for unnecessary and potentially harmful data collected on an employment application.

Because of my interest in promoting the right of privacy for employees of the State of Tennessee, I am very vitally aware that the legislation being considered by this Subcommittee is of much importance.

Clearly, criminal justice information is of much value to those who seek to protect us from individuals who would break our laws. Computerization of such information so that it may be transmitted to local law enforcement agencies quickly, in my opinion, has been helpful in solving countless crimes.

Information collected for the use of law enforcement officials, however, constitutes only one portion of the problem. While serving as a member of the Secretary's Advisory Committee on Automated Personal Data Systems, under the direction of Elliot Richardson, the then-Secretary of the Department of Health, Education, and Welfare, I along with the rest of my fellow committee members, learned of the magnitude of abuse in collection of personal data. Information is collected on citizens for countless purposes other than for use in criminal justice.

Senator Ervin has said, in a recent article in Barrister magazine, that there are presently at least 750 computerized data banks in the

Federal Government alone. This, combined with the countless storehouses of information held in the States and in private industry, poses a threat to every American because, to date, no definite and uniform guidelines have been imposed which regulate the data gatherers.

We, as citizens, do not know in which data banks we may appear. Certainly, we do not know for what purposes the information on us is used or disseminated, or who is entitled to use it. It is, therefore, my position that the real solution to the problem lies in the effective and uniform regulation of all data collection and dissemination.

My work on the Secretary's advisory committee made me amply aware of the dangers inherent in unregulated data collection and dissemination and the urgent need for reform.

Regulation is required at both the Federal and State level. The committee made specific recommendations which, in my opinion, should be incorporated into Federal law and there have been several recent pieces of legislation with this purpose. Additionally, the States should take positive steps to impose more stringent regulations.

I would, therefore, urge that the Congress act quickly and positively to set the example for States to follow—not just in the regulation of criminal justice information, but in all personnel data collection, both in the public and private sectors.

My experience as commissioner of personnel for the State of Tennessee and as a member of the secretary's Advisory Committee on Automated Personal Data Systems has convinced me that the citizen's right of privacy will not be adequately protected until proper regulatory guidelines are imposed on all data collected, no matter what form such collection takes.

Senator Ervin. I want to commend you on the excellence of your statement. We had former-Secretary and former-Attorney General Richardson before the committee last week, and as you undoubtedly found when you were serving on his committee, he is a strong advocate of adequate protection of the privacy of people.

I want to commend you on making the change in the question that called for disclosure of arrests. I have found that just mere arrest records, without any accompanying record of what disposition was made in the case, is very harmful—especially in cases where people are seeking employment.

We had in Washington, several year ago, thousands and thousands of young people, mostly college students or that age group, who descended upon Washington. Some of them undoubtedly, came with the intent to violate the law by disrupting the activities of the Federal Government. Many of them came merely for the purpose of protesting a Vietnam war and to petition the Government to do something about bringing it to a cessation. Others came just out of a sense of curiosity.

A good many thousands of them were arrested. Many of them were turned loose without any trial or anything else. If the fact that they were arrested is preserved and disseminated, it could be very injurious to them where, in a great majority of the cases, they came out of a sense of curiosity, not the purpose of violating the law.

Ms. Hardaway. I had a daughter on a college campus during those days that worried me very much because there have been numerous times when she has been one of those curious people.

There has been one time when she actually participated against dorm hours for females, which I think was a pretty normal thing going on on the college campus, and we wonder how that has been recorded on her record.

In relationship to employment, what concerns me is the fact that I am sure all State employment offices and many private industries—because I was in private industry before I came to State government—are very crowded, particularly State governments, with people looking for jobs.

We normally have anywhere from 5 to 15 or 20 applicants for any job. We attempt to train our interviewers as best we can. We do a very good job but they are certainly not experts, but they will have those 15 applications and there has to be some very quick way of deciding who should go further for a consideration and who should be discarded, at their desks.

When a person comes in, under our old application, "Have you ever been arrested", and he says, yes, on that line all it can hold is a "yes". It does not say "what for" or "what was the disposition of that". That was the quickest way in the world for that applicant to get into the stack that was never considered again. That was wrong because you talk about discrimination, that was the greatest discrimination that you could have.

Now, at least the interviewer sees what the conviction was, or what the arrest was—was there a conviction? Or what was the outcome of that conviction on the application. So that very quickly they are able to see as much of the entire story as they possibly can in a glance.

We are finding now applicants who have been convicted are going into the stack for future consideration because at least they have an opportunity to explain that conviction.

I think it is very significant that we were able to do that. What concerns me, Senator, is I was able to do that under the authority given me as the commissioner of personnel. I can move the application around anyway that I want to.

I have a very fine Governor who believes in the protection of privacy and he supported me and we were able to come up with new applications. The next fellow that comes along might not be that concerned about it and he might decide that he would like the old way better and we could be right back into the old application.

Those are the things that concern me. I think that there is too much left to individual management decisions. I think we need some firm guidelines.

Senator ERVIN. Of course the Government has a legitimate necessity for collecting much information concerning people. It would be impossible to operate government employment, or the Federal Government could not operate the Internal Revenue laws, or social security or medicare, without much information about individuals. But there is far more information collected by government than relates to simple administrative needs.

We found that particularly true in the case of Army surveillance of civilians. The government has no business collecting information about people's political views or their religious views, their relationship to the members of their families, and we found much information of that kind collected by Army Intelligence, and computerized, and also put into a book called a "compendium". And the government has absolutely no business collecting personal information of that kind because there is no doubt about the fact that there are areas in the lives of all of us that we are entitled to have kept from government and everybody else.

As Justice Brandeis said, the most precious right of civilized man is to be left alone in our private lives.

Ms. HARDAWAY. Senator, I do not want to leave the impression that I do not think certain matters on employees should be a matter of public record. I think they should be. I believe in the free American press. I believe in it more strongly than perhaps I have in days past.

What I do object to is that the records that I hold are open simply for a neighbor to come in when he becomes curious about the salary that his neighbor is earning next door, who happens to be a State employee, and you can simply walk into a file room and pull a folder, in alphabetical order, and look up whatever information he wants to about his neighbor.

I think that that is very bad. I think that that is wrong. I also believe that the press—and I think that this is true of the press in Tennessee, that is all I converse with—they also feel that they should show a justification when they want to look.

For instance, we just had to give up to one of our local newspapers, personnel folders on several correctional officers. I stood pat about 6 weeks. I knew, ultimately, I would have to give them up. As a lady, I thought if I could just be as annoying as possible, I might just discourage them a little bit and they might sort of fade out before they took them, but they did take them and the attorney general directed me to give them those folders.

Because of my personal feelings, I set about to notify these employees that the newspaper had their personnel folders. You understand that was only because I personally felt that I should do that. I was not directed by any law, or otherwise, that I had to.

I think when the press, or anybody else, has their folder, I think the employee should be notified that their folder is out.

Mr. BASKIR. Have you found any noticeable decrease in the quality of employees that Tennessee now has in State government because of the fact that you are not permitted to get charge records on them?

Ms. HARDAWAY. No. To the contrary, we are finding, because of the fact that we have been talking about this issue for the past 3 years, and because I am the first commissioner of personnel to ever go statewide, to meet with every one of the 33,000 employees, and as I have gone to meet with those groups, I have discussed this matter of their personnel folders.

And my viewpoint, and the viewpoint of the Governor and what we are attempting to do, and what we attempted to do in the last legislative session when we entered the bill to secure their folders, because this is becoming an issue and because they are aware that we are doing all that we can do from the executive branch of the Government, to put our muscle behind some sort of State regulations, we find that we are upgrading at least the atmosphere around State employment.

And we are beginning to attract a better applicant. There are a lot of other things that go into that—pay equity and other issues that we are now addressing in State employment that we have never addressed before.

Mr. BASKIR. There is certainly no harm in terms of morale and atmosphere in dealing more fairly with individuals' privacy if they happened to be employees of the State?

Ms. HARDAWAY. Indeed, let me tell you another interesting thing that is happening. Employees are writing me now saying, I think somebody looked at my folder, can you tell me.

I think before they were not even aware of it. They receive mailings during political campaigns which obviously came from their applications. I also removed, "What is your voting precinct?" I removed that from the application.

If you would like to get into the IBM list that I control, I would be glad to do that. I will tell you what I do about that.

Mr. BASKIR. Let me ask you a different question first.

Are there any State statutes in Tennessee that require, before you get certain kinds of employment or State benefits of other relations with the State, that information about a charge, as opposed to conviction, is required to be given by the individual?

Ms. HARDAWAY. No. You are speaking of fringe benefits?

Mr. BASKIR. Yes.

Ms. HARDAWAY. Retirement insurance, no, those will be just the normal regulations that insurance companies would require, and the retirement is an automatic thing that comes upon employment based on the application that we are given.

Mr. BASKIR. Things like welfare? Other kinds of State benefits?

Ms. HARDAWAY. We are into a different subject, and one that I am not qualified to talk to you about. Yes, under the welfare system, certainly there are requirements that other information be given.

I am sure in this employment security department, under the WIN program, there have been certain things asked for on those applications. But you do understand that that is a different application from the one that I control?

Mr. BASKIR. They might be asked for more information about charges as opposed to convictions?

Ms. HARDAWAY. I am almost certain that they are.

Mr. BASKIR. Would you recommend that for most government employment, not only in Tennessee, let us say in the Federal Government and other States, that the same change be made that Tennessee made?

Ms. HARDAWAY. I certainly would.

Mr. BASKIR. Thank you.

Mr. GITENSTEIN. I would like to ask a few technical questions here. In several States, State employees are fingerprinted at the point of employment and those fingerprints are submitted to the FBI for the purpose of ascertaining whether or not there is an identification record in the Bureau's files.

Does Tennessee do that?

Ms. HARDAWAY. Only if we employ an applicant for our criminal TBI, our highway patrol, we do not fingerprint any employees except those involving law enforcement.

Mr. GITENSTEIN. In terms of nonlaw enforcement employees, how do you ascertain whether or not he does, indeed, have a conviction record?

Ms. HARDAWAY. I must rely entirely on him and reference checks with past employers. Let me say something—Commissioner Armour and I—Commissioner Armour is the Commissioner in charge of the Tennessee State Police of Tennessee, TBI, all law enforcement, he and I are as close friends in State government as could possibly be.

Commissioner Armour also believes in privacy, a very similar position to mine. I could not, under any circumstances, receive from Claude Armour, any information that he has on any employee that I had. He simply will not give it to me. I could walk across the street to the metropolitan courthouse in the city government and find out whatever I wanted—if you understand what I am saying? That is a different branch of our government and I expect, in fact I think I could walk in and say I am commissioner of personnel, I would like to know about John, I imagine I would have it within a very short time.

Mr. GITENSTEIN. The way Senator Ervin's bill is drafted for employment situations, whether State government or private industry, is that as long as there is a State statute that enables this type of dissemination, the legislation would permit dissemination of only conviction records from a law enforcement agency to a non-law-enforcement agency, for the purpose of screening possible job applicants. The one exception to this rule is that it does not apply when the law enforcement agency is screening an applicant, in which case they could get any kind of criminal record.

Would that scheme be consistent with your view?

Ms. HARDAWAY. I would support that 100 percent.

I would be very interested in seeing a conviction record on an applicant that I am considering hiring.

Mr. GITENSTEIN. Assuming the record is complete and indicates a not guilty disposition, wouldn't that be equally irrelevant as far as you are concerned?

It would be a complete record in the sense it is an arrest with a disposition of something less than a conviction. I would assume that you would take the same position with regard to that record?

Ms. HARDAWAY. Yes, I think I would. My position is, I do not want that record if it is not complete, and I do not want to be able to get that record without the person whose record it is, without them knowing that I am asking for that record. I simply do not believe, as the commissioner of personnel, that I would be able to walk into the metro courthouse of State government, or otherwise, and get any sort of a record that is not complete, and that the individual has not had an opportunity to know at least that they have that record and to look at that record and to be certain that it is correct.

Mr. GITENSTEIN. In the circumstance I am talking about the record would be correct. Indeed, it would be complete. But it would indicate an arrest, plus a prosecution, but the prosecution resulted in a non-guilty disposition.

Ms. HARDAWAY. I think you have an innocent person there.

Mr. GITENSTEIN. You would not be interested in seeing that record?

Ms. HARDAWAY. No, I do not think I should have that record.

Senator ERVIN. Thank you very much for a very helpful contribution.

Ms. HARDAWAY. Thank you, Senator.

Senator ERVIN. Counsel will call the next witness.

Mr. BASKIR. Mr. Chairman, our next witness this morning is Mr. Lawrence Beddome, executive director of the National Law Enforcement Telecommunications Systems, Inc., NLETS.

Senator ERVIN. I am delighted to welcome you to the committee. I want to thank you for your willingness to appear and give us the benefit of your views on this very important legislative proposal.

Mr. BEDDOME. Thank you, Senator, it is a pleasure to be here. The prepared testimony that I brought would be rather lengthy if I were to read it all the way through, but I would like to make reference to it, and with your permission, skip through it because there may be a few highlights that we might want to dwell on.

Senator ERVIN. That would be satisfactory.

TESTIMONY OF C. J. BEDDOME, EXECUTIVE DIRECTOR, NATIONAL LAW ENFORCEMENT TELECOMMUNICATIONS SYSTEMS, INC.

Mr. BEDDOME. As I indicated in the prepared testimony on the first page, I do have a real interest in this general area because of the background I have, having worked with Project SEARCH in their LEAA-sponsored efforts in security and privacy of criminal justice information systems, only recently having left active participation in law enforcement. I was in a command position as assistant chief of administration for the Arizona Department of Public Safety, and my direct responsibility in that agency was directly over communications, the data processing area, and the criminal records section. These three significant areas of related interest that I had in the past deal with this legislation.

The efforts of yourself, Mr. Chairman, and your colleagues and the members of the Department of Justice putting together these two bills certainly draws a great focus on this general area of security and privacy.

The States, I think I have indicated that the States by and large are actively considering legislation in the same general area, because there is beginning to be an extreme awareness of the need for some sort of uniformity. The States are concerned that the criminal records, for example, that they keep, they look upon those as theirs and their property, and they want to have some sort of reassurance that if they exchange them with another State, that those records will be treated in the same fashion that they would treat them in their own States. I do think that this is significant and probably one of the reasons why some of the States are now focusing in on this general area.

My general area of interest of course, I believe is the operational aspect or the practitioners, if you will, of criminal justice operation. Information is critical to the police officer on the street. He needs to know about people he is dealing with as he comes across them, about the automobiles they are driving, these types of things he has to know for his life.

If he makes an arrest, then the court needs to have some sort of decent information on the subject before admitting him to bail. There is no way he can make an intelligent decision on the magistrate's part without some sort of information. Probation officers need to have information about the people they have on probation or parole that have been rearrested. Before sentencing convicted offenders, courts have to have some sort of background check so that they can

make an intelligent decision about what type of sentence to hand down. The custodial people, if the person is remanded to the custody of an institution, they have to have some sort of background information, his previous history, this type of thing. So I think that you can see our interest was in the operational area.

I worked on the task force of a recently published criminal justice commission standards and goals effort on criminal justice systems and statistics. Even the committee that I was on, when we looked at critical time factors on when certain records should be handed down and so forth, I disagreed with some of the recommendations of the 4-hour turnaround on information to the courts. I suspect the reason that we went for some of those time factors was sheer economics. And in the jargon of the data processor, real time means dollars. The faster the turnaround the more rapidly you disseminate information, and the more expensive and sophisticated the system has to be.

The 4-hour turnaround to the court, for example, I feel if I were the victim of an innocent arrest, if I were falsely charged or mistakenly identified and picked up, I would not want to have to wait 4 hours, let us say, for a court to have information and make a decision on me. I would want out; I would want out now. So I would hope that the court could have rapid information on me.

On the other hand, I believe, from the other side of the fence, if I were the court and individuals were brought before me looking for a bail decision, I would want to know, is this man on bail from another offense; is he a bail jumper from out of State. This kind of information is needed by the court to make intelligent decisions. Look at the criticism the court is under for releasing people that are out on a fourth, fifth, or sixth bail for a like offense.

I take issue with the people for the sheer sake of efficiency that want to integrate all those systems. I do not believe in that at all. I do believe a good communications link needs to be between various data banks. Those people that have a need to know and the right to know should have an efficient, effective communications link between their data banks but the data bank managers manage their files, then with some sort of agreement communicate with one another.

And from that standpoint, I say thank God for LEAA and what they have done to help upgrade the information systems in recent years around the country. I am a firm believer in working smarter rather than harder.

I would like to fall back on my own text again here so I can say this properly, Mr. Chairman, because I had the benefit of seeing your testimony when these hearings started where you stated increased efficiency and sophistication of these automated criminal justice systems has compounded security and privacy problems. Some believe that the old, inefficient manual systems provided a certain degree of protection or privacy to the individual.

I, for one, believe somewhat the opposite. Old manual file systems without proper safeguards of who can access them and what happens to the paper when it is photocopied and scattered to the four winds is not really a matter of good record.

With a sophisticated computer system, good audit trails can be developed. A computer is generally programed to keep track of the time of day, location, terminal identification, and terminal operator.

That type of audit trail leaves a permanent mark forever about who was in what file. I think that is important. That way with a followup audit, periodic or routine, you can always call files up and find out who that terminal operator gave that record to. I think these sophisticated systems can build in far more security and privacy safeguards than we would have ever dreamed in the old manual system.

I have also seen items in the media that attack the deadly effectiveness and the efficiency of these systems, as though that, too, was something evil. My question is, in this regard, what in the world do we want to do something for if we do not want to do it effectively and efficiently?

There are only generalities in my testimony, Mr. Chairman, about the bills. I have read them thoroughly. I have discussed them with several people, but I do not give specifics and rather would speak in generalities about some of the things that bother me.

One that troubled me was the requirement in the laws that are presented to us that requires an express authorization to receive criminal justice information. I think this is an undue burden on the States that have adequate laws at the moment. This seems wrong to me to pass Federal legislation that would preempt many laws in the several States.

I have in my new function the opportunity to send out a communication to the various chiefs of the several States, requesting their opinions on these statutes. The Colorado State Patrol, the chief, he responded to me. He said that he would be opposed to endorsing S. 2964 until we have a resolution of the conflicts between S. 2964 and the Project SEARCH recommendations.

I have not personally talked to the colonel since I received his communication, but I am assuming he is referring to the Project SEARCH draft bill or the model bill that was centered around security and privacy. I believe that too has been entered into the record of this committee for deliberation later.

He said he would also like to have an opinion of the court of proper jurisdiction as to the constitutionality of the Attorney General enforcing codes of official conduct in local matters. He is particularly reluctant to support any legislation which contradicts and/or subverts the recommendations of Project SEARCH, which have been developed over nearly 5 years with considerable investment of funds and man effort, an effort well coordinated among Federal, State, and local governments.

In many instances, the input that I received when I announced that I would be testifying here was:

> Please be sure and tell the Committee that these records that we keep are really the private property of the States or the jurisdictions who generate them. They do not belong to the Federal Government, they do not belong to the world. These records were produced by our agencies to help us in the conduct of our business, and we would like to have some sort of say-so. We would like to have a better voice in how they are used outside of our jurisdiction.

Mr. Chairman, early in these hearings, you expressed concern about the quality and accuracy of information which should be allowed to circulate in the criminal justice data system. You also indicated an interest in whether or not it should be computerized, and you had a very grave concern about the lack of dispositions. And then, of course, one of the other serious concerns that was on your mind was the dissemination outside criminal justice agencies of these criminal records.

And I notice that subsequent to my invitation to participate here that the President himself went on radio and put together a commission, a Cabinet level group, to investigate these things, what happens to the criminal record after it leaves the hands of the criminal justice agency.

My personal concern, and the people I represent, they, too, agree with you about releasing the data outside the criminal justice system. The Arizona legislature just a year ago addressed this issue very much like Ms. Hardaway has discussed in the issue of Tennessee. In ARS 41-1750 they discussed what happens to the criminal record, who has a right to it if they are outside the criminal justice community. There are about four areas of specific use outlined in that bill. A copy of ARS 41-1750 is attached to my prepared statement.

ARS 41-1750 B(1)-(5) inclusive deals with the unrestricted use of the criminal history data or any kind of law enforcement information between the law enforcement agencies. Then they addressed the rest of the criminal justice community separately and said almost the same thing, that law enforcement may disclose to legitimate justice agencies, meaning the courts, probation officers, or correctional officers, prosecutors, records that are public record type information. This is excluding—although the statute does not spell it out—does exclude what is known as criminal intelligence.

Then the other things that are of concern of the States, local jurisdictions, and the Federal Government, is in the employment of people. So that you have to take some sort of consideration here. The Arizona legislature decided, after weeks and months of deliberation, that it was proper to give out to those agencies of government, that have statutory authority to have it, criminal history information, but only conviction information, but if that there was an arrest without a conviction or an open case, then the administrators of these various State agencies or government agencies would not be entitled to that information, which kind of goes along with Ms. Hardaway's position that she did not want to know about an open case.

The final area was in the various licensing boards that might have statutory authority to do background investigations. For example, areas that might be subjected to organized criminal activities, let us say the liquor industry, that is one that I can specifically refer to. Whether or not the applicant for a liquor license who was going to be in this area that there was going to be a background investigation on this individual. Similarly as with the Government employee approach, so this too always must be preceded by a fingerprint examination. It means a positive identification that we will be revealing to this agency information about the right party.

The police and the correctional institutions, this is one of the areas of discussion among police officers for years, our concern about the lack of dispositions. This has troubled police themselves for years. They are very faithful about recording the event of an arrest, because you want to be certain that the person you have arrested, you have some sort of positive identification. That was one of the primary

reasons for rolling fingerprints, with the exception of some misdemeanor customers that are in every Saturday night; they become very familiar with those fellows.

What happens after the police turn it over to the prosecutor and it goes upstairs? Many times there is nothing recorded in the criminal history events there until the man winds up institutionalized. And the institution has, again, the same kind of concern the policeman has. They will roll fingerprints on every individual in turn. And there we have one of the secondary or third links in the chain. A more positive identification again is made.

This lack of disposition information between the policemen and the correctional institution or what happens to him after he leaves the correctional institution is of concern to the police and to all of us, I think. We want to see this area tightened up. Industry talks about zero defects. That is really quality control. Why cannot we practice zero defects or quality control when we are dealing with human beings in the criminal history area?

Now, turning to sealing files as an area that has generated considerable concern with people that I discussed these bills with before I came here, it really troubles the conscientious policeman that you should block us off on being able to access these records on previous events for investigative purposes. If the committee after the hearings should decide, after all your deliberations, that you should really seal the records of an individual, let us say one who was not prosecuted after a certain period of time, or for whatever reason, that total sealing and completely eliminating this event from his life from ever being accessed by at least a policeman of an investigative nature is wrong. We feel that at least the identification records, the fingerprint card itself, which is not accessible by a name search, would be a legitimate thing to be left unsealed. If future arrest cards come in, or future identification of some other nature is required they would be automatically available. The man may be a victim of an airplane bombing or some other kind of disaster where there are a lot of people that need to be identified. At least you could clear up those kinds of things with that type of an entry in the file and open to ready access.

We are concerned seriously in the criminal intelligence area. The police absolutely have to have some sort of criminal intelligence system to do their work effectively. Maybe what the problem is is in the definition of the term, or maybe the loose usage of the term "criminal intelligence." Maybe that is what bothers us.

But crime prevention is really the primary function of the local police. They do not have the time to do crime prevention any more. It is the "squeal" basis in the jargon of the street; they go where the noise is, where the calls are. You are so busy answering those calls, many times you do not have time to do preventive control. This, in effect, is one of the opportunities to prevent something. That is, if you hear something, tips, rumors, innuendoes, go follow up on those things. You should not make arrests based on some sort of unsubstantiated rumor, but it does give you lead information to put your finger on the source of trouble, whether it be street rumbles in the city of New York or any criminal activity.

We do not believe that that criminal intelligence information ought to be put in with the general routine case, arrest case and disposition data. And in the well-run police department, it is not that way. In times gone by, even as a senior command officer, I have been turned away as a captain from the criminal files in the Arizona Department of Public Safety, because the various jobs that I had at the time did not give me the right to know. I had no business in there. Idle curiosity might have been the reason I wanted to go there. Whereas the patrolman who was involved in that area of endeavor would be an authorized party to the intelligence section activity. That is how my former department was organized.

We in Project SEARCH looked at handling intelligence information and we took the approach that you have in your bill, Senator, and the one that the Justice Department submitted. And we said maybe we ought to have it and it ought to be automated so that we can look at it properly, pull it out properly, and evaluate it for what it is worth. Forty years from now you may have a pile of garbage, and it is not doing anybody any good.

I have kind of rambled about the bills themselves.

I feel it is important to discuss the agency that I represent here today, the National Law Enforcement Telecommunications System. I would like to discuss just briefly the agency.

In the middle 1960's we evolved from an evolutionary process which had been underway since the 1920's and the 1930's, when police agencies, larger ones, subscribed to teletype systems so that they could communicate with one another where the mails were not rapid enough to do the kind of job that they needed. But we really did not connect up the 48 continental States until the early 1960's. In 1966, finally, the State of Arizona was proud to be the home State for the national switching center. It was put in the Arizona Highway Patrol in 1966, when NLETS was organizing in a formal fashion instead of a general operation, as it had been for years. Finally, at long last, it connected up all the agencies together. It is like building a pipeline, and you are only putting half the fuel in it. Pretty soon it is going to be a full pipe. That is what happened to NLETS.

A couple of years ago, it got to a point where it was not uncommon for a 6-hour backlog in some of the busier agencies around the country if they decided to send a message for whatever reason to another agency. It might take hours to get to its destination, just because of the backlog of traffic.

NLETS at that time sat down among themselves and said, we have got to upgrade. And it began to look like it was going to be a pretty expensive proposition. The States, still not having enough money to do the kinds of things they would like to do the way they would like to do them, said, let us take a look and see if we can use some of the Federal LEAA money that has been handed around for these sorts of things. Are we not, as a consortium of the States, entitled to LEAA funds?

After deliberation, it was decided that we were a bona fide organization and entitled to LEAA money. So NLETS was allowed to upgrade themselves with the assistance of the Federal Government. And on the 24th day of December last year, we went into the newly upgraded NLETS operation and, in effect, it proved its worth to the extent that we pulled the plug, if you will, on the old system on February 1, 1974.

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The 1st day of February of this year, there were 17 State criminal justice communications systems hooked to NLETS that were computerized. The balance of the States were hooked up with a higher speed line than they have had in the past and more sophisticated terminal equipment. Twenty-three additional States have plans and have made application to my organization, requesting technical assistance from us and funds that LEAA has provided to upgrade their systems. So we will have over 40 of the States computerized in communications systems by the end of this year, if all the plans come about.

In the meantime, the FBI made application to NLETS to be included in the upgrade. They are on the system now, and we are using the FBI NCIC lines to Puerto Rico, Hawaii, and Alaska to connect those three agencies to the continental United States, giving them access to the balance of the law enforcement system for the very first time. They have never had message switching capability with the other States.

In the days that we see ahead, for example, the State of Alaska where there are concerns in Alaska on the future pipeline crews. That will be a construction project of immense magnitude that will draw thousands and thousands of people, probably, to Alaska to work on the various associated projects up there. They anticipate that there may be some problems with some of the people who come in to work up there. They were delighted with the opportunity to have an opportunity to talk to other States through this new medium.

NLETS is, as I mentioned earlier, a consortium of the States. We are an incorporated, nonprofit entity, incorporated under the laws of Delaware. Again, until recently, when this upgrade was envisioned and finally put in, it was a very loose kind of arrangement. The telephone company provided the telephone lines, they took upon themselves the billing operation, they added up how much it cost every month to operate the subsystems, divided it up by the number of customers. That is how the bill was paid. The telephone company was doing the billing.

When we wanted to go into this upgrade and wanted to examine the possibility of going to a better quality computer to handle higher speed communications and do that type of thing, we decided that it was high time that we got a little better organized and had a professional staff. That is when an executive director was hired and a permanent office facility was setup, an office where you could send your complaints and what have you.

We do not have data banks; we do not maintain them. But we like to believe that data banks are a necessary tool of the criminal justice community, and we would like to provide the links between them. That is what we are doing at the moment. We are now allowing the States to have a written record message system. It is analogous in a way to the UPI and AP wire services, where reporters can sit down and type out a message or a story, if you will, and put it on the teletype, where it is received verbatim on the other end of the wire in a very short period of time for anybody else that has business with that message. That is means of communication No. 1.

No. 2, we are giving to those communities who have an interest in it the ability for NLETS to provide driver's license information and motor vehicle registration information to the highway patrol

and the police departments of the country that need this kind of information on an out-of-State driver or out-of-State vehicle.

There will be a meeting in Pikesville, Md., in May, where matters of concern—it will be the annual meeting of the board of directors. We will discuss at that time things like this legislation and other matters that will be before us.

Mr. Chairman, I have rambled all over the place. I would like to just say in closing that NLETS is the product of a bunch of tough State officials who have weathered many bad times trying to work with limited resources as they put together a really good interstate law enforcement communications system. With LEAA, we think we have done that.

We are in the business of communications. We want to provide the network to give our information to another State, and let those two States engage in that.

If you have any questions, I would be delighted to answer them.

[The prepared statement of Mr. Beddome follows:]

Prepared Statement of C. J. Beddome

Mr. Chairman and members of this subcommittee, I appreciate the honor and opportunity of appearing before you to testify on the very important matters involved in the proposed Legislation before you, which is designed to regulate the collection, storage and dissemination of criminal justice information. The matters of security and privacy as it affects the collection, storage, processing and dissemination of criminal justice information is very important to me because I am one of the charter members of Project SEARCH. I had the opportunity to be one of their security and privacy committee members in the development and the publication of technical report #2 which is almost a Bible in the security and privacy area of criminal justice information systems today. I appear today as a spokesman for the National Law Enforcement Telecommunications Systems, Inc. I am the Executive Director of that organization. In this position, I am charged with the day-to-day administration of this corporate body of the several states.

GENERAL STATEMENT

Many states are presently actively considering Legislation in this same general area. I certainly agree that there is a need for Federal legislation to assure some degree of uniformity in the laws of the states and to settle some of the uncertainty that now exists, because there is a constant question as to what will be permitted in the way of state action to implement security and privacy safeguards and what standards new state and local systems will have to meet. Probably one of the reasons most of the states that are now working on this Legislation or already have it is their concern for the potential abuse of automated systems information when their records are disseminated to other states not having the proper safeguards. I would hope that this Federal Legislation which we are here discussing today will provide a catalyst that will spur all of the states to prompt action so that uniform safeguards will exist throughout the nation. I have heard and seen some of the testimony that has preceded me at these hearings. I hate to even consider the possibility that some of my comments may be repetitions; however, 20 years of law enforcement experience prompts me to be cautious about overlooking something essential so I must restate what others have said. We must not overlook the fact that there is a very urgent need within the criminal justice community for information that is timely, accurate, and responsive to the needs of the various components of this same criminal justice community. Recently published extensive studies by the National Advisory Commission on Criminal Justice Standards and Goals stresses the heavy dependence of the criminal justice system on information. It also describes how the system works and how and why people involved in this system use it. Operational information is critical to the police officer on the street. He should know about the people he is dealing with as he comes across them; about the automobiles they are driving. Those types of things he has to know for his life is in peril without it. If he makes an arrest, the court needs to have decent information on the subject before admitting him to bail. Probation

officers ought to have information about people they have on probation or parole that have been rearrested. Before sentencing convicted offenders, courts have their probation officers do extensive criminal background checks to find out whether information about the subject will influence the court for heavy or light sentence. The correctional officer, before he takes custody of an individual that has been remanded to the prison needs to know what type person he is taking responsibility for.

In the day-to-day operations of criminal justice agencies, constant challenges are presented to the practitioners and administrators alike. If they are to make intelligent decisions that affect the accused, the suspect, the victims, or society as a whole, they need rapid access to accurate data.

I even disagree with some of the recommendations of 4-hour turn-around on information to the courts. If I was the innocent victim of an arrest and wanted immediate bail, why shouldn't the system be able to immediately deliver to the magistrate information about my situation. Conversely, if I was presently out on bond for previous arrest, or a bail jumper from out of state, the court should be informed because the likelihood of my appearing in his court again would have to be evaluated more closely.

I don't know if I agree that total integration of systems is necessary but certainly good communications between state and local data banks by authorized users of the system is essential for the good of society.

The past several years with the assistance of funds from LEAA, the states have been developing extensive computer systems to assist in this area. The media and some others have been led to believe that the proliferation of these new criminal justice systems is evil somehow rather than allowing the criminal justice community to work smarter instead of harder.

The Chairman noted at the opening of these hearings that increased efficiency and sophistication of these automated criminal justice systems has compounded security and privacy problems. Some believe that the old inefficient manual systems provided a certain degree of protection or privacy to the individual. I'm one who believes somewhat the opposite. Old manual file systems without proper safeguards of who can access them and what happens to the paper when it's photocopied and scattered to the four winds is not really a matter of good record. With a sophisticated computer system, good audit trails can be developed. A computer is generally programmed to keep track of the time of day, location, terminal identification, and terminal operator. That type of audit trail leaves a permanent mark forever about *who* was in *what* file. Follow up audits can tell us who he gave it to or what he did with it. I think that these new sophisticated systems can build in far more security and privacy safeguards then we would ever have dreamed in the old manual systems. I have also seen items in the media that attacks the deadly effectiveness and efficiency of these systems as though that too was something evil. My question is, why in the world have any kind of function if you don't want it to do the best job possible. Why hire a policeman, why have courts, why have correctional institutions if we don't want them to do very well the things they were designed to do best, and why prohibit them from having the very tools that they need to do an excellent job. Any other kind of an attitude would set back the equitable administration of justice in our society. The problem is that we haven't evaluated the effectiveness of the system properly. The inefficient components of the system need to be remedied immediately.

We must assume that criminal justice agencies in the several states all have statutory authority within their states to conduct criminal justice business. To have a requirement in the law "that without an express authorization to receive criminal justice information by Federal or state statute," seems an undue burden on the states. This might require tampering with a state law when at the moment, that state law is adequate. It seems wrong to me to pass any Federal Legislation that would preempt many laws in the several states.

I have a communication from Colonel Wayne Keith of the Colorado State Patrol. The Colonel makes a very good comment. He said that he would be opposed to endorsing SB2964 until we have a resolution to the conflicts between SB2964 and the Project SEARCH recommendations. He also wants an opinion of a court of proper jurisdiction as to the constitutionality of the Attorney General enforcing codes of official conduct in local matters. He says he is particularly reluctant to support any legislation which contradicts and/or subverts the recommendations of Project SEARCH which have been developed over nearly 5 years with considerable investment of funds and man effort; an effort well coordinated among Federal, state, and local governments.

I would like to repeat what others have no doubt already told you; "prior Federal funding or interstate activity of some of these systems shouldn't necessarily be the justification of Federal law or regulations that will in effect nullify many adequate state laws and regulations on the matter of security and privacy of criminal records systems."

No matter who furnishes the money, the system and the records in it belong to the users and contributors not the Federal Government. Criminal law enforcement is usually a state function. We agree that Federal standards are okay if states help to formulate them. For example, it seems impossible to override the draft rules issued recently by LEAA and the FBI because they seem to take on some special property when published as draft rules by the Federal Government.

The Chairman's opening comments reflect his concern over:

1. Quality and accuracy of information which should be allowed to circulate in the criminal justice data system.
2. Whether it should be computerized.
3. Lack of dispositions.
4. Dissemination outside criminal justice agencies (Also a Presidential concern).

We agree with him about release of data outside the criminal justice system. This matter was addressed by the Arizona Legislature and they arrived at a good solution to the problem by restricting just what the State Criminal Identification Section could release to non-criminal justice agencies.

We have already expressed ourself about the need for computers to increase the quality of the data and keep better audit trails.

We can't say too much about how we too want the records to reflect the final dispositions of the cases. Police are always sensitive to claims of false arrest so they faithfully fingerprint every arrested individual except for their "regular misdemeanor customers." Institutions are also careful to record prints at time of receiving the individuals. It is the activity between the police and corrections and after the release from institutions that the system breaks down.

We need to encourage or demand that each person who handles the records of an offender records his activity accurately and in timely fashion.

We agree with Senator Mathias—it is tough on the mobile American trying to get records corrected if he has to run all over the country. A problem I see in his concept is that the records in the system belong to the agency that contributes them.

The state, therefore, must have some say so about how the system will operate.

I can't presume to speak for the FBI, but my 20 years of law enforcement experience has always been the same: The FBI Identification Division has maintained that the records were the property of the contributing agency and only the contributor could get them removed from the system. Menard vs. Mitchell would not be on file today if Menard had used local remedy; i.e. a California court order requesting expungement at the arresting agency rather than fight with the FBI in Washington, D.C.

The system too must be protected from the abusive citizen that constantly wants to get access to his own records to "challenge" or "Correct" them.

Sealing the records troubles lots of conscientious policemen. If an order is granted to seal a file or a cycle within a file, the fingerprints should still be left in condition to aid an identification process if comparison fingerprints are submitted or new arrest prints come in to the file. Fingerprint files are only searchable by highly skilled technicians who carefully match the prints. This method of identification is not done by name of FBI number as many suppose.

Non-prosecution really can come about for many reasons. It is not fair to society to remove arrest data from the files if non-prosecution is due to plea bargaining or extradition to other jurisdictions where other charges are pending.

We are very concerned about the attitude being taken in both bills about criminal intelligence systems.

Criminal intelligence is closely guarded information in the various systems in operation. One of the primary responsibilities of the police is crime prevention. You cannot engage in crime prevention solely on your good reputation for solving crimes after they are reported. Investigative leads, tips, and rumors must be listened to and investigated. Modus operandi files need to be kept. Crime analysis must be done regularly. As long as this sensitive data is kept separate and apart from the routine arrest and case disposition data and not generally available to every member of the department let alone outsiders. If one political kidnapping or fire bombing can be prevented because intelligence information was accepted for evaluation then it proves its value to the law abiding majority of society.

Project SEARCH developed a model security and privacy bill that defines probably better than either of these two bills the kind of data that should be kept and how often it should be reevaluated for its worth.

Industry has a system called "zero defects" where quality control is practiced by everyone so that the product produced is reliable and useful to the customers. We need more of that in our business.

At this point, I would like to discuss NLETS. NLETS really has an important role to play in criminal justice communications.

NLETS stands for National Law Enforcement Telecommunications Systems, Inc. From the time of its formation as a 48 state entity in the middle 60's until last December, it was known as the Law Enforcement Teletype System. This organization realized prior to its recent upgrading operation that it should develop systems capability for more than just teletype message switching. The system's capability is there now to do networking or telecommunications in its broadest sense for anyone in the criminal justice community that has need for its services.

NLETS is made up of representatives of law enforcement agencies from each of the 48 continental United States and the District of Columbia. We are incorporated under the laws of the State of Delaware and are a non-profit organization whose purpose is to provide improved law enforcement communications.

Presently, NLETS is comprised of eight regions or circuits of several states each. These state communications officers elect their Circuit Chairman to represent them on the Board of Directors. The Circuit Chairmen are automatically members of the Board of Directors. NLETS, as a national body, additionally elected the usual officers to represent them in corporate matters; that is, a President, Vice President, and Secretary. At the last annual meeting in December, the Board changed the name of the organization from National Law Enforcement Teletype Systems to National Law Enforcement Telecommunications Systems. They also changed the By-Laws to provide for a slightly different organizational structure. Our next annual meeting will be this coming May in Pikesville, Maryland, where we will elect a President, a First Vice President, and a Second Vice President. The need for a Secretary-Treasurer has been dispensed with by the addition of an Executive Director who is charged with the administration of the affairs of the corporation, and as such becomes the paid professional staff. At the present time, there is only myself and a secretary on the payroll of the company. All other essential functions being done by professionals that are not employees of the LETS organization are doing their work under contract.

The Board of Directors will meet at least once a year to conduct the organization's business. All policy decisions are made by the Board of Directors. The policy decisions range from how the system is to be operated technically to how the corporation's general business will be handled. It is the Executive Director's function to see that the Board's decisions on system operational matters are carried out. The Executive Director's office is located at 1202 E. Maryland Avenue, Phoenix, Arizona. The computers that switch the traffic back and forth between the Circuits are located at the Arizona Department of Public Safety Headquarters in Phoenix, Arizona, so that they are actually manned by a law enforcement agency. The Arizona Department of Public Safety has a contract to man and house the system hardware. They also currently are providing the fiscal management running the NLETS budget on the DPS computer and providing the billing of all the States for their share of the costs. Presently we are charging our system members $613.04 each month. All non-members that are part of the system are charged actual line costs of $613.04 per month; whichever is greater.

The Board of Directors voted in May, 1973, to proceed with a system upgrade program that provides for increasing the number of communications lines used in the LETS system from eight lines to 50 lines. In addition to the increase in the number of lines, the system line speeds were increased from 100 words per minute (using teletype model #28 ASR's) to 150 words per minute (using teletype model #37 ASR's), and to provide 2400 baud lines for the direct connection of the LETS switching computer to computers in the states.

The result of the system upgrade program is a higher-speed system that has the capability of processing a full day's traffic on the old system in a single hour.

NLETS is the product of a bunch of tough intelligent state officials who have weathered many bad times trying to work with limited financial resources as they put together a really good interstate law enforcement communications system. Our present configuration is well able to handle some other networks now. We don't want someone to look at us with any more regulatory rules in their eyes than they would to Western Union or the Bell System, for example. We don't have data banks and neither do they.

Gentlemen, we have worked hard for years to put together this necessary communications system. The first police teletype systems go back to the thirties when larger agencies needed economical message systems to exchange data with one another and couldn't wait for the mail to handle their details.

If there is any weakness in how NLETS has been functioning as the representative of the states in matters of national operational policy or political philosophy it is that probably there are very few NLETS national representatives that are in that position as a direct appointment of their Governor's Office. Most of the time, it is authority assumed through the appointment of the Colonel in charge of the State Police or State Patrol who generally handles the statewide criminal justice communication system and also, of course, is involved in interstate matters; or the attorney General in some states who takes care of those functions.

I have requested input to this Legislation from each of the state chiefs serviced by the system and many responded with comments. I'd like to submit a few to the committee for the record.

I'd also like the record to show that we mailed the Chief Counsel of this Committee a copy of the NLETS operators manual. This manual has several sections dealing with our operations, policies, and procedures. It even discusses the financial arrangements of the system. We feel your counsel is competent to select those portions of the manual that should be entered into the records of this proceeding.

Mr. Chairman, that concludes my testimony. I would be willing to submit to any questions I may be able to answer.

ARIZONA REVISED STATUTES

41-1750 CRIMINAL IDENTIFICATION SECTION; DUTIES

A. There shall be a criminal identification section within the department of public safety.

B. The criminal identification section shall:

1. Procure and maintain records of photographs, descriptions, fingerprints, dispositions and such other information as may be pertinent to all persons who have been arrested for or convicted of a public offense within the state.

2. Collect information concerning the number and nature of offenses known to have been committed in this state, of the legal steps taken in connection therewith, and such other information as shall be useful in the study of crime in the administration of justice.

3. Cooperate with the criminal identification bureaus in other states and with the appropriate agency of the federal government in the exchange of information pertinent to violators of the law. In addition, the criminal identification section shall provide for the rapid exchange of information concerning the commission of crime and the detection of violators of the law, between the law enforcement agencies of this state and its political subdivisions and the law enforcement agencies of other states and of the federal government.

4. Furnish assistance to peace officers throughout the state in crime scene investigation for the detection of latent fingerprints, and in the comparison thereof.

5. Provide information from its records to law enforcement agencies of the state or its political subdivisions upon request by the chief officer of such agency or his authorized representative. Such information shall be used only for purposes of law enforcement.

6. Provide information from its records to courts, prosecutors or correctional agencies of the state or its political subdivisions upon request by the chief office of such agency or his authorized representative. Such information shall be used only for purposes of the criminal justice system.

7. Provide information from its records relating to convictions for public offenses to nonlaw enforcement agencies of the state or its political subdivisions upon request by the chief officer of such agency or his authorized representative, for the purpose of evaluating the fitness of prospective employees of such agency. Such information shall be used only for the purpose of such evaluation.

8. Provide information from its records relating to convictions for public offenses to licensing and regulatory agencies of the state or its political subdivisions upon request by the chief officer of such agency or his authorized representative, for the purpose of evaluating the fitness of prospective licensees. Such information shall be used only for the purpose of such evaluation.

9. Provide information from its records relating to arrests or convictions for public offenses to the subject of such information, or to his attorney at the request of the subject, and when accompanied by proper identification.

C. The chief officers of law enforcement agencies of the state or its political subdivisions shall provide to the criminal identification section such information concerning crimes and persons arrested for or convicted of public offenses within the state as the chief of the criminal identification section, with the approval of the director, shall deem useful for the study or prevention of crime and for the administration of justice.

D. Any person who releases or procures the release of information held by the criminal identification section other than as provided by this section, or who uses such information for a purpose other than as provided by this section, is guilty of a misdemeanor.

E. The chief of the criminal identification section may, with the written approval of the director and in the manner prescribed by law, remove and destroy such records as he determines are no longer of value in the detection or prevention of crime.

F. The chief of the criminal identification section, subject to the approval of the director, shall make and issue rules and regulations relating to the procurement and dissemination of information, in the manner prescribed by law.

G. All nonlaw enforcement agencies of the state or its political subdivisions may establish by rule, regulation or ordinance the need for fingerprint or background investigations for purposes of employment or licensing and may, thereafter, utilize the criminal identification section of the department of public safety in accordance with subsection F. Added Laws 1968, Ch. 209, § 1, eff. July 1, 1968; as amended Laws 1972, Ch. 39, § 1.

(Effective April 6, 1972.)

Senator ERVIN. Does your organization have the benefit of any LEAA funds?

Mr. BEDDOME. Yes, sir. In this recent upgrade, there was $1½ million, in round figures, that would help us provide some of this new capability, but we do pay our own way and are charging our customers, if you will, $613.04 a month, so that the States are paying their fair share of the system.

Senator ERVIN. I think you run a very fine service, and I commend you for the great work that you are doing.

Mr. BEDDOME. Thank you, Senator.

Mr. BASKIR. Mr. Beddome, do I understand from your oral and written testimony that you would welcome Federal standards with respect to the interchange of criminal justice information, but that you would prefer that these standards might set minimums to be left to the States to work out or apply, rather than having the Federal Government set the standards, and also administer them and control the operation of State and local law-enforcement information systems?

Mr. BEDDOME. I have two kinds of people that I represent. One would agree with the statement you just made. The other would say that we are not fussy so long as we are consulted. We want to put in the input to your standards. We are guarding our information jealously, and maybe we should have a majority vote on the commission or a board, or whatever is put toegther to oversee the standards of conduct and procedures.

Mr. BASKIR. At a minimum, you think the States ought to have an equal voice, if not a majority voice, in the control and the formulation of policy that concerns their own activities, not Federal Government activities, at least that.

Is that what I understand?

Mr. BEDDOME. Very definitely.

Mr. BASKIR. I gather you have no objection to Federal legislation which can set uniform minimums and uniform goals to be applied by the States.

Mr. BEDDOME. Without exception, those people that responded to that question—and I proposed it almost that way prior to this day—they all agreed along this way. The only thing that would trouble some of them was something that would hinder or impede good law enforcement and good criminal justice.

Mr. BASKIR. As long as the minimum is sophisticated and is based on an awareness of State law enforcement needs, such that it does not unjustly interfere with those needs, such a minimum would constitute good legislation. There would be no problem with minimum Federal guidelines or standards in the states that have been applying.

Mr. BEDDOME. I would think not.

Mr. BASKIR. I understand from what you said, that NLETS up to the present time is a totally State-run, State-organized cooperative effort, which is totally State-financed.

Mr. BEDDOME. That is correct, sir.

Mr. BASKIR. It is certainly the desire of the participating States and NLETS that it at least remain that way.

Is that correct?

Mr. BEDDOME. Yes, it is, sir. We are appreciative of the LEAA and the Federal Government for the financial assistance to upgrade the system. We really want to be independent; we want to run our own system.

Mr. BASKIR. Do you see the need for the Federal Government to operate a system such as the NLETS?

Mr. BEDDOME. No. I find that kind of hard to answer, because I realize it is an extremely—that there are extremely broad implications in it. As we go down the road with more automation and more rapid communications, there certainly is a lot of interstate implication there, an area of interest to the Federal Government.

Mr. BASKIR. Recently, I understand, we have had some testimony which indicates that the FBI applied to the Attorney General of the United States for authority, or for permission, to operate the NLETS kind of system, in much the same way as it applied a couple of years ago, and was granted the authority to run the interstate exchange of criminal histories. Has there been any sentiment expressed in the NLETS organization with respect to this kind of application?

Mr. BEDDOME. Yes. We have never really seen—this is one of the things that you hear about—we have not had documents in our hands that say, this is exactly what the FBI wants to do. But we are concerned, because it has been a State-run operation, and we would probably resist it as much as we could, the surrender of the system to the Federal Government. That is what we are looking at. We are not looking at a private war with the FBI but a surrender to the Federal Government of something the States have put together.

In all honesty, there are times—in years gone by, the bad times that I talked a while ago—when it was a 6-hour backlog, for example, before you could get your message from Los Anglees to Cleveland, Ohio, or whatever. It was frustrating in those days, and I personally, in times gone by, when I sat, either with a working group or representing my colonel on the NCIC advisory board requested assistance. I

have heard the NCIC group state, Lord help us, come in and get your FBI switching center up to speed and relieve the strain on NLETS and do what they are doing, because they are not doing a good job.

Those times are behind us, and there is a lot of pride among those proud people that put this thing together. They are—they know we have a system that is really functioning well. We do not want to surrender it now to anybody.

Mr. BASKIR. The application the FBI had made did not come to the attention of the NLETS organization in any official way.

Is that correct?

Mr. BEDDOME. That is correct, sir.

Mr. BASKIR. The application was made a month ago. There could very well be a decision without NLETS' views. You were never asked for your views?

Mr. BEDDOME. Not directly. I had the opportunity to appear with several other witnesses at a briefing with Attorney General Saxbe last month. It was mentioned there, when President Tom Allen from NLETS and I represented the agency at that briefing. From that standpoint, I would say yes, we have official knowledge that there was interest in the FBI running the NLETS operation, or at least upgrading most of them so that NLETS would be ineffective, no longer needed. Then it would become as it is today, sort of a free system. You pay for your terminals, the NCIC terminals, and the line charges are gratis from the Government.

Mr. BASKIR. The memoranda involved in the FBI's plea have been given to the subcommittee and are available to the public. A reading of the subcommittee hearing record might substitute for official information or official notice to NLETS. Doubtless, the information is in the record, and is available for publication, for you and for the other members of NLETS.

There has also been some testimony about the future plans for NLETS, in respect to a study going on at the Jet Propulsion Laboratory concerning satellite communications, looking, I guess, beyond the period of the late 1970's. Could you elaborate on that, and why you think there may be a need for this, or what the advantages relating to this kind of an improvement are?

Mr. BEDDOME. People with vision have looked at history, and realized what will happen when you provide a needed service, and upgrading the means for providing a needed service. The future system probably will not be run until that pipeline, too, is full. At the same time the LEAA put money into the NLETS upgrading operation. They contracted with one of the national resource groups, which is the Jet Propulsion Laboratory at Cal Tech in Pasadena, and asked them to take, as input, a needs study that was being put together by Project SEARCH and to develop a system of the future, one that would accomodate NLETS at some point in time down the road when and if it reaches the saturation point.

I do not know that if LEAA, at the time that they contracted really envisioned that maybe NLETS would be the system of the future, or this was just a vision or if they said, hey, something else is going to have to happen. We need some intelligent input so that at some point down the road, when NLETS is saturated again some other kind of system is going to have to come along, and it ought to be put together now, so that we have plenty of time and a lot of the technical people working on it.

So, the work is underway right now, in Pasadena. I am one of the ones who is on the steering committee. There are people from many disciplines and several government agencies around the country that are on that committee, and just as recently as either Friday of last week or Monday of this week, before I left Phoenix, I had a call from Mr. Pat Rygh, who is the project coordinator on this project. Mr. Rygh asked me for permission to send some of his technical people in to DPS headquarters to see the people who are running NLETS computers, the computer maker and so forth; so that there is a very close relationship there from that standpoint, at least, evaluating what NLETS is doing today, what kind of hardware it has, and looking down the road a ways so you can have enough vision of the possibility of the growth of the criminal justice communications systems of this country to a place where it is not beyond the realm of possibility where we would be using ground stations and satellites in the future.

Mr. BASKIR. Thank you very much.

Mr. GITENSTEIN. I just want to follow up with a few technical questions on exactly how NLETS operates. As I understand it, NLETS is a transparent system in the sense that no information is stored. It is not a data bank, it is only a communication link between individual law enforcement agencies.

Is that correct?

Mr. BEDDOME. It is not a data bank system. Also, we are not now transparent, because programing is not complete. It was supposed to be done by the 18th of this month. I am not sure whether it will be on schedule, but certainly within the next few days, it will no longer have the capability to store the message that is passed through the system in the transaction logs.

Let's assume you sent a message to another agency. The transaction log of the computer, which is essential—records whether everybody is hooked up, the time stamping of the message, the agency from whom it was sent, to whom it is addressed, and any of this kind of transaction data—to who is sending messages to where, how long they are, those types of things. That type of recording is essential to good network management—you know, whether your system is becoming overburdened, or whether you need to reorganize. Temporarily, we are storing the whole message for log analysis. It is done as soon as the logs have been run through another process, another computer, just to glean out that transaction information. In a very short period of time, there is a technical term called truncating, where the computer will be programed to look at the information which has the address of the message, who was sending it to whom, if you will, and the time of day. It will see what type of message it is, whether it is an administrative message or whether it is an inquiry for a driver record someplace, or a motor vehicle inquiry; and it will count the number of characters in the message, which we would need to know for message lengths, and the types of things for the statisticians. After that, the truncating occurs which is merely dropping out the text, so that there is no record ever of what is was.

Mr. GITENSTEIN. There are both advantages and disadvantages to keeping an actual copy, keeping the message on the system. One way to observe how the system is working is to keep a copy of all messages that are being transmitted on the system.

Mr. BEDDOME. There is a philosophical difference. What we did—I have to say we; I am now part of the organization, although I was not involved in the technical design at that time. What we did was to decide that we are a communications service. If we are going to be tying data banks together, the data bank managers, have the responsibility to know who they have agreements with, who they are talking to, and what kind of information is being exercised, and by whom. We are playing the role of the communications system, like the telephone company does when it hooks you and your cousin up in another city. Once the lines are hooked up, the telephone company is out of the way, and they do not know what the conversation is.

Mr. GITENSTEIN. Who makes the decision as to what kind of data bank can be hooked into NLETS?

Mr. BEDDOME. The agency that wants to hook up to NLETS has to present a written petition to us to do this, and it is discussed, and the board of directors decides whether this is in the purview of NLETS or not, at least until such time that we have fulfilled our obligations to LEAA. LEAA provided us some of the money for the upgrade, they, too, take a look at it. So, from the standpoint of the U.S. Department of Justice deciding whether or not we are clean, and we are abiding.

Mr. GITENSTEIN. Is there someone looking at exactly what is going to be included in the data bank that is going to be connected up? What type of information is going to be accessed, and what are the conditions under which the information can be accessed?

Mr. BEDDOME. That is correct, sir.

Mr. GITENSTEIN. Senator Ervin's bill controls the exchange of information from one agency to another. Generally, the bill controls the exchange of information from an agency in one State to an agency in another State, and of course defines the types of information. The critical link as to how the information is to flow is a system like NLETS, is it not? That is the sort of lifeblood of law enforcement communications; all the information we are talking about generally would flow through something like NLETS, if not NLETS itself.

Mr. BEDDOME. That is correct, sir.

Mr. GITENSTEIN. In this sense, there are legislative controls. With respect to the collection and dissemination of that information, this legislation has, in effect, a very profound effect on NLETS.

Mr. BEDDOME. Very much. We would be very much regulated by the bill. I am saying so even if we maintain the posture we are maintaining at the moment, but all we are doing is providing a service between agencies. I am satisfied that, whatever product the Congress comes up with this year, and I assume they will develop something this year, I am sure it will involve NLETS or any kind of other agency that is not even on the drawing boards today that looks like NLETS.

Mr. GITENSTEIN. Could you please explain, in layman's terms, why it is that the FBI needs to have its own NLETS, so to speak, in order to operate NCIC?

Mr. BEDDOME. I do not know if I can really do justice to an answer to the question. If I understand how the NCIC program works, at the moment there are two kinds of information in there. Let us call it the wanteds and criminal history information.

Now, there are some several States that have started to automate their criminal history records, so the CCH, the jargon for that, the nomenclature for that kind of information; the design of the CCH program, which is a secondary function that has come along, that has been talked about for a long time, both before and after the Project SEARCH—it went back to the original concept of the State maintaining its own records, and the FBI being the index, if you will. So that if an inquiry were to be made against a subject, the index would, in effect, point its finger at the agency holding the file, and in the interests of expedience and efficiency, thoughts and communications let's call it, that provided a query to the index. The response could, in effect, switch that Agency A to Agency B, so you would not have to have parallelling lines and a duplication of expense.

I do not know whether I have really beat around the bush on it, or if I gave you an answer that you can work with.

Mr. GITENSTEIN. The NLETS systems could be the communication systems that would actually do the switching. NLETS could be the system that would help the agency make an inquiry to the index, and also get the record from the agency that the index pointed to.

Is that correct?

Mr. BEDDOME. That is technically feasible. It was never envisioned by any of the NLETS people, that they would take over the communications links that the FBI is maintaining with the NCIC. It is technically feasible, just as it could go the other way.

Mr. GITENSTEIN. The reason that the FBI now, or NLETS, or NCIC needs that capability is that their own lines cannot fulfill that problem.

Is that correct?

Mr. BEDDOME. I do not know whether or not the computer capabilities at FBI headquarters has the capacity to accommodate the additional message volume, and so forth. NCIC is a very busy system, and there is a heck of a lot of activity in it right now. But what I talked about, what we are talking about at NLETS, is lengthy messages as opposed to the short burst of a question and a summary response; and if you burden down one system with the other kind of activity today, either one of us would probably break down. Either one of us would probably have to expand our system to accommodate the other man's traffic.

At the moment, the NLETS people, at least, they were not envisioning getting into the data bank business, the criminal data bank, at least. We did say, driver information, motor vehicle information we could work back and forth.

Mr. GITENSTEIN. Thank you.

Senator ERVIN. Thank you very much for your very substantial contribution to the study of this committee.

Counsel will call the next witness.

Mr. BASKIR. Mr. Chairman, our next witness this morning is Mr. Donald Carroll and Mr. Michael Capizzi, who are appearing on behalf of the National Enforcement Intelligence Units, and the Interstate Organized Crime Index.

Senator ERVIN. Gentlemen, I want to welcome you, both of you, to the subcommittee, and to thank you for being willing to assist us in the study of this very important legislation.

TESTIMONY OF DONALD H. CARROLL, SENIOR INVESTIGATOR, DI-TRICT ATTORNEY'S OFFICE, ORANGE COUNTY, CALIF., GENERA CHAIRMAN, LAW ENFORCEMENT INTELLIGENCE UNIT (LEIU) CHAIRMAN, INTERSTATE ORGANIZED CRIME INDEX (IOCI)

Mr. CARROLL. Mr. Chairman, I do have a prepared statement I would like to read at this time.

Mr. Chairman, members of the subcommittee, we appreciate the privilege of appearing before you to testify on the very important matters of security and privacy as it relates to the exchange of information between agencies belonging to the Law Enforcement Intelligence Unit and/or the Interstate Organized Crime Index.

I appear in three capacities: as general chairman of the Law Enforcement Intelligence Unit, chairman of the Interstate Organized Crime Index, and senior investigator for the Orange County district attorney's office in California.

Appearing with me is Mr. Michael Capizzi, assistant district attorney of Orange County, Calif. I will relate the history and purpose of the Law Enforcement Intelligence Unit, which we commonly call LEIU; and the Interstate Organized Crime Index, which we refer to as IOCI, and attempt to explain the organizational and management structure of each.

I will explain the progress made from the time of the inception of LEIU in 1956 to the present. After my testimony, Mr. Capizzi will express our views on how the two bills under consideration would affect LEIU and IOCI.

The Law Enforcement Intelligence Unit was formed in San Francisco, Calif., on March 29, 1956. It is an organization through which law enforcement officers can keep abreast of the current whereabouts and activities of subjects involved in organized crime.

The function of an intelligence unit in law enforcement is to keep constant check on the activities of the underworld through confidential investigations, evaluations and maintenance of proper liaison with officials and other sources of information locally, as well as nationally and internationally.

On March 29, 1956, representatives of 26 law enforcement agencies met in San Francisco, Calif. At this session, suggestions, criticisms, administrative decisions, purposes, election of officers and formation of committees were aired.

The most important result of the meeting was the formation of the Law Enforcement Intelligence Unit itself. From that date until the present, the purpose of LEIU was established as: The gathering, recording, investigating, and exchange of confidential information not available through regular police channels on individuals and organizations involved in, but not necessarily limited to, the following criminal activities and those who aid, directly or indirectly, in these activities:

Bookmaking principals; fixers, known or suspected; gambling house operators; mafia; narcotics, principal peddlers; pimps and procurers; racket attorneys; racketeers, known or suspected; receivers of stolen property, fingermen, et cetera; roving professional gamblers; other organized crime subjects of interest to law enforcement.

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Numerous meetings have been held between that date and this resulting in the adoption of the LEIU card to be used in exchanging information on subjects involved in organized crime.

The organization is divided geographically into four zones: The Eastern Zone, the Central Zone, Northwestern and Southwestern United States. Each Zone has a chairman and vice-chairman. Nationally, the organization has a general chairman and a general vice-chairman, a secretary and a treasurer.

The national officers and zone officers make up the executive board of LEIU. The executive board is the governing body of LEIU and establishes policy and passes upon the admission of all members.

A member is a law enforcement agency of general jurisdiction, having an intelligence function. Each member agency appoints an LEIU representative to be the contact for the Law Enforcement Intelligence Unit.

Membership in LEIU is difficult to attain, in that you must be sponsored by an LEIU member, and you must be endorsed by three other members. All members, of which there are approximately 230, are notified of the application for membership, and an investigation is conducted as to the background of the agency and individual, to represent that agency, and then a vote is taken at the next executive board meeting. Termination of a member is more easily obtained.

To subject a subject to the LEIU file, a member fills out a form which contains information as to his identity, his criminal activity, and his associates. This form is then submitted to his zone chairman for review.

The zone chairman's responsibility is to determine if this subject is involved in organized crime based on the information submitted and that he falls into one of two categories for distribution—either a zone distribution only or a national distribution.

After making his decision, the zone chairman forwards the form to the central coordinating agency for the law enforcement intelligence unit, which is the Department of Justice, in Sacramento, Calif.

They, in turn, reduce this information to a 5 by 8 card which will also contain the subject's photograph. The law enforcement intelligence unit card is then sent to all national members or zone members, depending upon the determination made earlier.

One of the purposes of this card is that if this subject would appear in your respective area, a member could look at the card and tell who submitted this subject to the file and would know what agency to contact for additional information on him.

A member also commits his agency to conduct upon request independent investigations, surveillances, and, through background checks, on behalf of other members.

With the modern means of transportation, an organized crime subject can travel from coast to coast in a matter of hours. The benefits of membership in the law enforcement intelligence unit are many, but include the ability to pick up a telephone and call another member across the country and request that an airplane be met and a surveillance conducted in that city and ascertain what other organized crime subjects contact the person in question.

The confidential information received back, in most instances, is priceless. The membership of the law enforcement intelligence unit is comprised of the major law enforcement agencies in the United States, and covers the majority of the 50 States.

Due to the exchange of information, and the meetings both zone and national, the representatives of the member agencies over the years have established a relationship between themselves of trust and respect.

There is little hesitancy in exchanging confidential information between members, as the law enforcement intelligence unit constitution and by-laws restrict the dissemination to members only unless the submitting agency authorizes the release of the information to another law enforcement agency who is not a member.

Each member agency has a 5 by 8 card on every subject submitted to the law enforcement intelligence unit file. The manual system has been an adequate means of storing information on the subjects until the last 4 or 5 years, when the file has become too large and cumbersome to research manually.

There is also a need for a more specialized index for organized crime subjects and the card system has little, if any, analytical capability.

In light of the limitations of the card system, both the law enforcement intelligence unit and the Law Enforcement Assistance Administration (LEAA) saw the need for a much more sophisticated system of communication between law enforcement intelligence agencies.

Therefore, the law enforcement intelligence unit undertook the interstate organized crime index project with grant funding from the the Law Enforcement Assistance Administration. The objectives of the project were to define, develop, demonstrate, test, and evaluate a prototype computerized central index.

The project was divided into three phases: Development and design of prototype system; test and demonstration of the system; and evaluation and redesign for an operational system.

The first meeting on the project took place in May 1971 in Washington, D.C. A grant application was awarded by the Law Enforcement Assistance Administration in September 1971. The project committee was formed on September 23, 1971. The security and privacy subcommittee was formed on September 19, 1971. A data base format was formed on March 1, 1972. The "Security and Privacy Code of Ethics" was published April 4, 1972.

The project is directed by the interstate organized crime index executive committee which is composed of the law enforcement intelligence unit executive board, six elected terminal agency representatives, and an Law Enforcement Assistance Administration representative.

Members of the executive committee also compose the security and privacy committee and the technical operations committee.

The security and privacy committee addresses itself to questions concerning the security of the information in the data base, and the protection of individuals' rights.

The committee prepared a manual entitled "Security and Privacy Policy and Procedures," which establishes minimum security standards. The technical operations committee addresses questions concerning the technical requirements of the system such as hardware, software, et cetera. Technical guidance to the committees is provided by a staff from California Crime Technological Research Foundation, CCTRF.

The system is composed of a computerized central index, CI, 30 dedicated terminals, and a central coordinating agency, CCA.

The central index contains the names, descriptions, and other identifying data on principals and associates. Information in the data base must be "public record information." Subjects engaged in the following criminal activities are included in the data base:

MAJOR NARCOTICS TRAFFICKING

Large-scale illegal manufacturing, importation, or wholesale distribution of narcotics.

GAMBLING

Participant in a network of illegal gambling operations includes horse races, lotteries, athletic contests, large dice games, and casinos.

LOAN SHARKING

Regular practice of lending money at higher rates than the legally prescribed limit, often accompanied by use of force or threat of force to collect loans and prevent protest or detection.

LABOR RACKETEERING

Systematic practice of imposing the collection, for fictitious unions, of "dues" from employers or of cooperating with employers in creating "sweetheart contracts" which defeat the purposes of collective bargaining; imposing settlements on labor; extorting funds by threatening labor disruption or by requiring the employment of individuals as paper labor consultants or employees; and diverting funds from union pension or welfare systems to organized crime-related businesses.

CRIMINAL RECEIVING

Process of systematically distributing, transporting, or receiving stolen goods; not limited to fencing operation.

BRIBING AND CORRUPTING OF PUBLIC OFFICIALS

Use of bribes and political contributions to systematically nullify the enforcement of existing laws, or to influence political activities which affect organized crime operations; public officials, includes law enforcement officials, prosecutors, legislators, judges, regulatory agency officials, mayors, and councilmen, et cetera.

SECURITY AND FRAUDS

To engage, during the conduct of business activities related to organized crime syndicates, in widespread public distribution or sale of stolen or counterfeit stocks, bonds, securities, and money; insurance frauds, illegal diversion of assets of insurance companies, embezzlement of large sums of money, and fraudulent bankruptcies.

ENFORCING

Use of threat of violence, force, or physical destruction as part of the technique for carrying out any of the criminal activities in this index or preventing detection or conviction.

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EXTORTING

Use of threat of violence, force, or physical destruction against legitimate business enterprises; objects including obtaining an ownership share of the business, cash payments, or forcing purchase of unnecessary equipment or services.

ORGANIZED PROSTITUTION

Maintenance of large-scale network of prostitution services.

HIJACKING

Process of systematically robbing the conveyors legal or illegal goods.

ARSON

Regular participation in arson activities either for hire or as one of the techniques of enforcing or extortion.

LIQUOR VIOLATORS

Participation in a significant volume of illegal liquor traffic; includes distilleries, transport and storing of alcohol, sale and tax fraud associated with these activities.

OTHER

Associated with organized crime principals and associates.

The CCA has the responsibility of updating the files and submitting the computer tapes to the CI for inclusion into the data base.

The system has undergone an independent evaluation to determine the configuration of an ideal system. The recommendations from this evaluation are that an on-line computerized system be developed for IOCI. The computerized system approach would provide for the following functions: on-line subject inquiry to a centralized data base; update of the subject data via remote terminals; coordination between agencies interested in the same subject; administrative message capability among terminal agencies; data base search and analysis capability; and system management.

In addition, the use of the recommended automated conceptual approach would incorporate the following features: Interactive communications between the terminal user and the computer for on-line inquiry and update; compliance with public record privacy requirements; expansion of the subject data base by establishing coordinative capabilities; improvement of the inquiry capability by establishing selective response formats and options; and simplification of the sign-on procedure while retaining security.

The recommendation is based, fundamentally, upon the need for intelligence agencies to exchange and coordinate information related to organized criminal activities.

Presently, information is exchanged by numerous methods few of which are formalized or systematic. On an interstate basis, the IOCI concept is widely supported by users as a means for improving the exchange and coordination of information.

Other benefits of the system include: coordination among agencies interested in the same subjects; leads to criminal associates and businesses; identification of unknown subjects; and data base analysis capability.

Additionally, IOCI has had the effect of significantly increasing the rapport and coordination of agencies participating in the use of the system. This cooperative atmosphere has aided in bringing the nature of nationwide organized criminal activities into focus.

In a recent poll of the LEIU membership, the 230 agency members stated they would like to see the project continue—that they found it to be an extremely valuable tool in the fight against organized crime.

In addition, unsolicited, the California Peace Officers Association resolved that the Interstate Organized Crime Index is a viable tool for law enforcement across the Nation.

If allowed to continue, I view the project as enlarging to somewhere between 150 and 200 terminals across the United States, allowing them access to one central computer.

A couple of examples of the benefits of this system are the ability to query a computer on a subject's name and receive not only his complete name and identifying data, but what other law enforcement agencies in the United States are holding current information on this subject.

The ability to make an inquiry by the type of crime and some identifying information and obtain possible investigative leads as to the true identity of your suspect is another example of the benefits of a computer over a manual file.

Mr. Chairman, I appreciate having the opportunity to appear before you and express my views. At the conclusion of Mr. Capizzi's testimony, we will both stand ready to answer any questions members of the subcommittee may have.

Senator ERVIN. Thank you very much.

TESTIMONY OF MICHAEL R. CAPIZZI, ASSISTANT DISTRICT ATTORNEY, DISTRICT ATTORNEY'S OFFICE, ORANGE COUNTY, CALIF., LEGAL COUNSEL, LAW ENFORCEMENT INTELLIGENCE UNIT (LEIU) AND INTERSTATE ORGANIZED CRIME INDEX (IOCI)

Mr. CAPIZZI. Mr. Chairman, I do appreciate the opportunity of appearing before you to express our views on what we also feel to be a very important and highly sensitive matter; that is, the matter of security and privacy as it relates to the dissemination of factual data within criminal justice information systems.

I appear in my capacity as legal counsel for Law Enforcement Intelligence Unit, LEIU, and Interstate Organized Crime Index, IOCI, as well as assistant district attorney, Orange County, Calif., office of the district attorney.

I prepared a written statement of my analysis of the bills that are under consideration by the subcommittee and I would submit that and ask that that be considered, and then comment on what I feel would be the more important aspects of the bills as I see them and the relationship to those organizations that I represent.

We are, of course, very much concerned with S. 2963, which would completely do away with certainly IOCI and possibly, because of the

definition, do away with the Law Enforcement Intelligence Unit, and very possibly any intelligence systems or data gathering system that might be maintained by any police agency; that is, because of the reference to telecommunications lines as making a system an automated system.

Of course every police department depends very heavily on telecommunications lines, the telephone if nothing else, in the gathering and collection of information. In that sense, LEIU would be an automated system that would be prohibited by S. 2963. We are quite concerned about that.

But, of course, we are concerned with the provisions that would restrict any person who had access to criminal justice information, whether it be by viewing court records or participating in court proceedings, or being a witness to anybody giving that information, and the prohibition on them having access to it, or conveying that information and disseminating it to other persons.

We feel that that is somewhat overbroad and would restrict our ability to gather information. Much of the information in the Interstate Organized Crime Index is public record information and is obtained from those now-public records which we have access to.

We are concerned about the provisions of the public notice requirement and the requirement that public notice be given any time a system is enlarged. As we read the bill, it would apply not only to automated criminal justice systems but also to any criminal intelligence information system and again, that would apply to every police department which gathers information. And, taken in a strict sense, it would require that he give public notice prior to adding any new subject into the system.

In fact, I suppose they could not even take a crime report without giving public notice that they were going to enlarge the system.

I am sure that was not the intent, but we see that as the effect. We feel that S. 2964 is preferable to S. 2963 in that it would allow the continued operation of the interstate organized crime index and the law enforcement intelligence units.

We are concerned about the precedence of State laws provisions in both bills and we feel that the provision in S. 2964 would be to the advantage of LEIU and the interstate organized crime index in that it would not permit State laws that vary from one State to another, and may be more restrictive than what even the minimum standards set forth by either of these acts would contemplate, and thus reduce the interstate system.

So that we feel if there is going to be legislation in this area, that it should not permit more restrictive State legislation to interfere with the interstate systems.

The more restrictive State legislation, of course, would apply to systems wholly in the states, but not to the systems which extend beyond the boundaries of the State.

We feel that the provision which would give precedence to those State laws, under the theory that it would be providing greater rights of privacy to the citizens of those States, is really not accomplishing what, initially, it might appear to accomplish.

And I say that because the citizens of those States may be lulled into a false sense of security, thinking that their State law protects them. Where, in fact, in the State capitals and the larger cities of those

States, the Federal Government itself may be operating a system that would not be as strict as those of the States in which those systems were allowed.

So there would be no harm to have an interstate system also operating in those States and operating with no greater limitations than are on the Federal system operating in those States.

We are concerned about the civil remedies provided for in S. 2963. We are concerned that it gives a party aggrieved the right to file an action for a violation of the act, and, conceivably, a party aggrieved could be a party who is not, himself, contained within the interstate organized crime index, or the law enforcement intelligence unit files, and it could be used as a device to gain access to those files by people who, for whatever reason, would like to find out who and what is there, even though they themselves are not there, under the guise of being a party aggrieved, whether the party aggrieved is aggrieved because of the public notice provisions or other reasons.

In our statement we set forth a possible alternative with respect to criminal intelligence systems that is, having an in camera proceeding, if any suit is filed against such systems operating within the act.

We are not against regulation. We feel that the systems have operated to this point with a great deal of self-regulation and restraint and have been used in a very proper manner.

We have done so voluntarily in the past and would like to continue to do so voluntarily. We recognize that the regulations are imminent. We feel that the regulations, as proposed by S. 2964, are livable and still protect the privacy of the individual and the citizens of this country.

If there are any questions, I would certainly try to respond to those, and thank you for the opportunity of expressing our views.

[The prepared statement of Mr. Capizzi follows:]

PREPARED STATEMENT OF MICHAEL R. CAPIZZI, ASSISTANT DISTRICT ATTORNEY, DISTRICT ATTORNEY'S OFFICE, ORANGE COUNTY, CALIF., LEGAL COUNSEL, LAW ENFORCEMENT INTELLIGENCE UNIT (LEIU); AND INTERSTATE ORGANIZED CRIME INDEX (IOCI)

Mr. Chairman, members of the Subcommittee, we appreciate the privilege of appearing before you to express our views on the very important and highly sensitive matter of security and privacy as it relates to the dissemination of factual data within criminal justice information systems.

I appear in my capacity as legal counsel for Law Enforcement Intelligence Unit (LEIU) and Interstate Organized Crime Index (IOCI) as well as Assistant District attorney, Orange County, California, Office of the District Attorney.

Mr. Carroll has explained the history and purpose of LEIU and IOCI as well as the organizational and management structure. I might add that in my view a benefit derived from these organizations, second to none other, is the communication and working relationship between local law enforcement agencies that the two organizations have fostered. The communication has enabled local law enforcement to deal more effectively with the very nomadic organized crime figure who shows no respect for the law let alone the geographical boundaries of a local law enforcement agency's jurisdiction. It goes without saying, if law enforcement is to continue to benefit from these two organizations, it must take advantage of modern technology. If not to make further gain to maintain the status quo. With these considerations in mind, I turn to a discussion of S.B. 2963 and S.B. 2964 and the impact they would have on LEIU, IOCI and law enforcement in general.

S.B. 2963

S.B. 2963, Section 208(b), which prohibits the maintenance of criminal justice intelligence information in an automated system, would effectively eliminate the IOCI project. The impact of this section on LEIU is less dramatic but still devastating. LEIU, which is a manual system in the realistic sense, would become an automated system as a result of the definition. S.B. 2963, Section 102(4) provides, "'Automated System' means an information system that utilizes * * * telecommunications lines, * * * wholly or in part for data collection * * *." Thus, LEIU would have to either abandon the use of the telephone, radio, teletype or television in collecting data or abandon the system. While either of these alternatives may achieve the state of disorganization that opponents of automated systems desire, it certainly would not be acceptable to victims of crime if they were required to hand carry their report of criminal activity to the station house.

S.B. 2963, Section 202, states that nothing but conviction record information may be disseminated except as otherwise provided in that section and in Section 203. This creates the inference that criminal justice intelligence information may not be disseminated at all for neither Section 202 nor 203 so provides.

It is requested that any doubt be eliminated by adding a section that would limit the provisions of Sections 202 and 203 to criminal justice information. This is hopefully the intent as evidence by the heading preceding Section 202 but the uncertainty could put every prosecutor in the country out of business by preventing the transmission to him of crime reports necessary to initiate criminal proceedings.

S.B. 2963, Section 204, is overbroad in that it would restrict a person, who had access to criminal justice information, from disseminating criminal justice information even if he obtained it other than from the system. It would even prohibit an individual from relating criminal justice information gained from personal observation on personal time. This seems to inhibit the freedoms the act claims to promote. This section would also serve to prohibit public inspection of all heretofore public records of our courts and judicial system including appellate opinions.

S. B. 2963, Section 301(c)(8) appears to extend beyond the purview of the act for it could apply to a local agency and its efforts to collect and/or disseminate data on a strictly local, manual basis without the use of federal funds.

The requirements of S. B. 2963, Section 305(a), are unrealistic in requiring public notice of enlargement of a criminal justice intelligence information system. This section would require IOIC or LEIU to give public notice each time it wished to add a name to the file without first deleting a name to make room for the new name. Further, Section 305(a) would apply to manual criminal intelligence information systems, yet, the act cites computer technology as its primary justification. If the act is to prohibit automated criminal intelligence information systems, it seems unnecessary to delve into the systems of the dark ages which have never been considered a serious threat to privacy and impose on them additional restrictions.

S. B. 2963, Section 308(a) gives a person aggrieved the right to recover $100.00 for each violation of the act. Some further definition of "person aggrieved" is required. As presently drafted, if IOCI or LEIU unintentionally violated Section 305 by adding a name to the system prior to purging a name to make room, thereby enlarging the system, every citizen of the United States would be a party aggrieved and would be entitled to $100.00.

Finally, S.B. 2963, Section 310, which gives precedence to state laws, creates the lack of uniformity that Section 101 (p. 3, 11.6–8) condemns as undesirable. Thus, Section 310 is inconsistent with Section 101. It is submitted that if nationwide or interstate systems such as IOCI and LEIU are to be effective, the rules must be uniform in each state. This would still permit intrastate systems to be regulated by more restrictive state legislation. Section 101 (p. 3, 11.4–6) states that commerce between the states is a further justification for the act. However allowing precedence to state laws frustrates rather than facilitates commerce and yet, the facilitation of commerce is the very core of the commerce clause of the Constitution. While this is not consistent with states rights, it is certainly consistent with nationwide interstate systems such as IOCI and LEIU which will only be hindered by trying to follow the regulations of 50 states.

S.B. 2964

The two associations I represent feel that the basic provisions of S.B. 2964 would allow continued operation of their systems, thus find S.B. 2964 far more acceptable than S.B. 2963.

The coverage of 2964, as expressed in Section 4, seems to be restricted to more limited Federal interests without intruding on the right of the states to regulate systems existing wholly within the borders of the states.

S.B. 2964, Section 5(b) would have the effect of prohibiting public inspection of heretofore public court records just as S.B. 2963 would. Since IOCI contains only public record information and court records are a major source of such information, this provision would hamper the collection of otherwise includable data.

We feel that the "Precedence of State Laws" provision in S.B. 2964 is superior to the precedence provision in S.B. 2963. The precedence provision in S.B. 2964 would allow interstate systems such as IOCI and LEIU to operate on a national level with full participation by all 50 states. At the present time, due to peculiarities of state law, one of the most populous states, New York, is prevented from full participation in IOCI. If there is a need for Federal regulation, it is because of a need for uniformity. To permit one or more states to adopt their own regulations with respect to a nationwide system destroys the system by forcing it to follow the regulation of the most restrictive state. The alternative would be for a system such as IOCI to drop from the system states that could not participate rather than limit the effectiveness of the system. The result, of course, would not be a nationwide system. Without a nationwide system, local police cannot effectively fight crime that transcends their geographical boundaries. As a result, local law enforcement agencies would be forced to abdicate their responsibility in that area to a Federal Police Force.

The public notice required by S. B. 2964, Section 12(b) is more practical than its counterpart in S. B. 2963. Section 12(b) permits names to be added to the system thereby enlarging it without the necessity of prior public notice.

With respect to the civil and criminal remedies authorized by S. B. 2964, Section 15, it is suggested that steps be taken during the pendency of judicial proceedings to safeguard the dissemination of information about individuals who are not parties to the suit but whose names may arise in substantiating compliance with the act. Just as others can speculate that computerized systems will be used improperly, we can speculate that the judicial process will be used improperly by those objecting to the storage of information in such systems. Criminal justice intelligence information deserves protection from spurious attacks. To assure this protection, it is suggested that S.B. 2964, Section 14, provide that the court in which a civil action is filed, alleging misuse of criminal intelligence information in violation of the act, conduct an *in camera* hearing. At such hearing, the judge could receive evidence from the individual or agency accused of violating the act and determine, based on such evidence and the evidence received from the plaintiff in open court, whether the individual is included in the system and if so whether there is reasonable cause to believe there is a violation of the act. The judge should be authorized to dismiss the action if he concludes the individual bringing the action is not in the system or that there is no probable cause to believe the act has been violated. Such dismissal should not specify which ground is the basis of the dismissal for to do so may call attention to the fact that an individual is in the system. If there is no violation of the act, there is no need for the individual or others viewing the court records to know he is in the system The *in camera* proceedings could be reported and a transcription of evidence could be sealed and preserved for any subsequent judicial review. If the judge concludes the party bringing the action is in the system and there is probable cause to believe the act has been violated, the action would proceed as any other action.

A major drawback to S. B. 2964 is the total authority vested in the Attorney General to adopt regulations. It is felt that giving this power to the Attorney General or to the Board, as contemplated by S. B. 2963, is in essence the same for both would be Presidential Appointments. As between the two we would prefer that the Attorney General have the authority for his interest should be the proper enforcement of our laws. However, we feel that organizations having a vested interest in the preservation and proper, yet effective, use of justice information systems should have some input and participation in the promulgation of regulations.

The bill proposed by Project SEARCH addresses this concern at Section 13. It there provides that the Attorney General shall consult with representatives of law enforcement agencies participating in systems covered by the act. This could be extended to give those individuals a vote in the adoption of regulations.

Those agencies and individuals participating in LEIU and IOCI are cognizant of the emphasis placed on the security of systems and the privacy of individuals.

If there are any who doubt this to be true, I direct your attention to the Security and Privacy Manual adopted by IOCI as one of its first working documents. (Copies have been submitted to the Subcommittee.) All of the essential components of security and privacy are addressed in the Manual. The components are there because the participants strongly agreed with those principles and wanted them included in and made a part of the system. Having been placed in the Manual and adopted as IOCI Regulations, they are rigidly followed by the participants.

The members of IOCI and LEIU are not against regulation. They have been living with regulation throughout their careers—self regulation in abiding by and enforcing the law. They have not abused the trust and confidence placed in them. LEIU and IOCI have never faced a lawsuit for invading privacy or for any reason. It is not necessary to abolish all automated criminal justice intelligence information systems simply because someone says they *could* pose a threat to privacy. How many instances have been documented where an automated criminal justice intelligence information system has invaded an individual's privacy? If there are isolated cases, is it sufficient cause to abolish such systems? The auto kills 50,000-plus persons each year and injures tens of thousands more. Yet, we do not abolish the auto. We punish the violator of *reasonable* rules and regulations of the road. The same is possible with respect to abuses related to criminal justice intelligence information systems. The participants should be authorized to determine which individuals are to be included in the system. If they abuse this authority mechanism of our courts, both civil and criminal, has been and always will be available to redress wrong. It is certainly not necessary to abolish or unduly restrict so vital a concept as the exchange of intelligence information among law enforcement agencies.

Once again Mr. Chairman, we appreciate the opportunity to express our views and stand ready to answer any questions members of the Subcommittee may have.

Senator ERVIN. Do you not think that people who are actually aggrieved by disobedience of the law ought to have some kind of remedy?

Mr. CAPIZZI. Yes; I think any party aggrieved should have a remedy. I do not think in exercising that remedy he should be allowed to do so to the detriment of someone else.

We are talking about privacy. I think we are talking about the privacy of individuals in the system.

Senator ERVIN. I do believe that he could only redress his own grievance. That would not give him an opening to go into the system and obtain information about other people.

Mr. CAPIZZI. If the nature of his complaint was that the system was enlarged, I think he might have access, or at least put those operating the system to proof to show who and what was put in and whether that does or does not constitute an enlargement. In that sense, if that constitutes a person aggrieved, it may operate to the detriment of the people in the system.

Senator ERVIN. I think experience has shown that you cannot always depend on the people to enforce their own regulations against themselves.

Congress has just passed a law which I was instrumental in getting passed, that is necessitated by the "no-knock" laws. We have the illustrations out in Illinois where officers of the law went in and broke down doors of people's houses, assaulted them in some cases, threatened them with weapons, and it turned out that they had broken into the wrong house.

So this bill provides that the Federal Government can be held responsible for those actions. And I think that wherever the law stops, there tyranny begins, and I think you have to have some kind of remedies to keep government, itself, from violating the rights of people.

Mr. CAPIZZI. I do not think there is any question about it. I agree with you 100 percent. I think the remedy is to provide sanctions that might be imposed against those that violate the law rather than prohibit them from doing anything by legislative action.

Senator ERVIN. In your statement, you favor a centralized system, as controlled entirely by the Federal Government?

Mr. CAPIZZI. No, my comments were with reference to the interstate organized crime index, which has a central system.

Senator ERVIN. I am sorry, I did not understand. I thought you were talking about those files that the State might file in their own system.

Mr. CAPIZZI. With respect to that, systems operating within a State, I think the operation of the system should be left up to the States. I think that would be permissible under both bills.

Senator ERVIN. I agree with you, certainly, that under the national system, that the National Government ought to have control of it.

In other words, if this is going to work well, it is going to have to be worked largely by cooperation and mutual understanding.

Mr. CAPIZZI. To a large extent, that is true.

Senator ERVIN. I think that we can look upon the past and see that there has been a very high degree of cooperation and mutual understanding with respect to problems between the national law enforcement investigatory arms, such as the FBI, and the State and local officials.

Mr. CAPIZZI. There has been a degree of cooperation, yes. I am not saying that we should do away with any State and local operated system on an interstate basis. I think those systems should be continued and allowed to continue with no greater restrictions than there are on systems operating by the Federal system.

There would be greater restrictions on our interstate system by giving precedence to State laws because it would restrict the overall system.

Senator ERVIN. I misunderstood the thrust of your statement on that specific point.

Does counsel have any questions?

Mr. BASKIR. Mr. Capizzi, what determines who gets into one of these intelligence files?

Mr. CAPIZZI. As Mr. Carroll indicated, the agency which is submitting the name, determines whether or not he is an organized crime figure, within the criteria that was set forth and as reviewed by the zone chairman of the zone of the agency where it is located. If he concurs that the person is an organized crime figure of nationwide importance, it is included in the system.

Mr. BASKIR. Does he have to have been convicted of a crime to be generally considered an organized crime figure?

Mr. CAPIZZI. No, it is not a conviction record information system.

Mr. BASKIR. Does he have to have been convicted at least once of a crime of the type that organized criminals usually commit before the information can go into the file?

Mr. CAPIZZI. No.

Mr. BASKIR. Does he have to have been arrested for such a crime?

Mr. CAPIZZI. No.

Mr. BASKIR. Mr. Carroll?

Mr. CARROLL. No. We have people in the system who have not been arrested.

Mr. BASKIR. Not even have been arrested?

Mr. CARROLL. Yes, sir.

Mr. BASKIR. What would be the standard with respect to somebody listed as an associate?

Are there any standards? What makes a person an associate of somebody who is in the file?

Mr. CARROLL. We are currently investigating a professional person who has never been arrested; has ordered numerous people "hit," murdered, and they have been murdered; we have witnessed meetings between this person and others in various locations; and we have labeled those people at these meetings as associates of his.

Mr. BASKIR. How do you know, when a decision is being made to forward a name as a candidate for inclusion in the file, how do you know he is really in organized crime if he does not need an arrest or conviction?

What is the judgmental basis that you use on those kinds of information?

What process would you go through to make that decision?

Mr. CARROLL. Rely on the integrity of the member agency who submits this card that what is on his card is correct.

Mr. BASKIR. Say you were going to submit a card on somebody, what kind of a decisionmaking process would you go through?

Mr. CARROLL. If I were going to submit a new subject to the file, he might, for example, be a major bookmaking or head of a major bookmaking operation in my area; he may have blank number of people working for him; he might be a control for somebody from New York.

Mr. BASKIR. Assuming this is all true, how do you know this is true?

Mr. CARROLL. Probably from possible arrests of this subject.

Mr. BASKIR. I assumed that he has not been arrested.

Mr. CARROLL. I beg your pardon.

Mr. BASKIR. You mentioned before, perhaps he need not even have been arrested.

Mr. CARROLL. That is possible.

Mr. BASKIR. Assuming that he was not arrested or convicted, you described him as a major bookmaking operator, how do you know? What kind of a process do you go through to know whether he belongs in there or not?

Mr. CARROLL. If you are using a hypothetical, of somebody who has not been arrested, we could go from informant-type information, coupled with an investigation by a police officer or a police agency, or perhaps we have made bets with this person in an undercover capacity, even though he has not been arrested yet.

Other people we have met with have witnessed them turning money over to him.

Mr. BASKIR. Do I gather, what you do, you sort of gather all the information which is gotten from a variety of sources about this man, and his activities, and his environment, from informants, maybe from newspaper stories, from testimony, perhaps from a whole variety of sources, and observations, and you add this up together and in your own judgment, based upon your own experience, this shows you that this man is not only a criminal but a member of organized crime, for example, if that is what we are talking about?

In your judgment, you would put him in there, is that correct?

Mr. CARROLL. In our judgment, if he is a member of the Mafia and we are able to show that he is of interest, nationally, we should submit him. Of course the information that goes on the card that is submitted and duplicated and mailed out to all members, is public record information, the identifying data, any associates, are from public records that we have checked—the county recorder's office—and have obtained a document showing that he and others own property in a business, this type of public record.

Mr. BASKIR. For a person to be listed as associate, need he be a criminal associate?

Would you have information that he also participates in criminal activity and qualifies to be there on his own right?

Mr. CARROLL. Sometimes the associates are also in the file themselves. Other times they are not.

Mr. BASKIR. Let's take somebody who is not in the file on his own right.

What would make you decide to put him in as an associate? What kind of relationship, what qualifies, a drinking buddy, a classmate?

How do you make the decision as to who is an associate and who is not an associate?

Mr. CARROLL. Personally—of course, each department has to make their own decision.

Mr. BASKIR. I assume that you are in the position of being a contributing department.

Mr. CARROLL. From that standpoint I would put an associate in that I would think would have some value to another agency to be knowledgeable of. We have family relationships. Joe Smith's wife's name is Mary. The son's name is Tom. Business associates: He owns 17 banks along with Mr. Brown. He also owns a string of pizza parlors along with three other people, and I would name them. He has been arrested with two other people, and we would name them, in a similar type crime, that he is a suspect in now.

Mr. BASKIR. There is knowledge that organized crime, when he goes into legitimate business and they may take over legitimate business and allow them to operate and sort of invest in them.

If somebody in your file has got a 20-percent interest in a business, you might be listing also all the people in that business, is that right?

Mr. CARROLL. It is possible.

Mr. BASKIR. As business associates.

Mr. CARROLL. It is possible, depending on how many associates. The card is only 5 by 8 in size. We try to list those associates that would be of importance to another agency.

Mr. BASKIR. Do you list attorneys, people who represent people in the files, as associates?

Mr. CARROLL. We have some racket attorneys in the files; yes.

Mr. BASKIR. Somebody who regularly represents people?

Mr. CARROLL. Yes, sir.

Mr. BASKIR. How about if he were appointed by the court?

Mr. CARROLL. No; he would not.

Mr. BASKIR. There is a friend of mine who is a public defender on the west coast. I wonder if he is in your file.

Mr. CARROLL. I would not know.

Mr. BASKIR. Presumably he should not be in your file.

Mr. CARROLL. I hope he is not.

Mr. BASKIR. If somebody wanted that file and got a list of organized criminal John Jones and close associates, they would get a whole list of names, that information will go out to whoever is requesting it, requesting that he had a right to get it. What he would know is here is John Jones who is a member of the organized crime index, who is in the organized crime index, and here are all the names who are his associates. And that tends to characterize all these individuals; does it not, because you think they qualify for putting in the file.

Mr. CARROLL. Not necessarily. It certainly does put a label on the subject that is in the file as a principal. There is no question about that. There is a question about his associates. Merely because he is listed as an associate does not make him a criminal, but as you say this is certainly off the top of the head, an indication that he is involved with somebody who is involved with organized crime.

Mr. BASKIR. Certainly a newspaper story or some sort of public announcement or public knowledge that Mr. Tom Smith is listed in an index of organized criminals as an associate of Mr. John Jones, who is considered to be a member of organized crime, that statement, one like that would be extremely embarrassing to our friend the associate.

Mr. CARROLL. Is that a question?

Mr. BASKIR. Yes.

Do you agree that it could be very embarrassing if it got rumored about the countryside that here is a man who is listed as an associate, listed in the index of individuals involved in organized crime as an associate of somebody who is considered to be in organized crime? That could be very embarrassing.

Mr. CARROLL. I am sure it could be.

Mr. BASKIR. The mere decision to put somebody in the file puts a label on him which can be very embarrassing if that is all you know about the man.

Mr. CARROLL. Certainly.

Mr. BASKIR. IOCI has been funded by LEAA.

Is that correct?

Mr. CARROLL. It is funded now.

Mr. BASKIR. Do I understand the decision to create IOCI required that the information in there by the individuals be limited to public record information?

Mr. CARROLL. That is correct, it is.

Mr. BASKIR. What is public record information? Is that a record of an arrest or a conviction?

Mr. CARROLL. It could be.

Mr. BASKIR. Could it be broader than that?

Mr. CARROLL. It is broader than that.

Mr. BASKIR. Could you describe it then?

Mr. CAPIZZI. It is information that is contained in the public documents or files of any public agency, and any information which is generally available to the public, including newspaper stories, congressional records, which are oftentimes a source of information, and

the information that is in IOCI is supported by public record type information. It is not anything that heretofore has been private with respect to the individual. It is already something that has been disseminated in one form or another to the public and is available to the public.

Mr. BASKIR. There is a little confusion.

Mr. CAPIZZI. In the IOCI system, there is greater privacy than the source.

Mr. BASKIR. There is a little confusion in the public record information. Sometimes in the testimony, it is considered to be the record of official action by a public officer in the course of his duty, but the way you are using it is slightly different. That is information which is in the public record, that is information that is in the public domain, newspaper stories or the like, or testimony.

Mr. CAPIZZI. That is correct, as opposed to an act by a public officer which could be a clandestine surveillance type thing. It does not include that.

Mr. BASKIR. There is a lot of information that gets in newspaper stories that is inaccurate or incomplete, biased, distorted and the like. The fact that something is in the newspaper, even in testimony, does not necessarily make it true.

Mr. CAPIZZI. That is correct.

Mr. BASKIR. Yesterday there was a considerable amount of discussion between Senator Gurney and one of the witnesses, a newspaper publisher, about the fact that a lot of prejudicial information, some of it involving secret Government inquiries, does get into the newspaper, grand jury information and the like, which may not be true and may be highly prejudicial. The fact that all this information is collected and filed and it comes out upon an inquiry is of a considerable convenience to somebody who is asking information about the listed individual because he does not have to go through all the records himself.

Is that right?

Mr. CAPIZZI. That is correct.

Mr. BASKIR. Its impact could be a whole lot greater than if you have two or three pages, assuming that capacity, which lists all the information that has gone into the public domain about him, true or not true, confirmed or not confirmed, all in one place. It can make a big impact.

Mr. CAPIZZI. If it got back into the mainstream, where it originated, but both these systems, LEIU and IOCI are restricted to law enforcement agencies for law enforcement purposes, on a need to know basis, and it is strictly to combat crime.

So far it has not taken on that color or flavor.

Mr. BASKIR. In your experience with the index, did you find it could have been more useful if more information, different kinds of information, could have been in it?

Was there any comment by the people who participated in the project, that they would like more kinds of things there, or different kinds of information?

Mr. CAPIZZI. Yes; additional information has been discussed and contemplated and debated. However, at the present time the public record type information restriction is still present.

Mr. BASKIR. What kinds of other information did some of the other people want to put into it?

Mr. CAPIZZI. Possibly expanding—one possibility would be expanding the present information by including sources of information other than the public type information.

Mr. BASKIR. Informants and the like?

Mr. CAPIZZI. Yes, sir.

Mr. BASKIR. Is it my understanding that LEAA has decided they do not wish to fund the system, and have other than public information in it?

Mr. CAPIZZI. I think it was a request by LEAA and it was concurred in by the participants in the IOCI system, that, yes, that was an acceptable restriction. At a future time, if an expansion of the system beyond that was necessary or desirable, it would be looked at at that time.

Mr. BASKIR. Thank you very much.

Senator ERVIN. I want to thank both of you gentlemen for the very material assistance you have given the subcommittee in the study of this proposed legislation, and the problems that have been raised by it.

Thank you very much.

Counsel will call the next witness.

Mr. BASKIR. Mr. Chairman, the Honorable George Milligan who was scheduled to be a witness this afternoon, the State senator from the State of Iowa, unfortunately could not be here, so our final witness this morning is Col. John Plants, who is director of the Michigan State Police.

Senator ERVIN. Colonel, I want to welcome you to the subcommittee and express to you our deep appreciation for your willingness to give us the benefit of your views in an area of which you are most knowledgeable.

TESTIMONY OF COL. JOHN R. PLANTS, DIRECTOR, MICHIGAN DEPARTMENT OF STATE POLICE

Mr. PLANTS. Thank you, Mr. Chairman. I am somewhat in the position that I am sure public speakers have been in from time to time, being the last on this platform and seeing that everybody else says what you intended to say.

Senator ERVIN. You might clarify what has been said, because on certain points there has been a great divergence of opinion, which is quite natural, I think, in the province of this kind.

Mr. PLANTS. I also find in this particular area that much of the work that has been done by a group like SEARCH or the NCIC, and there is a lot of incest in this area. Many of us served on the same committees and have had interaction for several years in this particular area.

I have got a statement that has been submitted to your staff, and I am going to skip around in that statement rather than reading it entirely. But there are entire areas that I think I would like to put on the record.

Senator ERVIN. You have a very fine statement, and I am going to direct the reporter to see to it that the statement is printed in full in the body of the record after your remarks. In that way we will not

miss any of the statements that you make in the record, and your remarks will emphasize the portions of the statement that you deem most important.

Mr. PLANTS. Thank you, Mr. Chairman. Let me say I have met privately with your staff, and many of the concerns that are echoed in this particular statement have been somewhat mitigated by a meeting with them last night, and I find they are not nearly as bad as I thought they were when I wrote the first drafts.

I would like to take this opportunity to thank the chairman of the subcommittee for extending an invitation to me, so that I may express my views on Senate bills 2963 and 2964, and the field of security and privacy as it applies to both individual rights and the users of criminal justice information. It is indeed gratifying to me, both as an individual and as a director of a department that has within its organizational structure a nationally recognized record and identification system as well as an outstanding automated criminal justice data system.

I am particularly appreciative of many of the concerns that have been expressed by Members of the Senate as regards to criminal justice data banks, for I, too, have been concerned with this problem and have worked directly on it since 1968. I therefore come before you both as a user of and a dispenser of criminal justice data.

I am privileged to serve as Vice Chairman of Project SEARCH, of which you are all familiar; as a member of the FBI NCIC Advisory Policy Board, and Chairman of its Committee on Security and Confidentiality; as well as general chairman of the State and Provincial Section of the International Association of Chiefs of Police.

In addition, I also served as chairman of the Criminal Justice Information System Task Force of the National Advisory Commission on Criminal Justice Standards and Goals. I give you this information not as personal references but as an indicator of my concern in this field. Throughout all of these projects, my colleagues and myself have worked to develop safeguards for criminal justice information systems.

It becomes apparent that there are several paramount points at issue in the development of safeguards. One is the protection of the individual and his rights to security and privacy. Another is the need for criminal justice information for management purposes, as well as prevention, detection, and apprehension of offenders.

Society and the individual can only feel secure if they do not fear undue encroachment from Government and are safe from crime and the fear of crime. We may not, under any circumstances, knowingly permit a citizen to be wrongfully and unjustly included within these data systems. Yet, we must have, if we are to adequately control the crime problem and allocate our resources effectively, the maximum amount of relevant data available within the criminal justice information system.

Participating elements within the criminal justice system have various needs. And if this system is to be effective, all of these needs of law enforcement, of prosecutors, of courts, and the corrections and rehabilitation service must be contained within the system so that they can effectively do their work. I have long advocated the need for full disclosure of information between elements of the criminal justice system, so that each may fulfill their obligations to society. I also have

long resisted the unrestricted use of information in this system for any other purpose other than criminal justice needs.

S. 2963 and S. 2964 are well-thought-out attempts to correct the problems of balancing the individual's rights to privacy and the public's rights to adequate protection and safety. However, I must express considerable alarm at some of the concepts that have been put forth as to how these bills define criminal intelligence and how they deal with it. I am concerned about proposals to include internal departmental memorandums and reports that concern criminal investigations, intelligence, and modus operandi files, all of which would be available to any citizen who would have the right to see what is in any file that is in regard to him.

My concern is simply that a burglar could inquire and force all departments within his area of activity to reveal the contents of any current investigations that they have on file. He could examine the files that they might have on him and could tell through this examination whether or not he was close to apprehension.

In addition, the leaders of organized crime would be permitted to assess the information that we have that involves them. I cannot conceive that there was any serious intention to force law enforcement into such a position of disclosure as this.

What I am suggesting is that a clear distinction should be drawn between the automated criminal justice information systems and the internal files of the police department that involve current investigation, modus operandi files, and intelligence files. They are distinct and different, and I strongly feel must be approached in a different manner. The effectiveness of police work relies largely upon information—information about proposed, present, and past criminal activities—and it is through these criminal investigations that law enforcement is able to adequately investigate crimes.

Much of a police investigation involves opinions, conclusions, and the intuition of experienced investigators. If these investigation reports are going to be available to any person upon demand, then I can guarantee you that this will drastically affect the processes of investigations and their successful conclusions.

Any such proposal to regulate these files of internal police activities should be viewed with considerable concern by those of you who will attempt legislation in this area. For such constraints and such exposure of these files will materially hamper law enforcement investigations.

The Congressional Record of February 5, 1974, has quoted the chairman of this subcommittee, as he introduced Senate bill 2963, as stating:

> In conclusion, I would like to reaffirm my earlier statement that this legislation is introduced to provoke discussion and to serve as the basis of the hearings. Neither I nor any of the cosponsors feel wedded to all of the provisions of this bill.

It is within this spirit that I have approached the analysis of both Senate bills 2963 and 2964 to provide this subcommittee with my reactions and observations to the proposals contained.

TITLE I, SECTION 101: CONGRESSIONAL FINDINGS AND DECLARATION POLICY

This section clearly indicates the lack of laws as it involves exchange of criminal justice information, and it adequately expresses valid concerns that arise in the absence of the laws. However, it also appears that within this section this bill would seek to apply Federal controls to all criminal justice systems.

I feel that the Federal Government, through legislation, should control Federal information systems and allow the States to control as much as possible their own systems.

It is my opinion, that since criminal justice records are overwhelmingly the property of the several States, the States themselves should pass legislation to control that information which is maintained within their system and which belongs to them.

Those controls that are acceptable and workable within the Federal system may not be acceptable or workable within the various State systems. We are dealing here in this instance with the proprietary rights of the several States and their needs, and the needs of their individual criminal justice systems.

The FBI careers-in-crime study indicated that only 30 percent of the offenders had any interstate implication. Now, with the interfaces between the State systems and the Federal systems, there may be a problem. However, if at the national level the criminal information systems are simply used as a pointer or index system with the States retaining the significant data, then this problem can be minimized. I firmly believe that the greatest potential for abuse lies in the aggregation of files, and therefore, even it if is less efficient financially, fragmentation does provide great benefits and indeed may be the middle ground we all seek.

SECTION 102: DEFINITIONS

In this section, the definitions are all inclusive. And this makes no provision for the use of internal departmental investigative memorandums, modus operandi files, nor intelligence files.

I think it would be far more productive to define the specific type of information the Congress seeks to control, rather than the all-inclusive approach to these records which the bill uses. By that I mean if it is political intelligence that causes you most concern, as it does most of us, I think you ought to separate out political intelligence or activist intelligence into particular subjects.

UNDER TITLE II

The problem that I find with title II, in its entirety, is that it attempts to very narrowly constrain the rights of criminal justice agencies in their day-to-day operations. As I indicated to you earlier, the flow of information between criminal justice agencies is the lifeblood of the whole law enforcement process. I think the constraints on this flow of information ought to be very carefully considered before they are given the effect of law.

I firmly believe that in criminal justice matters, the further one is removed from the street, the less one is able to fully understand the problems. I find, for example, that it is more difficult for me at the State level to understand the problems of street crime than it is for the commissioner of the Detroit Police Department. Similarly, it is even more difficult for Federal agencies to understand these problems.

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I would like to suggest, under my analysis of title III, that the necessary constraints which are in sections of title II be devised through State plans developed with the approval and under the supervisions of a Federal body.

TITLE III

The Federal Information Systems Board, as envisioned in title III can, depending upon the philosophical thrust, become either Orwellian in its nature or can completely hamstring the administration of criminal justice agencies, and of course, various shades in between.

The chairman and most members of this committee and staff are familiar with Project SEARCH. It appears that some of the organizational structure envisioned in this bill may have been influenced by Project SEARCH.

I would like to go further and suggest that we take the complete step and give a Federal charter to Project SEARCH to function as a policymaking body in this area. The present SEARCH committee includes people from every facet of the criminal justice communities in the States. We have judges, prosecutors, planners, police, and corrections represented. I do not know of a more representative group in the country.

I would suggest the present executive committee of SEARCH, elected by the complete group, function with somewhat of the same capabilities as the proposed Federal Information Systems Board. They could depend upon the U.S. Attorney General for legal service and advice, and this would provide input for that agency.

They would, of course, require an appropriation for staff and an agency within the Federal Government to which they could be attached. I think it most logical that they become an independent board within the Department of Justice.

UNDER SENATE BILL 2964, SECTION 3, DEFINITIONS

Overall, the definitions in this section are adequate. However, I would call your attention to subsection (d), "criminal intelligence information" defined as information compiled by a criminal justice agency for the purpose of criminal investigation, including reports of informants and investigators, contained in a criminal justice information system and associated with an identifiable individual.

Again, I must express my concern that this covers internal memorandums and reports of criminal investigations, modus operandi files, et cetera. These categories within the definitions give me a great deal of concern as they involve the internal workings of law enforcement as they apply to the prevention of crime, the reduction of crime, the detection of crime, and the apprehension of criminals.

If allowed to stand, this would provide the Federal Government with the opportunity of interfering with the day-to-day activities of local police agencies. This concept greatly concerns those of us at the State and local level.

I quarrel with section 8 as being a little provincial. Section 8 allows the President to use criminal histories in his appointments and the Senate in their consent procedures. I would suggest to you that Governors have the same problem in their States and ought to have the same sort of prerogative.

In my statement, I discuss many times the fact that far too much authority is granted to the Attorney General to promulgate rules and regulations for the operation of these systems. I do agree, however, that more than any other Federal officer, he should have input into the system.

To balance these two points of view, I would suggest that the Attorney General be allowed to promulgate rules and regulations, but they should be approved by a committee composed of State representatives who are much closer to the problem, such as the system for the electronic analysis and retrieval of criminal histories committee.

There are several areas of common concern that are covered by both bills, but I feel neither adequately covers the problem. The first of these deals with criminal intelligence. The very term itself is inflammatory and is probably one of the least understood aspects of a police department's activity. I wholeheartedly concur with Senator Strom Thurmond's remarks as outlined in the Congressional Record of February 5, 1974, as it relates to intelligence information.

Senator Thurmond quoted from the police task force report of the National Advisory Commission on Criminal Justice Standards and Goals, and I quote:

> Intelligence in the police sense is awareness. Awareness of community conditions, potential problems, and criminal activity—past, present, and proposed—is vital to the effective operation of law enforcement agencies, of continued community security and safety.

This concept is the position that I have taken regarding intelligence activities in my department and that particular quotation was written by a member of my department for the police task force report.

As you probably know, the riots of 1967 and 1968 caught many police departments short when it came to intelligence activities. Our State geared up to provide that kind of information, and since 1967 we have not had a major planned civil disorder in the State of Michigan without, at least, a 2-day advance notice.

This advance notice has allowed the government to take steps to either avert the problem or to minimize it to the point where the least damage is done to society and to the individual. I have no way of estimating what this is worth to our society.

The vast bulk of information in criminal intelligence systems deals with criminals. It deals with organized crime, burglary rings, holdup rings, and other types of common criminals who operate in consort or singly. I cannot believe that you would seriously entertain any efforts to curtail these police activities.

Let me say, when you talk about criminal intelligence, we in Michigan are not speaking simply of organized crime intelligence dealing with the Syndicate, with the Mafia or Cosa Nostra, or any other name. We use organized crime in the broader sense of the term, and much of our activity deals with organized burglary or robbery rings.

We have many times, on the basis of unsubstantiated information provided to us, conducted surveillance on a burglary ring and caught them in the act of breaking into businesses, and have caught a rapist attempting to rape. Without the ability to maintain and use this kind of intelligence information, these kinds of countermeasures against crime would not be available.

I would ask that this subcommittee consider standard 8.5 of the National Advisory Commission Report on Criminal Justice Systems. This standard suggests that all criminal justice information be classified according to its sensitivity and that restrictions be placed on this information based on that sensitivity.

In other words, break it down in much finer details than the bill does and put safeguards based on the sensitivity of various kinds of information.

I firmly believe that very little restraint ought to be placed on police departments in their use of criminal intelligence data. In Michigan, our department operates the Michigan Intelligence Network, called MIN for short. This network coordinates all of the intelligence data gathered by the police departments in the State, classifies that data, and tightly controls its access. The only people who can use this information are those police officers who have a need to know that kind of information.

There is one exception to this. We do run gubernatorial appointments through the intelligence files to make sure the Governor knows precisely who he has in considering appointments. We feel this is the proper way to use intelligence information. We hope the subcommittee will not obstruct us in our efforts.

Another area that requires careful consideration by this committee that is not addressed in the bills is the question of aggregation, or centralizing criminal justice information. As I have stated earlier, it is this aggregation that causes the most potential for abuse. There are those who, under the guise of saving money, would maintain master name files or maintain other kinds of files that would aggregate all of a person's data into one large depository from which carefully selected people would control the access.

Gentlemen, I understand computers. I have been dealing with them for at least the last 8 years. And this concept frightens me. One of my concerns over the two bills presently being considered is that they deal only with criminal justice information.

It is my contention that this information is probably the best handled of most of the data banks that are operating in the country, because we have had a concern for privacy and security for many years. I am more concerned about some of the data banks that are being assembled under the guise of social services and keep an individual's entire dossier on file.

I have been approached by persons who intend to operate these banks and have been asked for criminal histories so that they might lie side by side with financial histories, health histories, social histories, and everything else concerning a particular individual. I have used every legal means to refuse these requests.

It is for this reason that I strongly urge you to write into whatever legislation comes out of this subcommittee the requirements that criminal justice information systems be operated as dedicated ones by criminal justice agencies. It is the very fragmentation of systems, which the efficiency experts decry, that makes them less prone to abuse.

I have long advocated a principle which I call functional centralization and, that is, criminal justice information is centralized at the State, county, and local level; social services information would be centralized at the State, county, and local level, but in separate

systems. I think this kind of centralization is the middle ground between a proliferation of small systems and the cost savings that centralization might bring about.

Another area of concern that I have deals with the question of sealing of records with which both bills deal. I agree completely with the sealing of records after a certain period in which an offender has shown no criminal activity. I do not think, though, that the sealed records should not be available to police officers in their normal investigative operations. Most of the horror stories that have been produced on these criminal histories are based on employment records, that is, people applying for employment.

I agree that there is a vast potential for abuse in this area; however, in many States there is a different charge for second or third or subsequent offenses, and if a record is sealed it is impossible to tell whether or not a person has in effect committed second offense drunk driving or first offense drunk driving if there is a period lapse and the record is sealed and there is no way for the police to get into it.

I do think that it ought to be prohibited—except in very limited situations—for a person's record, after a certain period of time, to be used in employment practices. I think most police departments would agree with that. They find themselves in a box in giving out criminal history information in licensing practices. In our State one may not have a permit to carry a pistol if he has been convicted of a felony in the last 8 years or been adjudged insane. It then becomes incumbent upon the police to look into a person's criminal history before a pistol purchase permit or concealed weapons permit is available to him. There are other licensing functions in various States that require criminal histories, so that the police find themselves in a box between wanting to keep the information somewhat secure and being required by law to disseminate it.

What I am suggesting to you is that the sealing process not prohibit police departments from having access to information that is necessary for their operations, while at the same time it should strongly prohibit, except under compelling circumstances, the information from being used in hiring practices.

Both of the bills carry provisions for civil penalties in cases of violation of the provisions of the bills. I do not quarrel at all with the liability of a person who knowingly violates the procedures that are established to protect a person's privacy.

But I think that these remedies ought to be limited to criminal sanctions rather than civil sanctions. Statutorily providing for civil sanctions almost guarantees that there will be a high number of harassment suits or suits that are filed just as fishing expeditions. We are inviting harassment with this kind of legislation.

It is my understanding that most of the States, certainly in Michigan, a person can already commence civil action against government entities where it can be shown that they were wrongly injured. The question of governmental immunity has been rightly narrowed by the courts, and I think that it is no longer necessary to put these protections into legislation.

Let me say in conclusion, again I thank you for allowing me to speak before the group and I commend you in moving in an area that is long overdue. We both—you, as Members of the U.S. Senate and myself as a law enforcement administrator—seek the same

results in this area. Perhaps, what we both seek for the citizens of this country was best expressed by the Old Testament prophet Micah when he said, "They shall sit every man under his vine and under his fig tree, and none shall make them afraid."

[The prepared statement of Col. John R. Plants follows:]

PREPARED STATEMENT OF COL. JOHN R. PLANTS, DIRECTOR, MICHIGAN DEPARTMENT OF STATE POLICE

I would like to take this opportunity to thank the Chairman of the Subcommittee for extending an invitation to me, so that I may express my views on Senate Bills 2963 and 2964 and the field of security and privacy as it applies to both individual rights and the users of criminal justice information. It is indeed gratifying to me, both as an individual and as a Director of a department that has within its organizational structure, a nationally recognized record and identification system as well as an outstanding automated criminal justice data system. I am, particularly, appreciative of many of the concerns that have been expressed by members of the Senate as regards to criminal justice data banks, for I, too, have been concerned with this problem and have worked directly on it since 1968. I, therefore, come before you both as a user of and a dispenser of criminal justice data.

We have long recognized that crime and criminals are a highly mobile problem; that within a very short period of time an individual may commit a crime in one area, pass through several others, and be beyond the reaches of the first jurisdiction before the crime is reported.

In 1967, the Michigan State Police developed the Law Enforcement Information Network which uses the acronym, LEIN, as a computerized information network. Prior to this time, information regarding wanted persons, stolen vehicles, persons who were driving with revoked or suspended licenses and without vehicle identification information, often required from fifteen minutes to as much as three or four hours before our posts in the field could determine that these people were, in fact, either wanted, possessed stolen vehicles, or were operating a motor vehicle while their right to drive was revoked or suspended.

These delays for obtaining valid information were extremely costly, not only in costs in tying manpower up waiting for results, criminals evading apprehension, but costly in terms of delaying citizens until adequate information could be obtained. With the inception of LEIN, these delays were reduced to two to three minutes, thus effecting a considerable savings in manpower to police agencies and reducing inconvenience to citizens to a minimal level. In my own agency, alone, the total time saved was approximately 30 man-years of officers' time in the first year of operation—to say nothing of the reduction of inconvenience to the citizens who were involved in these delays.

The original LEIN system was established with 80 terminals at various police agencies, municipal, sheriffs, and state police posts, strategically located throughout the state. Presently, we have 221 terminals located throughout the state within the courts, federal agencies and a prison, and the system contains 217,000 warrants of persons who are wanted and information on 40,000 vehicles that are stolen or wanted. This is a far cry from the early days of the LEIN system.

In order to develop adequate standards for use and to provide for user input into the LEIN system, a LEIN Advisory Committee was appointed, representative of the agencies using the system. The LEIN Advisory Committee established system standards (Attachment A) and a system participation agreement (Attachment B).

I should like to draw your attention specifically to Section J, of Attachment A (LEIN Standards).

Today, the computer system housed within my department has been designated by state government in Michigan as the Criminal Justice Data Information Center. In addition, we serve as the door to the national law enforcement community for our users as well as providing for their intrastate needs. The configuration and access capabilities of the Center are more clearly defined in Attachment C. It is possible for a terminal in Michigan to go across state lines to access wanted persons and motor vehicle information from NCIC or several state data banks, and indeed this occurs several thousand times a day. The addition of criminal histories to these processes is not only a logical step forward, but it is a necessity if adequate law enforcement can continue.

As I indicated earlier, in 1968 I became concerned with the security and confidentiality of data banks. This concern was developed as a result of a Judicial Inquiry within the State of Michigan that was investigating certain alleged improprieties and criminal violations. In this instance, the judicial inquiry into these improprieties and alleged violations was conducted utilizing the computer at our installation to index and correlate information obtained through this inquiry. This meant that the computer then possessed highly confidential information generated as a result of the Judicial Inquiry and as such members of my computer staff were also required to be sworn by the grand jury to secrecy. As a result of this inquiry, the system contained information of an extremely sensitive nature and cloaked in secrecy by law, I commenced exploring the need for security and confidentiality for the protection of information stored in such a system and the protection of the rights of individuals on whom information was stored in the system.

I am privileged to serve as Vice Chairman of Project Search, as a member of the FBI NCIC Advisory Policy Board, and Chairman of its Committee on Security and Confidentiality, as well as General Chairman of the State and Provincial Section of the International Association of Chiefs of Police. In addition, I also served as Chairman of the Criminal Justice Information System Task Force of the National Advisory Commission on Criminal Justice Standards and Goals. I give you this information not as personal references but as an indicator of my concern in this field. Throughout all of these projects, my colleagues and myself have worked to develop safeguards for Criminal Justice Information Systems.

It becomes apparent that there are several paramount points at issue in the development of safeguards. One is the protection of the individual and his rights to security and privacy; another is the need for criminal justice information for management purposes as well as prevention, detection, and apprehension of offenders. Society and the individual can only feel secure if they do not fear undue encroachment from government and are safe from crime and the fear of crime. We may not, under any circumstances, knowingly permit a citizen to be wrongfully and unjustly included within these data systems. Yet, we must have, if we are to adequately control the crime problem and allocate our resources effectively, the maximum amount of relevant data available within the criminal justice information system.

Participating elements within the criminal justice system have various needs. And if this system is to be effective, all of these needs of law enforcement, of prosecutors, of courts, and the corrections and rehabilitation service must be contained within the system so that they can effectively do their work. I have long advocated the need for full disclosure of information between elements of the criminal justice system, so that each may fulfill their obligations to society. I also have long resisted the unrestricted use of information in this system for any other purpose other than criminal justice needs.

Yet, I see us approaching a serious dilemma if indeed we continue with this point of view. There are many positions that I think require some knowledge of an applicant's background before they can be considered for employment. Some examples are:

1. Utility service employees who have almost unrestricted access to our homes.
2. Employees who handle, or are in the position to influence the handling of, large sums of money or securities.
3. Persons with a history of sexual deviances who apply for positions involving children.
4. Some public license applicants whose actions can cause severe injury to the public.

S2963 and S2964 are well thought out attempts to correct the problems of balancing the individual's rights to privacy and the public rights to adequate protection and safety. However, I must express considerable alarm at some of the concepts that have been put forth as to how these bills define criminal intelligence and how they deal with it. I am concerned about proposals to include internal departmental memoranda and reports that concern criminal investigations, intelligence, and modus operandi files, all of which would be available to any citizen who would have the right to see what is in any file that is in regard to him. My concern is simply that a burglar could inquire and force all departments within his area of activity to reveal the contents of any current investigations that they have on file. He could examine the files that they might have on him and could tell through this examination whether or not he was close to apprehension. In

addition, the leaders of organized crime would be permitted to assess the information that we have that involves them. I cannot conceive that there was any serious intent to force law enforcement into such a position of disclosure as this.

What I am suggesting is that a clear distinction should be drawn between the automated criminal justice information systems and the internal files of the police department that involve current investigation, modus operandi files, and intelligence files. They are distinct and different and I strongly feel must be approached in a different manner. The effectiveness of police work relies largely upon information, information about proposed, present, and past criminal activities and it is through these criminal investigations that law enforcement is able to adequately investigate crimes.

Much of a police investigation involves opinions, conclusions, and the intuition of experienced investigators. If these investigation reports are going to be available to any person, upon demand, then I can guarantee you that this will drastically affect the processes of investigations and their successful conclusions.

Any such proposal to regulate these files of internal police activities should be viewed with considerable concern by those of you who will attempt legislation in this area. For such constraints and such exposure of these files will materially hamper law enforcement investigations.

There is yet another concern that I feel that I must express involving the disclosure of information within the department's internal investigating files. In the State of Michigan, as across the nation, we have a severe problem with narcotics and dangerous drug abuse. We have recently established a program to encourage people to provide information on major traffickers in drugs and narcotics and the location of contraband drug manufacturing sites. We have developed a system to protect the identity of these individuals. In many of these cases, where we have received information, it is not simply a case of protecting the identity of the person who has disclosed the information for the purposes of shielding him or her from publicity—it is a matter of keeping the individual alive. Drug and narcotic dealers have become successively more vicious and, as such, are more than willing to kill to prevent apprehension.

We must concern ourselves with the security of these people and their lives, regardless of the cost, because they, too, are providing valuable information in our all-out war against narcotic and drug abuse. And yet, full disclosure of internal departmental investigative records as well as intelligence files would lay bare the activities of these citizens who seek to assist us in fighting this activity. We must do everything within our power to protect them, and their families, from unnecessary exposure to people who will kill them without giving it a second thought.

The Congressional Record of February 5, 1974, has quoted the Chairman of this Subcommittee as he introduced Senate Bill 2963 as stating, "In conclusion I would like to reaffirm my earlier statement that this legislation is introduced to provoke discussion and to serve as the basis of the hearings. Neither I nor any of the cosponsors feel wedded to all of the provisions of this bill." It is within this spirit that I have approached the analysis of both Senate Bills 2963 and 2964 to provide this Subcommittee with my reactions and observations to the proposals contained.

TITLE I

Section 101; Congressional Findings and Declaration Policy

This section clearly indicates the lack of laws as it involves exchange of criminal justice information and it adequately expresses valid concerns that arise in the absence of the laws. However, it also appears that within this section this bill would seek to apply federal controls to all criminal justice systems. I feel that the federal government, through legislation, should control federal information systems and allow the states to control as much as possible their own systems.

It is my opinion, that since criminal justice records are overwhelmingly the property of the several states, the states themselves should pass legislation to control that information which is maintained within their system and which belongs to them. Those controls that are acceptable and workable within the federal system may not be acceptable or workable within the various state systems We are dealing here in this instance with the proprietary rights of the several states and their needs and the needs of their individual criminal justice systems.

The FBI Careers In Crime Study indicated that only 30% of the offenders had any interstate implication. Now, with the interfaces between the state systems and the federal systems, there may be a problem. However, if at the national level the criminal information systems are simply used as a pointer or index system with the states retaining the significant data, then this problem can be minimized. I firmly believe that the greatest potential for abuse lies in the aggregation of files and, therefore, even if it is less efficient financially, fragmentation does provide great benefits and indeed may be the middle ground we all seek.

Section 102: Definitions

In this section, the definitions are all inclusive. And this makes no provision for the use of internal departmental investigative memoranda, modus operandi files, nor intelligence files. I think it would be far more productive to define the specific type of information the Congress seeks to control rather than the meat-axe approach to these records which the bill uses.

TITLE II

The problem that I find with Title II, in its entirety, is that it attempts to very narrowly constrain the rights of criminal justice agencies in their day-to-day operation. As I indicated to you earlier, the flow of information between criminal justice agencies is the lifeblood of the whole law enforcement process. I think the constraints on this flow of information ought to be very carefully considered before they are given the effect of law.

I firmly believe that in criminal justice matters, the further one is removed from the street, the less one is able to fully understand the problems. I find, for example, that it is more difficult for me at the state level to understand the problems of street crime than it is for the Commissioner of the Detroit Police Department. Similarly, it is more difficult for federal agencies to understand these problems.

I would like to suggest under my analysis of Title III, that the necessary constraints which are in sections of Title II be devised through state plans developed with the approval and under the supervision of a federal body.

TITLE III

The Federal Information Systems Board as envisioned in Title III can, depending upon the philosophical thrust, become either Orwellian in its nature or can completely hamstring the administration of criminal justice agencies. The chairman and most members of this committee and staff are familiar with Project SEARCH. It appears that some of the organizational structure envisioned in this bill may have been influenced by Project SEARCH.

I would like to go further and suggest that we take the complete step and give a federal charter to Project SEARCH to function as a policy-making body in this area. The present SEARCH committee includes people from every facet of the criminal justice in the states. We have judges, prosecutors, planners, police, and corrections represented, I do not know of a more representative group in the country.

I would suggest the present executive committee of SEARCH, elected by the complete group, function with somewhat of the same capabilities as the proposed Federal Information Systems Board. They could depend upon the United States Attorney General for legal service and advice, and this would provide input for that agency. They would, of course, require an appropriation for staff and an agency within the federal government to which they could be attached. I think it most logical that they become an independent board within the Department of Justice.

It is probable that this group may have to be expanded somewhat to include representation from outside the system. But, I think the half dozen or so state planning agency heads on the committee provide a great deal of non-user input. In fact, one of the benefits of the arrangement that I suggested is that the executive committee must from time-to-time go back to the full group for approval of their actions and this would give every State some input into the control of one of the most valuable functions of their criminal justice community.

SENATE BILL 2964

In my review of Senate Bill 2964, I was particularly pleased with the statement of Senator Hruska during the introduction of the bill when he stated, "I have long been concerned with the need to protect the rights of privacy for citizens of this country and to guarantee that such rights are provided for in the operation of criminal justice information systems. I have been particularly concerned with ensuring that criminal justice records are complete and accurate and that the exchange of such records is accomplished in a manner which safeguards the rights

of citizens while at the same time providing for the legitimate needs of the criminal justice system in the society which it serves." I can but echo this same sentiment expressed by Senator Hruska.

Section 2: Findings and Purpose.

I am particularly gratified by subsection (b) of this section that recognizes that circumstances can exist where it is clearly necessary and justified, after having weighed the interests of the individual against the needs of government or society to provide information outside the criminal justice system.

Section 3: Definitions.

Overall, the definitions in this section are adequate; however, I would call your attention to subsection (d), "Criminal intelligence information" defined as information compiled by a criminal justice agency for the purpose of criminal investigation, including reports of informants and investigators, contained in a criminal justice information system and associated with an identifiable individual. Again, I must express my concern that this covers internal memoranda and reports of criminal investigations, modus operandi files, etc. These categories within the definitions give me a great deal of concern as they involve the internal workings of law enforcement as they apply to the prevention of crime, the reduction of crime, the detection of crime, and the apprehension of criminals.

If allowed to stand, this would provide the federal government with the opportunity of interfering with the day-to-day activities of local police agencies.

Section 5: Access and Use.

In general, I concur with the concept of this section and I feel that it is very workable as it is written; however, I cannot concur with the role of the Attorney General as it relates to this section. It appears in this particular section that a great deal of authority is vested in the Attorney General, and I would not yet be prepared to abrogate the state's authority in favor of rules promulgated by the Attorney General as they relate to data within law enforcement agencies and other elements of the criminal justice system. I will discuss the general question of intelligence shortly.

Section 8: Dissemination of Arrest Records.

It appears that Governors have somewhat the same problems with their appointments and should have this same ability to have full information as the President.

Section 9: Sealing of Criminal Offender Record Information.

Again, I must disagree with the arbitrary time for the sealing of records. I feel that we must consider the event that occurred, circumstances under which it occurred, and in turn establish policy regarding this within the state system, itself. Shortly, I shall also discuss sealing in general.

Section 11: Security of Criminal Justice Information Systems.

I concur with the concepts within this section, but again I must express my concern as to the role of the Attorney General in this section and suggest the federalization of Project SEARCH as an alternative.

Section 16: Regulations of the Attorney General.

As I have mentioned many times in discussing Senate Bill 2994, I feel that far too much authority is granted to the Attorney General to promulgate rules and regulations for the operation of the Criminal Justice Information System. I do agree that, more than any other federal officer, he should have input into how the system operates. To balance these two points of view, I would suggest that the Attorney General be allowed to promulgate rules and regulations, but they should be approved by a committee composed of state representatives who are closer to the problem.

There are several areas of common concern that are covered by both bills, but I feel neither adequately covers the problem. The first of these deals with criminal intelligence. The very term, itself, is inflammatory and is probably one of the least understood aspects of a police department's activity. I, wholeheartedly, concur with Senator Strom Thurmond's remarks as outlined in the Congressional Record of February 5, 1974, as it relates to intelligence information. Senator Thurmond quoted from the Police Task Report of the National Advisory Commission on Criminal Standards and Goals, and I quote, "Intelligence in the police sense is awareness. Awareness of community conditions, potential problems, and criminal activity—past, present, and proposed—is vital to the effective operation of law enforcement agencies, of continued community security and safety." This concept is the position that I have taken regarding intelligence activities in my department and that particular quotation was written by a member of my department for the Police Task Force Report.

As you probably know, the riots of 1967 and 1968 caught many police departments short when it came to intelligence activities. Our State geared up to provide that kind of information, and since 1967 we have not had a major planned civil disorder in the State of Michigan without, at least, a two-day advance notice. This advance notice has allowed the government to take steps to either avert the problem or to minimize it to the point where the least damage is done to society and to the individual. I have no way of estimating what this is worth to our society.

The vast bulk of information in criminal intelligence systems deals with criminals. It deals with organized crime, burglary rings, hold-up rings, and other types of common criminals who operate in consort or singly. I cannot believe that you would seriously entertain any efforts to curtail these police activities.

We have many times, on the basis of unsubstantiated information provided to us, conducted surveillance on a burlary ring and caught them in the act of breaking into businesses, and a rapist and caught him attempting to rape. Without the ability to maintain and use this kind of intelligence information, these kinds of countermeasures against crime would not be available.

I would ask that this Subcommittee consider Standard 8.5 of the National Advisory Commission Report on Criminal Justice Systems. This standard suggests that all criminal justice information be classified according to its sensitivity and that restrictions be placed on this information based on that sensitivity.

I firmly believe that very little restraint ought to be placed on *police departments* in their use of criminal intelligence data. In Michigan, our department operates the Michican Intelligence Network, called MIN for short. This network coordinates all of the intelligence data gathered by the police departments in the State, classifies that data, and tightly controls its access. The only people who can use this information are those police officers who have a need to know that kind of information. We think this is the proper way to use intelligence information and would hope that this Subcommittee not obstruct us in our efforts.

Another area that requires careful consideration by this committee is on the question of aggregation, or centralizing criminal justice information. As I have stated earlier, it is this aggregation that causes the most potential for abuse. There are those in the country who, under the guise of saving money, would maintain master name files or maintain other kinds of files that would aggregate all of a person's data into one large depository from which carefully selected people would control the access.

Gentlemen, I understand computers. I have been dealing with them for at least the last eight years. And this concept frightens me. One of my concerns over the two bills presently being considered is that they deal only with criminal justice information. It is my contention that this information is probably the best handled of most of the data banks that are operating in the country, because we have had a concern for privacy and security for many years. I am more concerned about some of the data banks that are being assembled, under the guise of social services, and keep an individual's entire dossier on file. I have been approached by persons who intend to operate these banks and have been asked for criminal histories so that they might lie side by side with financial histories, health histories, social histories, and everything else concerning a particular individual. I have used every legal means to refuse these requests.

It is for this reason that I strongly urge you to write into whatever legislation comes out of this Subcommittee the requirement that criminal justice information systems be operated as dedicated ones by criminal justice agencies. It is the very fragmentation of systems, which the efficiency experts decry, that makes them less prone to abuse. I have long advocated a principle which I call "functional centralization" and, that is, criminal justice information is centralized at the State, county, and local level; social services information would be centralized at the State, county, and local level, but in separate systems. I think this kind of centralization is the middle ground between a proliferation of small systems and the cost savings that centralization might bring about.

Another area of concern that I have deals with the question of sealing of records with which both bills deal. I agree, completely, with the sealing of records after a certain period in which an offender has shown no criminal activity. I do not think, though, that the sealed records should not be available to police officers in their normal investigative operations. Many states have different charges for second or third or subsequent offenses than they have for the first, and if a record

is sealed it is impossible to tell whether or not a person has in effect committed second offense drunk driving or first offense drunk driving.

I do think that it ought to be prohibited—except in very limited situations—for a person's record, after a certain period of time, to be used in employment practices. Again, I think it is necessary for Presidents and Governors in their appointive procedures and the Legislatures and Congress in their consent procedures to have complete criminal histories on persons whom they are considering. I am, also, confident that there are other situations in which full disclosure of a person's criminal history is necessary. What I am suggesting to you is that the sealing process not prohibit police departments from having accessed information that is necessary for their operations, while at the same time it should strongly prohibit the information from being used in hiring practices, except under compelling circumstances.

Both of the bills carry provisions for civil penalties in cases of violations of the provisions of the bills. I do not quarrel at all with the liability of a person who knowingly violates the procedures that are established to protect a person's privacy. But I think that these remedies ought to be limited to criminal sanctions rather than civil sanctions. Statutorily providing for civil sanctions almost guarantees that there will be a high number of harassment suits or suits that are filed just as "fishing expeditions." We are inviting harassment with this kind of legislation. It is my understanding that most of the States, certainly in Michigan, a person can already commence civil action against government entities where it can be shown that they were wrongly injured. The question of governmental immunity has been rightly narrowed by the courts, and I think that it is no longer necessary to put these protections into legislation.

Let me say in conclusion, again I thank you for allowing me to speak before the group and I commend you in moving in an area that is long overdue. We both—you, as members of the United States Senate and, myself, as a law enforcement administrator—seek the same results in this area. Perhaps, what we both seek for the citizens of this country was best expressed by the Old Testament prophet Micah when he said, "They shall sit every man under his vine and under his fig tree, and none shall make them afraid."

Attachment A.—Law Enforcement Information Network Standards

Should a terminal be approved by the LEIN Advisory Committee, I, the legally constituted head of this department, agree to abide by all of the LEIN Standards as herein outlined.

A. *Maintain 24-hour, 7-day a week service.* This standard shall apply to all terminals which make warrant, vehicle or any other file entry which may require subsequent confirmation. This standard shall also apply to all agencies which finance their own LEIN terminals and initiate such entries.

B. *Service any non-terminal department for inquiries and file entries and updates, when such service is requested and approved by the LEIN computer center.* The LEIN Computer Center shall be responsible to continually review line loads to insure that equitable as well as optimum use is made of its communication facilities.

C. *Establish effective procedures to insure that all records, including warrant, vehicle and property entries and cancellations, are promptly made and that all such records are maintained accurately.*

D. *Enter all warrants, including traffic warrants received from the various courts for service.* Warrants excluded from this requirement shall only be those for which there is insufficient descriptive data to reasonably insure accurate identification. This standard is deemed essential in order that the police officer is totally informed relative to the wanted status of any person he may be confronted with in pursuit of his appointed duties. The LEIN Advisory Committee urges that all police agency heads establish close liaison with their respective courts to insure that warrants are promptly prepared and delivered for entry into LEIN and NCIC. Further, effective procedures should be developed between the police agency and the courts to facilitate prompt notification when warrants have been served or are no longer valid.

E. *Enter all stolen and wanted vehicles.* Stolen license plates must also be promptly entered.

F. *Enter into the stolen property files all serialized stolen or missing guns, articles, securities and boats.* The LEIN Advisory Committee recommends that procedures be developed by all LEIN users to facilitate *prompt entry* of these items. It should be recognized that delays in such entries can seriously impact on the recovery/apprehension capability of police agencies.

G. *Maintain an interim bond procedure for the purpose of accepting interim bond from persons arrested for other police agencies as well as for their own.*

H. *Comply with all rules and regulations of the LEIN system, as published in the LEIN operating manual and any other regulatory documents disseminated at the direction of the LEIN advisory committee regarding the policies and procedures of LEIN and interfaced systems.*

I. *Abide by the rules of the NCIC computerized criminal history program—background, concept and policy, dated March 31, 1971.* Submit to LEIN a copy of the LEIN Computerized Criminal History Participation Agreement signed by the head of the participating police agency.

J. *Comply strictly with all rules and regulations relating to system security.* Recognize that data stored in LEIN and interfaced systems is documented police information. Entry of, and access to, this information must be restricted to authorized law enforcement agencies. Each station must be responsible for allowing only authorized personnel to operate LEIN terminals. Vehicle registration or driver record information is not to be disseminated to any other than authorized law enforcement personnel. Unauthorized persons requesting this type data should be referred to the nearest Secretary of State office.

K. *LEIN terminal agencies shall be responsible to coordinate procedures within their department and other user departments to expeditiously respond to inquiries for record confirmation.*

L. *All terminal agencies must agree to send their terminal operators to LEIN training schools, whenever announced.*

M. *LEIN terminals shall not be awarded to any police agencies which do not service a minimum of three police patrol units during any eight-hour period.* Personnel manning the police patrol units need not be members of the department to whom the terminal is assigned.

Detective or investigators' vehicles, for the purpose of these standards, are not construed to be a police patrol unit. Nor shall vehicles assigned to agency heads, departmental executives and other supervisory personnel not normally assigned to street duty be considered as a police vehicle for these purposes

N. *Fees.* It was agreed by the Committee that no LEIN terminal shall charge any fee for any service rendered via LEIN, except as approved by the LEIN Advisory Committee. Any terminal in violation of this standard shall be removed from the agency in violation upon recommendation of the LEIN Advisory Committee.

Signature____________________________
Department__________________________
Date________________________________

Attachment B.—Law Enforcement Information Network Computerized Criminal History Participation Agreement (LEIN/NCIC)

The National Crime Information Network of the FBI, hereinafter called NCIC, agrees to furnish to ________________________ (Agency), a criminal justice agency, through the Michigan Law Enforcement Information Network (LEIN), criminal history information as is available in NCIC files, subject to the following Provisions:

____
(Agency)

agrees to abide by all present rules, policies, and procedures of LEIN and NCIC as approved by the LEIN Advisory Committee and the NCIC Advisory Policy Board, as well as any rules, policies, and procedures hereinafter approved and adopted by these respective groups.

LEIN reserves the right to immediately suspend furnishing criminal history data to the aforementioned criminal justice agency when either the security or dissemination requirements approved and adopted by the LEIN Advisory Committee or the NCIC Advisory Policy Board are violated. LEIN may reinstate the furnishing of criminal history data in such instance upon receipt of satisfactory assurances that such violation has been corrected.

____
(Agency)

agrees to indemnify and save harmless the Law Enforcement Information Network and its officials and employees from and against any and all claims, demands, actions, suits, and proceedings by others, against all liability to others, including

but not limited to any liability for damages by reason of or arising out of any false arrest or imprisonment, or any cause of action whatsoever, and against any loss, cost, expense, and damage resulting therefrom, arising out of or involving any negligence on the part of ______________________ in the exercise of enjoyment
(Agency)
of this agreement.

This agreement will become effective upon the confirming signature of the Director of the Michigan State Police.

In witness whereof, the parties hereto caused this agreement to be executed by the proper officers and officials.

LAW ENFORCEMENT INFORMATION NETWORK

By: ______________________________
(Signature)

Title: Director, Department of State Police______________________

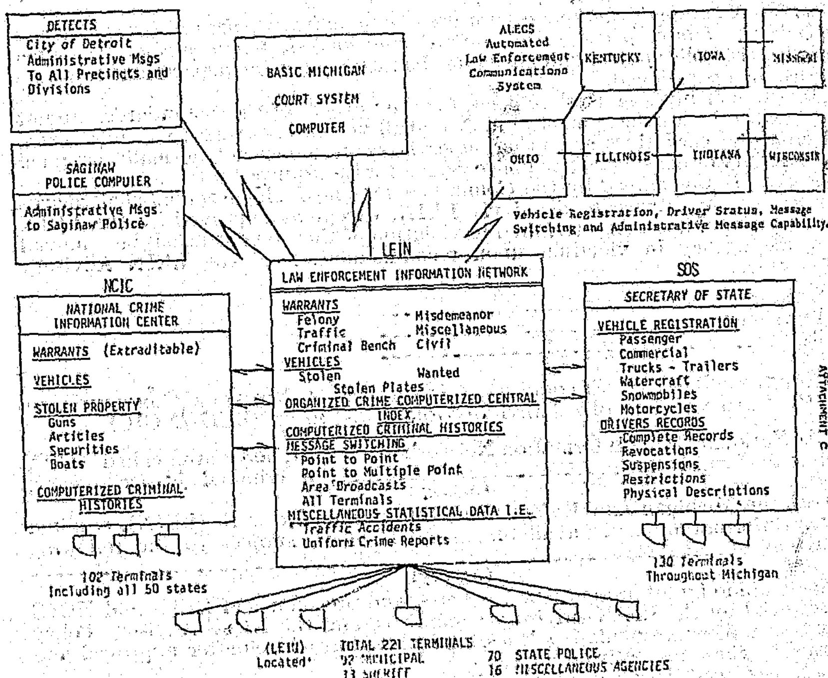
Date: ______________________________

Agency: ______________________________

By: ______________________________
(Signature)

Title: ______________________________

Date: ______________________________



Senator ERVIN. I am glad you closed your statement with one of my favorite quotations because I think it is about the finest statement of the hunger of the human heart for privacy.

Mr. PLANTS. I would like to say that this is the only time I have used that. I have used it before, and I agree.

Senator ERVIN. You made a most helpful statement for the committee, and I confess that I find myself in substantial agreement with virtually every major point that you made. I am glad you emphasize the fundamental distinction between investigatory and intelligence information as distinguished from criminal history information.

I appreciate very much your suggestion that we ought to make it very plain in any legislation that the right of individuals, that the access to his own records should be restricted to his criminal history record. As I understand it, investigatory and intelligence information, as distinguished from criminal histories, is primarily collected to enable law enforcement agencies to be informed for internal or in-house purposes, so they will be aided in understanding the problems that can arise in the criminal field, as well as identify and apprehend those that are responsible for criminal activity. It is manifest to me that the agency concerned ought to be permitted to keep the investigatory and intelligence information to itself, except in those cases where the agency might find it wise to assist some other criminal agency by giving that information to the criminal agency alone.

I do not think there can be any case made for the proposition that investigatory and intelligence information is not intended for any dissemination beyond those points.

Mr. PLANTS. That is somewhat true. There are some cases of interstate conspiracies where the information has to be exchanged between police departments, or intrastate conspiracies where it has to be exchanged between police departments.

Senator ERVIN. That should be left to the determination of the agency which has assembled that investigatory intelligence information, should it not?

Mr. PLANTS. It is difficult sometimes to express to people outside of the law enforcement community—I would narrow that down—outside of the police community that much of police work—a good policeman particularly uses his intuition a great deal. As an example which I have used from time to time, if you saw telephone lines going into a house and a known gambler is coming and going from that house, you might conclude that they were selling Girl Scout cookies by solicitation. But a good policeman knows there is a bookie place there. He cannot prove it, but he knows it.

It is that kind of information that is in intelligence files; that street address in the intelligence files would be listed as a bookie place. If I had to go to court and prove that was a bookie place I could not do that. But that is the kind of information that is generally in criminal intelligence files in police departments.

Senator ERVIN. Of course, much of it, a large part of it is unverified. Therefore if it was disseminated outside the law enforcement agencies it could do great injury to the privacy of individuals.

Mr. PLANTS. The information that causes me the greatest concern in intelligence systems is what is called political activist or militarist information. Most of that was started by local law enforcement—I cannot speak for the Federal agencies—but by State agencies it was started after the student activists and the militant activities in the late 1960's and early 1970's. We had in a short period of time 300 threats and bombings, for instance, in the State of Michigan. We are not proud of it, but we spawned SDS in the State of Michigan. We have a strong Ku Klux Klan in the State of Michigan. We have them from right to left, in armed militant groups.

While those extreme groups right or left gives me no conscience problems in keeping that information, as you get to the middle of the road it does cause me concern. And I, honestly, do not know how to handle those records. There is a need for them under certain conditions.

We had a bombing series early in the 1970's in which a student activist group put some bombs in ladies' restrooms in some shopping centers. It was because of these kinds of files that we had that we were able to find them after a very short time and prevent some major damage to society.

But in the process of using that information to find those particular bombing groups—we do have people in the files that unquestionably should not be there; and again, I would ask that somehow you try to balance our need to find those bombers with the need of some of the people who are in them to get their names out. And I honestly do not know how to do that, Senator. I somewhat resent the implication that many civil rights groups make that we are somehow sitting back here trying to steal Aunt Tillie's favorite dilled pickle recipe.

But we had to provide protection in these very militant times. In order to do that we had to have information. I would be the last to say that there was not information collected on people that should not have been collected and that that information should not be in there.

The collection itself does not bother me nearly as much as the inadvertent escape of that information out to the public. That is why I think that this information should not be given out in employment practices at all. It should not even be discussed.

Senator ERVIN. It should be kept, it seems to me, in the full control of the law enforcement agency for the twofold purpose that this bill has in mind. First, to enable the law enforcement agency to protect society, and also to make certain that this information is not disseminated because of its possible injury to innocent persons. Therefore, I think you are going to almost have to confine the custody of this information to the law enforcement agency, subject only to its determination to supply the other law enforcement agencies where the condition arises that it makes that advisable.

Mr. PLANTS. From what I know of your viewpoints on constitutional law and constitutional rights and the first amendment, I would doubt that you and I would have 10 cents difference in our philosophical background. But where I sometimes have to compromise is that I am responsible as the head of a major agency in the country for also protecting society against some of the excesses of some of these groups. And as I say, it causes me concern. I really do not have an answer to it. But I do think one needs to be developed.

Senator ERVIN. I was also very much impressed by your views in respect to the distinction between criminal information and all of the information which is being collected for social purposes in so many areas of our Nation, and I certainly agree with you that those two kinds of information should be kept separate and apart from each other.

Mr. PLANTS. There is developing in this country, Senator, in fact there was a proposal in our State—I am not so sure how valid it is now and I am active in opposing it—to have a master name file operated by some computer czar in a single large file. Anybody that the State has information about anywhere in the State will be in these master files. The file would point off to my criminal history file, although I would keep the actual criminal history. Frankly, as a citizen I resent being in that file.

The idea behind the master name index was an honorable one. They wanted a citizen to be able to make one inquiry to see if anywhere in the State his name was being held. Frankly, if you go with the functional centralization idea, a health data center, special services data center, a law enforcement data center, I think it is far more desirable for citizens to write six letters to six data banks and ask, "Is my name in there?" than to aggregate all these names together because there is then a great potential for abuse in such aggregation. That concept bothers me both as a citizen and a user of systems.

Senator ERVIN. I share your view entirely. I think in those social files what I would call political information has absolutely no place. But it does have some place in the criminal justice information systems.

Mr. PLANTS. Even there it should be very, very limited.

Senator ERVIN. I might state there is great difficulty in defining what is intelligence information as distinguished from criminal history information. One of our witnesses suggested as good a definition as any to be to define criminal intelligence as any information which is helpful to law enforcement agencies in ascertaining and solving the problems of crime. And I do not know, but I do think that is about as good a definition that can be devised on the spur of the moment. Of course, criminal histories do have a place there, too.

Mr. PLANTS. I can live with that particular definition. I am not sure that the ACLU could. That is part of your problem in trying to balance it between the various groups that are looking at the problem through different colored glasses.

Senator ERVIN. Does counsel have any questions?

Mr. BASKIR. Colonel, during the course of your written statement and your oral testimony you were distinguishing between various ways that the control of information should be administered.

The Justice Department bill contemplates that the Attorney General will devise regulations in implementing rules for the operation of both the Federal system and the rules that are being applied to the States. One of our witnesses isolated 17 instances in which the Attorney General is given discretion to apply a provision to the S. 2964 bill in terms of elaborating it for future regulations. S. 2963 takes a somewhat middle ground and it creates what the bill calls an Information Systems Board composed of nine people and three different groups, three State individuals, three Federal officers, and three persons who are not officers of the government. This at least gives the States an equal voice with the Federal Government in the development of these plans.

I gather from your testimony that you are inclined to go somewhat further toward State control when you suggest that the SEARCH committee or the SEARCH institution ought to be federalized, or at least ought to be given a charter to operate this legislation. In other words, they are to be the ones to devise the implementing rules and guidelines. Of course, Project SEARCH is totally—certainly predominantly—composed of State officials, so that I gather, if my summary of your position is correct, that you feel that even Senator Ervin's bill, S. 2963, does not give as much control to the States in the operation of these rules as you would like.

Mr. PLANTS. I am a firm believer that all wisdom does not reside on the banks of the Potomac. I think that one of the points that I made in

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here, and I tried to make it as gently as possible, is that the further away you get from the action the less real feel or understanding you have for it. That is one of the things that I tried to say.

I have difficulty, as I said, understanding the street problems of the city of Detroit. The Federal bureaucracy has far more difficulty understanding that street problem than I do because they are much farther removed from it. That is the major reason that I am opposed to having the Federal Government or the Federal bureaucrats—and I consider myself a bureaucrat and do not use the term derogatorily—but I am opposed to having Federal bureaucrats devise that kind of control. I think the States are far more able to understand the problems and have men of integrity and honesty and are just as concerned in this field as the Federal apparatus. And I think that they ought to be able to control it. I happen to be vice chairman of SEARCH and probably have a little bias in that area but I am not really wedded to the SEARCH group.

In part of the statement that I did not read, I said SEARCH should be expanded to include other areas. SEARCH does have in it almost all of the facets of criminal justice community. It is that concept, really, more than specifically the SEARCH group that I was referring to. The thing about SEARCH is, the executive committee—and I happen to be on the executive committee of SEARCH—must go back to the full committee from time to time for approval of its actions. It can operate for a certain period of time by itself but it has to go back at least twice a year to that parent group for approval of its action.

I think every State has a much more vital stake in this problem than the Federal Government. I tried to emphasize that criminal histories are principally our records. When you talk about Federal intelligence files, when you talk about Federal criminal history files, basically they are an aggregation of what they have gotten from us. This was one of the things that makes us somewhat furious. When we give them the information, then ask them to give it back, they will not give it to us because there is some kind of security label on it. It is really our information to begin with. We think the States have a far larger stake in this than the Federal bureaucracy does. We feel that we ought to have a far larger voice than what either of the bills provides.

S. 2963 is particularly bad for us because of the influence of the Attorney General.

Mr. BASKIR. And S. 2963, he is one member in nine. S. 2964, he is the only one.

Which one are you saying is worse?

Mr. PLANTS. S. 2964 is worse as far as the influence of the Attorney General. Frankly, I have looked at the SEARCH bill, and 2963 and 2964, and the regulations put out by LEAA. They get me confused. I admire you for being able to keep them straight. I cannot.

But 2964 does have more influence by the Attorney General than S. 2963.

Mr. BASKIR. I gather from your comments that you believe the central index should have a minimum amount of necessary information and it ought to be, in your words, a pointer system. You also believe, as I understand it, that it would be very bad, certainly, for Federal-State relations and for the State responsibility if the central system collected large amounts of full criminal histories and held them there rather than having the States hold the information themselves. Is that correct?

Mr. PLANTS. If you look at the NCIC concept and background papers which were developed by the policy advisory board, or at least approved by them, they do go to the pointer concept. But in an interim period, before the States accept their role in the pointer system, they do agree that certain criminal histories, such as the interstate criminal histories should be kept by the FBI. It is the ultimate aim, I think, of the Bureau, the SEARCH group, and most of the States, that NCIC function as a pointer and not as a dossier sort of file.

You will find not too much dispute over that. The question is, what do you do in the meantime, between having to have this information and the States not yet ready to handle it?

It is in this interim period that the Bureau has been keeping these kinds of files on interstate offenders.

Mr. BASKIR. Also, of course, it is keeping purely State files for those States that have not yet developed theirs systematically.

Is that correct?

Mr. PLANTS. I did not understand that.

Mr. BASKIR. For those States that do not presently have a computer capability, the Bureau would contain in the central computer, even the local, that is, the purely State criminal histories, sort of in safekeeping for over a period.

Mr. PLANTS. There are several problems that would require the FBI to have the full criminal history files—for example, some States are having problems operating dedicated systems. The requirements say criminal histories must be kept in dedicated systems, that is, operated under the control of criminal justice agencies. Some States are not yet ready to accept that concept, and consequently, you find some of the criminal histories may be kept at the FBI level because it is the only way that they can be kept under NCIC requirements. The Security and Confidentiality Subcommittee will not allow, through the FBI—of course, we are advisory, but they have generally followed our suggestions—they will not allow an agency who is not criminal justice oriented, to have criminal histories and pass them in interstate commerce through the NCIC system. That is part of the problem.

Another part of the problem is some States may be too small to effectively automate. Michigan has approximately 4½ million master fingerprint cards, and about half of those are criminal and about half of those are applicants for personal identification. During World War II there was a big move for people to have their fingerprints on file so in case of a disaster we could identify victims and that sort of thing. About half of our file is applicant. You have the same mix with some of the local agencies with small files. If a State has 15,000 criminal histories in their entire file, it may not pay them to automate. Those States may wish to use the FBI files.

Mr. BASKIR. Thank you.

Senator ERVIN. Mr. Gitenstein?

Mr. GITENSTEIN. The type of legislative scheme that the subcommittee seems to be moving toward, if you look at both bills, is a scheme where there are Federal minimum standards on the exchange of information in three areas: one, between criminal justice agencies; second, between criminal justice agencies and noncriminal justice agencies; and third, an administrative structure of some sort to enforce those provisions.

Is it your position, assuming that we resolve the administrative concept and move toward a State-based concept like the SEARCH model to administer the act, that the Federal legislation should address the release of information and the exchange between criminal justice agencies?

Should there be any provisions in the Federal law concerning the exchange of this information from one agency to another?

Mr. PLANTS. Yes. I think there should be areas, some of which I have discussed in here, the areas of dedication, the areas that prohibit criminal justice information and names being aggregated with other data banks, these kinds of broad restrictions. I could not enumerate them all here. I think those broad restrictions should be in the Federal legislation because some States are influenced much heavier by efficiency and economy experts that want to go with the big box with everybody's name in one big box. I think if you prohibit that by Federal legislation, you would have done a great service in this area of abuse.

There are others. I could not tick them off to you but I would be happy to discuss them with you later.

Mr. GITENSTEIN. That is very important.

Senator Ervin's bill addresses that, and perhaps it will prevent some anticipated problems, as you suggested, but there are also valid restrictions even on dissemination. For example, the task force that you suggested had a rule on return of records to a person where the record resulted in a nonconviction. That would suggest a very significant restriction on law enforcement dissemination, would it not?

Perhaps we should be considering restrictions like that.

Mr. PLANTS. One of the problems with the NAC report and many of their task force reports is that they are a compromise between various viewpoints of persons on the committee. That particular point I did not agree with, but the task force of the full committee did. Therefore, it is a part of the task force report. I think that creates far more mischief than it will do good—in other words, the bad features of that system will outweigh the good. Having a person come in, and removing all records of everything that ever happened to him can cause great harm to police operations—I happen to believe, for example, that an arrest is a public event. A man was deprived of his liberty. That is a public event. A man was arraigned before a court. That is a public event. A case was dismissed by the prosecutor. That is a public event.

I do not have any problems with keeping that information. That does not bother me a bit. It is how you use that information that bothers me. I think the use ought to be very tightly controlled, not rewrite history by wiping it out as if it never happened.

Mr. GITENSTEIN. What I am proposing is that there may be some problems with police use of an incomplete arrest record.

Mr. PLANTS. Yes. I believe with you that there may be some problems there. You brought up one more point. In this area, we have been operating an identification bureau since 1927, and we are one of the largest in the country. In the past, there has been no real incentive, because I would guess of our society's philosophy, there has been no incentive for the police to make complete records on the rap sheets.

We call the criminal history, the rap sheet. It was difficult to get information from courts. In fact, some courts did not think the police had any business with dispositions, so it was rather difficult to get them.

Therefore, in any identification bureau right now, you will find a great percentage of the older records, that we call dirty records. They are not complete, not that complete information is not available somewhere, but they are not complete on that rap sheet.

One of the things that I would seriously ask for you to consider is grandfathering in for a certain period of time that kind of information. It would be very disruptive if you suddenly in 1974 applied new kinds of restrictions on information that has been gathered over the last 10 or 15 years. I think it would create a lot of problems if you did that, and I would suggest that you find some way of grandfathering that in, so at the end of 5 years or at the end of 7 years or 10 years or whatever time you want to put on it, the information is sealed and it is no longer available to anybody outside the police community.

Mr. GITENSTEIN. That does not mean we could not have a provision in the bill that prohibited the dissemination of an incomplete record, even to a law enforcement agency if the arrest took place after the effective date of the act.

Mr. PLANTS. I have no quarrel starting with day one and laying down rules from day one. My problem is going back trying to cleanup records that have evolved over the years in various stages.

There is one other point I would like to make, if I may Mr. Chairman, in my role as the chairman of the State provincial section of International Association of Chiefs of Police. That section is made up of the State administrators around the country who for the most part operate the NLETS system and deal with NCIC in all of its aspects. We met in St. Louis at an executive committee last week and adopted a resolution which I have been asked to make sure this committee is aware of. The resolution in effect states that the State and Provincial Executive Board supports NLETS and its present operation as far as administrative messages are concerned. They also support the FBI and the message switching capability for CCH, NCIC and related functions.

They are supporting both systems, the FBI and the CCH and the NCIC's functions and NLETS in its message functions.

Frankly, as is presently established, I think there is plenty of need for both systems.

Mr. BASKIR. Do I understand from that resolution that the IACP committee prefers to keep NLETS as a State operated, State run system and would not like to see it incorporated in the NCIC, FBI run system.

Mr. PLANTS. Your statement is correct, with the exception that we do not speak for IACP, only the State and Provincial Section.

Mr. BASKIR. Thank you.

Senator ERVIN. I want to thank you very much.

You have been extremely helpful to us.

We will keep the record open for 10 days.

The subcommittee is recessed.

[Whereupon, at 1:20 p.m., the subcommittee was recessed, subject to the call of the Chair.]

ADDITIONAL STATEMENTS

The following inquiry was sent to approximately 25 representatives of law enforcement agencies, commercial concerns, professors of criminal law, and others interested in the proposed legislation. Responses received as of May 1, 1974 follow the inquiry.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS,
Washington, D.C.

DEAR ______________: On March 14th the Subcommittee on Constitutional Rights, which I chair, concluded two weeks of hearings on legislation dealing with criminal justice data banks and the right to privacy. I am writing to solicit comments by your organization on the two major pieces of legislation on this subject pending before the subcommittee.

I have instructed the staff of the subcommittee to keep the hearing record open until the first week in April. Therefore, we would be pleased to publish as part of that record any formal statement which you might want to make on behalf of your organization on these bills or on this subject generally.

I am including for your information a copy of S. 2963 and S. 2964, statements which Senator Hruska and I made at the time of introduction of both bills, as well as my opening statement at the recent hearings plus two short memoranda prepared by the staff, one which compares the two bills and the other which sets out several of the basic issues which were raised in the course of the hearings.

We would like to receive a copy of your statement by April 8. If you intend to submit a statement, please contact Lawrence Baskir or Mark Gitenstein of the subcommittee staff at (202) 225-8191 so that they might make space for your statement in the subcommittee record.

With kindest wishes,
Sincerely yours,

SAM J. ERVIN, Jr.,
Chairman.

Enclosures.

AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC.,
Evanston, Ill., March 28, 1974.

Mr. MARK GITENSTEIN,
Senate Subcommittee on Constitutional Rights,
Old Senate Office Building, Washington, D.C.

DEAR MR. GITENSTEIN: Americans for Effective Law Enforcement, Inc. is a national, not-for-profit citizens organization, the purpose of which is to provide responsible support for proper law enforcement.

When I became the Executive Director in 1970, I wrote to Mr. Baskir to ask to be put on the mailing list of your Subcommittee because of the nature of your aims and ours. Mr. Baskir kindly saw to it that I was put on the mailing list and in turn requested our thoughts from time to time.

Because of the extreme importance of the issues involved in S. 2963 and S. 2964, I request that the attached prepared statement be considered with regard to these bills. While we are generally supportive of the need for controls on the dissemination of criminal history information, we believe that there should be enough flexibility to permit such dissemination among criminal justice agencies. Our statement reflects this position.

I called your office two weeks ago and talked with a staff member who said that it would be permissible to submit this statement.

With thanks for your consideration, I am
Sincerely,

FRANK CARRINGTON, *Executive Director.*

Enclosure.

PREPARED STATEMENT OF FRANK CARRINGTON, EXECUTIVE DIRECTOR, AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC., EVANSTON, ILL.

Mr. Chairman: My name is Frank Carrington, I reside at 1341 Chestnut St., Wilmette, Illinois, 60091. I am the Executive Director of Americans for Effective Law Enforcement, Inc. (AELE) Suite 960, State National Bank Plaza, Evanston, Illinois, 60201. I am an attorney and I hold a Masters of Law Degree in Criminal Law from Northwestern University. By way of law enforcement background, I have served as a U.S. Treasury Agent and as Legal Advisor to the Chicago and Denver, Colorado Police Departments.

Americans for Effective Law Enforcement, Inc., (AELE) is a national, not-for-profit citizens organization, incorporated under the laws of the State of Illinois in 1966.

The purpose of AELE is to provide responsible support for proper law enforcement. AELE is not a "police, right or wrong" organization. We do not support abusive police practices of any sort; rather, we call for a balance which takes into consideration the rights of the law-abiding and the innocent victims of crime as well as the rights of the criminal accused.

This Subcommittee has heard from experts in the field of law enforcement and related areas. Those experts have presented detailed analyses of the provisions of the legislation before this Subcommittee and similar legislation in the House of Representatives, to wit: H.R. 188, H.R. 9783, H.R. 12574, H.R. 12575. We will not reiterate the points made and analyses provided with regard to most of the sections of the proposed legislation. We will, rather, address ourselves to what we believe to be the issue most important to the effectiveness of law enforcement: the question of limitations upon the dissemination of criminal history and arrest record information among criminal justice agencies.

We unreservedly agree with and support the statement made by Director Clarence Kelley of the Federal Bureau of Investigation in his testimony before the Civil Rights and Constitutional Rights Subcommittee, Committee on the Judiciary, United States House of Representatives:

Members of the Subcommittee, there is a continuous need for criminal justice agencies to have unfettered access to prior criminal records for subsequent investigations and for the safety of their personnel and innocent bystanders. (p. vii)

We concur with his recommendation in the same testimony:

I unequivocally urge you to omit any restrictions on criminal justice access to any type of criminal justice information. (p. vii)

Crime in all of its forms is an extremely critical domestic problem in this country today. Significant proportions of our citizenry are afraid to leave their dwellings at night for fear of criminal violence. Violent crime, crimes against property, white collar crime, organized crime and juvenile crime have become a corrosive part of our daily lives. The statistics of reported crime bear this out to the extent that lengthy citations of the statistics are unnecessary and many experts believe that there is perhaps as much or more crime in this country which goes unreported.[1]

It is likewise patent that far and away the greatest majority of the victims of crime, particularly violent crimes, are the ghetto dwellers, the minorities and the poor and powerless. The late Herbert L. Packer, Stanford University Criminologist, found in a study, released in 1970, that ghetto dwellers are at least 100 times as likely to be victims of street crimes as are middle class whites living in the suburbs.[2] According to Professor Packer, one out of seventy ghetto inhabitants fell victim to a mugger, rapist or assailant in 1969, while in the overall population the incidence of these crimes was one in 10,000. Those who should be the major source of concern in the criminal justice system—the victims of crime who happen to be of a minority race—pay for crime at a most usurious rate.

[1] See e.g. Crime Control Digest, February 4, 1974: "Unreported Crime Twice as Reported [illegible] me; LEAA Survey Shows."

[2] Crime Control Digest, March 25, 1970, page 7. See also: "Black Crime Preys on Black Victims", Associated Press, Report in the Denver Post, August 23, 1970.

To be sure, our crime problem, horrendous as it is, must never become the basis for any sort of wholesale erosion of the rights of individuals, including the right to privacy with which this subcommittee is so properly concerned. We do not for a moment advocate that there be no controls upon the information that is bandied about in our society concerning the private lives of individuals. We do believe, however, that drastic restraints upon the dissemination of accurate criminal history information and arrest information among criminal justice agencies would in many cases cripple the investigative and enforcement activities of such agencies to the demonstrable detriment of the law-abiding and the victims of crime.

We believe, further, that in balancing the necessity not to cripple law enforcement in the exchange of necessary criminal history information against the individual's right to privacy the needs of law enforcement on this issue should prevail.

S. 2963, for example, would prohibit the dissemination, with very narrow exceptions, of any but conviction records, even among criminal justice agencies. This provision strikes at the very heart of one of the most basic tools of law enforcement: information as to the identity, whereabouts and method of operation of known or suspected criminals.

Now, the theoretical case for restrictions on the dissemination of criminal history information and arrest records which have not resulted in convictions within a few years time, is based, we suppose, upon the presumption of innocence—that bulwark of our criminal justice system which holds that one is presumed innocent until proven guilty. No one in his right mind can quarrel with this presumption but it must be borne in mind that it is only a presumption.

In an ideal criminal justice system wherein each criminal proceeding resulted in the determination of the real truth as to the guilt or innocence of the accused, the no-dissemination-without-a-conviction would be eminently sensible. Unfortunately, the criminal justice system in the United States bears no resemblance to such an ideal system. The fact of the matter is that in many instances the truth as to the actual or apparent guilt of a suspect in our system is for one reason or another suppressed.

For example, a person arrested for a crime whose guilt is at least highly probable may escape conviction because:

1. Physical evidence against him must, under the Exclusionary Rule, be suppressed: (a) a suspected murderer found in possession of the murder weapon; (b) a suspected rapist found in possession of the victim's bloody underclothing; (c) an alleged robber or burglar found in possession of the fruits of the crime; (d) a suspected heroin dealer found in possession of heroin—all may have to be freed because the items found must be excluded as evidence if the police, in searching for or seizing such evidence, are found to have violated the accused individual's Fourth Amendment rights in any manner;

2. Confessions made by the perpetrators of crimes—often the only evidence of their guilt—must be freed if the police, in obtaining the confession, ran afoul of the extremely rigid requirements involving the admissibility of confessions in the decision of the United States Supreme Court in Miranda v. Arizona, 384 U.S. 436; (1966);

3. Witnesses, and often victims, refuse to testify against the accused because: (a) they are terrified into silence; (b) they are killed; (c) they are discouraged by the interminable delays involved in bringing an accused to trial; (d) in such crimes as rape and molestation cases the victims refuse to expose themselves or their children to the trauma of going through with a criminal prosecution.

4. Individuals who have been freed on such grounds as insanity, "diminished capacity," etc.

These are but a few examples of the manner in which, while the suspect has not been in fact convicted, the practical realities of the situation dictate that his guilt is at least as likely as his innocen

This is the sort of information whic r criminal justice agencies must be able to exchange among themselves if they are to be able to perform their function properly: the protection of the law-abiding. Certainly, such exchanged information must be as accurate and complete as possible. We support those provisions in the proposed legislation which seek to ensure this accuracy. But we urge the most searching consideration of the provisions which purport to restrict the dissemination of criminal justice information among criminal justice agencies in which a conviction did not result.

Such a restriction would result in cases in which law enforcement officers in jurisdiction "A" might be in possession of information about, or actually be confronted with, a series of crimes by unknown persons involving rather specific characteristics or methods of operation: a murderer who mutilates his victims in a certain way; an armed robber who gains access to his victims' premises disguised as a deliveryman; confidence men who use a certain technique to swindle their victims; heroin dealers who use a certain method of distributing their wares, etc. Since it is well known that many criminals tend to commit their crimes in the same manner time after time, it would be logical for the officers in jurisdiction "A" to circulate nearby police jurisdictions to ascertain if they had information about suspects who utilized similar methods of operation.

Now, suppose that officers in jurisdiction "B" did in fact have a record and criminal history about an individual who had been arrested in that jurisdiction for crimes utilizing the same method of operation but against whom no conviction had been obtained for any of the reasons noted above, for example, the suppression of evidence, or failure of witnesses to testify. That information would be unavailable to the investigators in jurisdiction "A".

The officers in jurisdiction "B" would be prohibited from transmitting this highly important information to jurisdiction "A" even though such information might well lead to the apprehension of a dangerous criminal in jurisdiction "A". Criminals, like everyone else in our society, are highly mobile and, since they may well be caught if they remain too long in one place, they have every reason to go from place to place in furtherance of their criminal purposes. The police, nationwide, need to exchange information about such individuals. The provisions of S. 2963 would, however, completely prohibit such dissemination unless a conviction had resulted. The prohibition of such dissemination would in many cases, forclose a legitimate police investigation before it could even get started.

The situations described herein while concededly hypothetical, are, we submit, not farfetched. They occur on a daily basis in the enforcement of the criminal law and they illustrate the intolerable burden which would be placed upon law enforcement, nationwide, should unrealistic restrictions be put upon the dissemination of criminal record information among criminal justice agencies.

An additional factor which must be considered before such restrictions are imposed is the safety of our law enforcement officers. Murders of and assaults against police officers have, tragically, become almost commonplace. 448 law enforcement officers were murdered in the United States between 1968 and 1972. Many actual, and potential, police killers have been previously convicted of some sort of crime, but many others have not. To prevent the absolute and unfettered dissemination among criminal justice agencies of criminal record information or intelligence information about those who are likely to present a danger to the safety of law enforcement officers will make the already dangerous job of the policeman infinitely more hazardous.

For the foregoing reasons we urge this Subcommittee to refrain from placing any restraints upon the dissemination of criminal record information among criminal justice agencies.

Respectfully submitted,

FRANK G. CARRINGTON,
Executive Director.

AMERICAN LIFE INSURANCE ASSOCIATION,
Washington, D.C., April 9, 1974.

Hon. SAM J. ERVIN, Jr.,
Chairman, Subcommittee on Constitutional Rights, Committee on the Judiciary, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR ERVIN: Pursuant to the request of your staff, there is attached a statement by the American Life Insurance Association with respect to S. 2963 and S. 2964 proposals that, among other things, would restrict access to certain criminal information by private corporations such as life insurance companies.

We are submitting this statement to the Subcommittee in order to make clear how certain types of criminal information are utilized by life insurance companies. We hope that the information included in this statement will be of assistance to your Subcommittee in assessing the desirability of certain provisions contained in these proposals that are intended to restrict access to criminal information.

We would appreciate having this statement included in the printed record of the Subcommittee's hearings on S. 2963 and S. 2964.

If you, other members of the Subcommittee or your staff wish to discuss this statement or other matters relating to these proposals, we would be pleased to meet with you.

Sincerely yours,

R. OTTO MELETZKE.

Attachment.

STATEMENT OF AMERICAN LIFE INSURANCE ASSOCIATION

This statement is submitted on behalf of the American Life Insurance Association, a national trade association with a membership of 365 life insurance companies which account for over 90 percent of the legal reserve life insurance in force in the United States.

We are submitting this statement to the Subcommittee in connection with the consideration of S. 2963 and S. 2964, in order to make clear how certain types of criminal information are utilized by life insurance companies. It is our hope that the information included in this statement will be of assistance to the Subcommittee in assessing the desirability of certain provisions in this legislation that are intended to restrict access to criminal information.

At the outset, it should be made clear that life insurance companies have an interest in criminal information only to the extent it is necessary:

1. In underwriting life and health insurance applications and investigating certain life and health insurance claims;
2. To comply with legal requirements of the States for the licensing of life insurance agents, and to afford adequate safeguards for companies in hiring agents and selecting management personnel with important responsibilities; and
3. To assure compliance with certain other Federal and State laws.

In the discussion that follows, we will outline the types of criminal information necessary to fulfill life insurance companies' underwriting and claims responsibilities, and point out the relevance of this information and how it is utilized. In addition, we will summarize those Federal and State requirements which make it necessary for life insurance companies to obtain certain types of criminal information.

I. UNDERWRITING AND CLAIMS CONSIDERATIONS

Underwriting considerations

A fundamental principle of life and health insurance is that each policyholder must be expected to pay a premium commensurate with the risk to be insured. Thus, only applicants exposed to comparable degrees of risk can be placed in the same premium class and, for this reason, the life and health insurance underwriter must have available information bearing on risk classification. This information is elicited from the insurance applicant in the written application, in many cases from a medical examination, and frequently through what are called inspection reports prepared by independent reporting agencies specializing in this business. These firms usually interview the insurance applicant, business associates, and others familiar with the applicant to develop information independent from that submitted on the application and to verify any such information. Their focus in developing information pertinent for underwriting purposes is not on criminal information, as such, but on any information that has an effect on mortality.

Although criminal activity or association can become important as a mortality hazard, as a matter of procedure reporting agencies do not routinely investigate for criminal history on insurance applicants unless their field representatives are informed by the applicant himself or others that there is the possibility of past or current criminal activity. When this is the case, such agencies generally develop criminal information only from public records, such as police blotter information pertaining to arrests, indictments, convictions, parole records, and other evidence of rehabilitation. Their objective, on behalf of their life insurance company customers, is simply to confirm or refute on a factual basis any evidence of criminal activity.

It is also important to the applicant, who allegedly has been involved in criminal activity, that a life insurance company has access to criminal information such as arrest records, trial records, records of final disposition, and parole or other rehabilitation records. Without this information, a life insurance company would be required to make underwriting judgments on the basis of information furnished only by the applicant, or developed through independent investigations through neighborhood, business, or other logical sources.

In most cases, it would not be possible to confirm that the information of possible criminal activity obtained through such sources is accurate, reliable, or given without prejudice, since much of the data supplied may be based on personal opinion or may be influenced by "rumor". When an underwriting decision is based on incomplete or inaccurate information—as would be the case if any insurance company (or independent reporting agency) were denied access to criminal records—it could result in (a) the denial of insurance protection to consumers who would otherwise have been eligible had the facts been available, or (b) the charging of unfairly high or unfairly low premiums to consumers who are accepted as insurance risks, since the underwriting decision would not be based on full information, or (c) the issuance of insurance to uninsurable risks.

For example, when there is evidence of a prior conviction, it is extremely important that there be access to information that might indicate a subsequent record free from arrest. This will provide confirmation to the underwriter that the applicant has been rehabilitated. Thus, free access to arrest or parole records can have a highly beneficial effect in making insurance available to an applicant at the earliest time and at the lowest possible rates. Similarly, when there is evidence of repeated arrests, it is essential that the underwriter have complete factual information in order to treat the applicant fairly. In this regard, the reason for arrest may be very significant, e.g., repeated arrests for heroin usage presents different mortality concerns than in other cases.

To further illustrate the positive effect of factual criminal information, persons convicted of so-called "victimless" crimes such as income tax evasion are frequently issued life insurance, perhaps with an extra premium. Again, access to arrest and conviction records is essential in order to determine the amount of extra premium, if any.

Aside from the "positive" effect factual criminal information can have on underwriting an otherwise borderline case, it is also necessary to have such information to assure that risks are not accepted where there is a reasonable expectation of greater than normal mortality because of evidence of prior or current criminal activity. Persons with known records of violent crime are more likely to be associated with violence than the normal risk. Crimes associated with violence obviously cause greater concern. For example, persons with repeated arrests and convictions for homicide, aggravated assault, burglary, extortion, narcotics selling or using, or attempted bombing of public buildings or airplanes, are declined for most forms of personal life or health insurance.

Where a threat of violence exists, there is an extreme risk to an insurance company that far surpasses the normal mortality risk presented by persons with no association with criminal activity. In addition, there are documented homicide cases where the sole motive was to collect life insurance proceeds. Furthermore, with absolute evidence of criminal activity, it is not unreasonable to assume that such an applicant may tend to be more dishonest in dealing with the insurance company when he applies for his insurance.

Because of the long-term nature of the life insurance contract, and because it will become incontestable two years after issuance, there is an obvious risk presented. Finally, especially in recent years with the advent of so-called "white-collar" criminal activity, another type of risk is presented—that an attempt may be made to convert crime-produced money to life insurance policies or annuities in order to conceal it from government authorities.

In order to offer insurance to persons with known criminal backgrounds, the underwriter must have factual information. The records of all convictions (regardless of when convicted) and arrests (going back for a reasonable period of time, depending on the severity of the charge) are needed. Felony records are more important than misdeameanor records, but both are important, particularly for the repeated offender. The underwriter will, of course, supplement these records with details of the applicant's present occupation, employment record, and family circumstances.

Claims investigations

In the claims area, there is also need for access to criminal information. It is a well-settled common-law rule that a beneficiary of a life insurance policy who murders or feloniously causes the death of the insured forfeits all rights which he may have in or under the policy. This rule is based upon public policy and upon the principle that no one shall be allowed to benefit from his own wrong. See, e.g., 44 Am. Jur. 2d, Ins., Section 1741.

Approximately 30 states now have statutes concerning the wrongful killing of the insured by the beneficiary. There are three basic types of statutes;

1. The first type disqualifies a beneficiary who has been convicted of the murder of the insured. E.g., Section 64.1–8, Code of Virginia 1950.

2. The second category of statutes disqualifies the beneficiary who has been convicted of feloniously killing the insured. E.g., Minnesota Probate Code, Section 525.87.

3. A third group of statutes is generally considered a codification of the common law, and disqualifies a beneficiary who intentionally and unlawfully kills the insured. This type of statute differs from the second category in that it may cover a "slayer" who participates, as principal or an accessory before the fact, in the willing and unlawful killing of any other person. It is unclear under this type of statute whether or not a homicide conviction is required. E.g., Section 15–2–803 of the Idaho Uniform Probate Court.

Another problem in the claims area is presented by the common-law rule that injury or death sustained by an insured in an encounter brought about by an assault committed by the insured upon another using a deadly weapon, or upon one who the insured knew had such a weapon, is not sustained by accident or accidential means within the meaning of a policy providing accidental death or disability benefits. Under such circumstances, the injury or death is deemed to be the natural and probable consequence of the insured's act. E.g., 44 Am. Jur. 2d, Ins. Section 1248, page 93.

Another area of concern to claim departments is the disappearance of the insured. That a presumption of death arises after an unexplained absence of a number of years—usually seven—is now recognized in some form in every state either through common law or statute. However, it is equally well settled that such a presumption of death "per se" has no weight as evidence. Upon introduction of evidence that the person concerned is alive, the presumption falls. It is therefore important for companies to obtain as much information as possible concerning the policyholder's circumstances immediately prior to the "disappearance", so as to establish a motive for the "disappearance". Any criminal involvement of the insured or his relatives or associates would obviously be significant in such situations.

Access to criminal information is also necessary in connection with claims for long-term disability benefits. In this regard, it is not unusual to have a claim fraudulently perpetrated on the insurance company in order to collect large long-term disability payments or large medical payments. Thus, for example, a prior history of criminal convictions for embezzlement or other crimes of dishonesty tends to alert an insurance company to investigate the validity of such claims, again on grounds that this at least indicates a potential for concealment or misrepresentation of fact in connection with the claim. Here again, confirmation by way of factual information is essential to treat the claimant fairly, on the one hand, and protect other policyholders, on the other.

In conclusion, insurance involves a pooling of risks which makes necessary the grouping of insured persons into comparable classes to achieve the fairest possible means of distributing these risks. For, in the final analysis, the funds to pay life and health insurance claims must come from the premium payments of those who are insured. Criminal activity is a well established risk factor in mortality and morbidity evaluation, and we urge that in developing any legislation that will restrict access to criminal information great care be taken to avoid unfairly imposing the burdens of this risk upon others.

II. COMPLIANCE WITH LEGAL REQUIREMENTS OF THE STATES FOR THE LICENSING OF LIFE INSURANCE AGENTS AND OTHER RELATED CONSIDERATIONS

Agents' licensing requirements

Access to certain criminal information by life insurance companies is also necessary to comply with the legal requirements of the states in connection with the licensing of life insurance agents. All states, except Massachusetts and Wisconsin, request applicants for agents' licenses to provide information with respect to criminal convictions. Some states limit their inquiries to felonies or serious offenses, but others inquire about minor offenses, including such matters as the issuance of worthless checks. In more than half of the states, there are inquiries not only with respect to convictions, but also arrests, charges and indictments, whether or not followed by a conviction.

In approximately half of the states, life insurance companies are required to sign an endorsement on the agent's application to the effect that a diligent inquiry and investigation of the applicant has been made. Furthermore, in Kentucky and Maine, a life insurance company must attach a copy of the investigative employment report on the applicant.

As in the case of underwriting and claims responsibilities of life companies, a typical procedure for a company in connection with selecting agents is to employ the services of an independent reporting agency to conduct a personnel background report on the applicant. Because of the various state licensing requirements that require criminal information, life insurance companies must be able to determine that agents applying for licenses have not been involved in prior criminal activity.

The following excerpt from the Colorado agents' licensing law illustrates the type of legal requirements referred to above. We are attaching as Exhibit A a compilation of the pertinent agents' licensing laws of all of the 50 states and the District of Columbia.[1]

Colorado Revised Statute, Chapter 72, Article 1, § 18. Licensing of agents—(1)(a) Every such company shall, through its proper officer or agent, promptly notify the insurance commissioner in writing of the name, title and address of each person it desires appointed to act as agent in this state. Upon receipt of such written notice, when accompanied by the fee required by section 72–1–12, if it appears that the appointee is of good moral character, *has not been convicted in this or any other jurisdiction of a felony or a crime involving moral turpitude*, and has submitted a truthful and accurate statement as required under subsection (2) of this section, and otherwise a suitable and competent person and intends to hold himself or herself out in good faith as an insurance agent, and if the appointee qualifies under the provisions of this section, the insurance commissioner shall issue to such person a license which shall state, in substance, that the person named therein is the constituted agent of the company in this state for the transaction of such business as it is authorized to transact in this state and for which such appointee shall have qualified. The commissioner may at his discretion require that the applicant submit to the department a complete set of fingerprints certified to by a law enforcement official. (Emphasis added)

Related considerations

Aside from the licensing requirements referred to above, there are other important reasons for companies to have access to criminal information in connection with the employment of agents and other company personnel. For example, there is the possibility of potential liability of a life company to third persons resulting from the illegal acts of agents. There are a number of judicial decisions in this regard that hold an insurer liable for assault and battery committed by one of its agents, and this principle has also been extended to conspiracy cases, false imprisonment, embezzlement, fraud, and even libel and slander.

III. COMPLIANCE BY LIFE INSURANCE COMPANIES WITH CERTAIN OTHER FEDERAL AND STATE LAWS

Federal securities requirements

In a number of respects life insurance companies or their affiliates are under the jurisdiction of and subject to regulation by the Securities and Exchange Commission ("SEC") pursuant to the federal securities laws. For example, over 85 investment companies registered under the Investment Company Act of 1940 ("1940 Act") are sponsored, advised by or otherwise affiliated with life insurance company members of the American Life Insurance Association. Each of these registered investment companies files with the SEC registration statements under the 1940 Act and the Securities Act of 1933, as well as proxy material and periodic reports under the 1940 Act and the Securities Exchange Act of 1934 ("1934 Act"). To each of these filings attach certain obligations and potential liabilities which are described below.

In addition to the foregoing, life insurance companies, in recent years and in increasing number, have begun to market variable annuities and/or mutual funds. As a result over 170 life insurance companies, or their subsidiaries or affiliates, have registered with the SEC as broker-dealers under the 1934 Act and with self-regulatory associations such as the National Association of Securities Dealers Inc. ("NASD").[2] Such broker-dealers are also subject to regulations, as described below.

[1] It is also noteworthy that all of the states in their agents' licensing laws specify the circumstances under which agents may be suspended, have their licenses revoked or refused because of convictions of felonies involving moral turpitude, and in some cases other types of criminal activity. For purposes of enforcing these requirements state insurance departments frequently utilize the services of independent reporting agencies to discover or confirm evidence of criminal activity. While these requirements may not always directly pertain to criminal information necessary for life insurance company purposes, they do point out the need for state supervisory agencies to have access to certain types of criminal information. (These provisions for all of the 50 states are also included in Exhibit A.)

[2] We are attaching as Exhibit B a copy of the application for registration with the NASD. Attention is specifically directed to questions 16(d) and 17, pertaining to criminal information.

These requirements point up the necessity for inquiries on the part of life companies as to criminal information pertaining to personnel involved in these special capacities.

Section 9(a) of the Investment Company Act makes it unlawful for any person to serve or act in the capacity of employee, officer, director, member of an advisory board, investment adviser, or depositor of any investment company, or principal underwriter for any open-end company, unit investment trust or face amount certificate company, if such person has been:

1. Convicted (which, by definition, includes a plea of *nolo contendere*), within ten years in connection with any felony or misdemeanor involving the purchase or sale of any security or in connection with such person's conduct either as an underwriter, broker, dealer or investment adviser, or as a affiliated person, salesman or employee of any bank, investment company or *insurance company;* and

2. Any person who has been permanently or temporarily enjoined from acting as an underwriter, broker, dealer or investment adviser or affiliated person, salesman, or employee of any bank, investment company or *insurance company*, or has been enjoined from engaging in any conduct in connection with such activity, or has been enjoined in connection with the purchase or sale of any security. (Emphasis supplied)

Section 9(a) operates as a matter of law. Upon the entry of a conviction or injunction, the enjoined or convicted person is automatically barred, and must resign from any enumerated capacity in which he is serving or face civil and/or criminal prosecution.

Section 9(b) of the Investment Company Act authorizes the Commission to bring an administrative proceeding to prohibit, conditionally or unconditionally, either for life or a lesser period of time, any person from serving or acting as an employee, officer, director of an advisory board, investment adviser or depositor of, or principal underwriter for a registered investment company or an affiliated person of an adviser, depositor or underwriter, if the Commission finds that such person has (1) filed a false statement with the SEC; (2) willfully violated any provision of the federal securities laws; or (3) willfully aided and abetted such a violation.

Section 9(b) is made operative by an order for proceedings which issues at the Commission's discretion.

Sections 15(b)(5) and 21 of the Securities Exchange Act of 1934 authorize the Commission to bring a proceeding against any person who (1) has filed a false statement with the Commission; (2) has been convicted within ten years of a felony or misdemeanor as described above; (3) has been permanently or temporarily enjoined as described above; or (4) has either willfully violated or aided and abetted the violation of any provision of the federal securities laws.

Under these procedures, the Commission may bar such person from being a broker or dealer. In recent cases, the Commission has, through court actions, barred such persons from serving on the board of directors of industrial companies. Assumedly, the Commission could seek to bar, through injunctive action, a person from service with an insurance company.

As is the case in agents' licensing, a significant number of life insurance companies utilize independent reporting agencies to verify the information furnished by personnel subject to the securities laws mentioned above. Thus, it is extremely important in order to comply with these Federal laws that insurance companies or independent reporting agencies acting on their behalf be able to have access to certain types of criminal information.

State securities laws

As in the case of the Federal requirements listed above, most of the states have similar requirements under their respective securities laws that require as a requisite to registration of broker-dealers, agents, or investment advisers information pertaining to convictions involving securities or any aspect of the securities business. In some states, the applicant broker-dealer, agent, or investment adviser must furnish information on any arrest regardless of whether a conviction subsequently took place. Other states require information as to whether the applicant has been convicted of a security-related offense. Still others require information as to whether the applicant has been convicted or charged with a felony or misdemeanor involving fraud.

A typical requirement of these securities laws appears in the Uniform Securities Act ("Blue Sky" law) which has been adopted in varying forms by 28 states. Section 202(a) of that Act provides, in part, as follows:

"A broker-dealer, agent, or investment adviser may obtain an initial or renewal registration by filing an application . . . [which] shall contain whatever information the [Administrator] by rule requires concerning such matters as . . . (3) the qualifications and business history of the applicant; in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly contolling the broker-dealer or investment adviser; and, in the case of an investment adviser, the qualifications and business history of any employee; (4) *any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony* . . ." (Emphasis supplied)

Usually, information necessary to comply with the state securities laws is requested on the licensing application of the individual state. Further, the states of Alabama, Nebraska, Tennessee, West Virginia and Wisconsin require that a background report prepared by an independent reporting agency must be forwarded along with the applicant's application. The Alabama Securities Commission application for a salesman's registration, for example, specifies that:

"The principal must furnish with this application a background report on the applicant. This report must be prepared by an independent reporting service (Example—Personnel Selection Reports by Retail Credit Company)." That application also includes the following question:

"Have you ever been charged with or convicted of any crime or suspended or disbarred from the practice of any profession?____________________
Explain:____
____"

While some states require that an investigative background report must accompany these applications, it is reasonable to expect that life insurance companies must take the precaution—as in the case of licensing insurance agents under state licensing laws—of having an independent employment report prepared by a reporting agency to assure that their representatives comply with the state securities laws. We are attaching as Exhibit C several illustrative examples of these state registration applications.

Other State requirements requiring compliance by life insurance companies

All states, of course, require a showing on the part of a life insurance company as to its qualifications for conducting the life insurance business. Most frequently, this will include reporting requirements on the part of officers and directors of insurance companies pertaining to the disclosure of criminal violations.

In summary form, states which require the disclosure by officers or directors of previous convictions or indictments include Arkansas, California, Illinois, Indiana, Kansas, Maryland, Michigan, Tennessee and Texas. In addition, at least one state, Colorado, prohibits officers and directors from serving in a life insurance company if they have been convicted of fraud or a felony. Those states in which the insurance department may refuse a certificate of authority or revoke an existing certificate if an officer or director has been convicted, indicted, or has been found to be untrustworthy, include California, Indiana, Minnesota, New York and Texas. Examples of these requirements are attached as Exhibit D.

The NAIC adopted a Uniform Biographical Data Regulation in 1967, and last year substantially revised the form of affidavit, concerning the reporting of biographical data on company officers and directors. One provision in the regulation relating to biographical data requires that the affiant affirmatively state that he has never been convicted of a felony in certain circumstances. An example of this reporting requirement is attached as Exhibit E. As is the case in the illustrations set forth previously in our statement, it is frequently necessary in connection with this biographical information for companies to order from an independent reporting agency a report designed to verify the information submitted on the affidavit pertaining to possible criminal activity.

Finally, a further aspect of this problem is included in the National Association of Insurance Commissioners' Model Insurance Company Holding System Regulatory Act, adopted by the NAIC in 1971. Here there is a requirement relating to the identity and background of individuals associated with the applicant that, in certain cases, provides for disclosure of whether or not such person has ever been convicted in a criminal proceeding during the last ten years, including further subsequent information as to the date, nature of the conviction, name and location of the court and information regarding disposition of the case. The Model Regulation is attached as Exhibit F.

Other Federal requirements

The advisability of restrictions on the availability of certain criminal information should also be considered in the context of pension plans, and in particular the provisions which exist in the pension reform bill as passed by the House on February 28, 1974 and the Senate on December 13, 1973. Both bills prohibit individuals who have been convicted of a number of specified crimes from serving as an administrator, officer, trustee, custodian, counsel, agent, employee (other than a clerical or janitorial employee) or fiduciary of any employee benefit plan, or as a consultant to any such plan, for a period of five years after such a conviction, with certain powers placed in the Board of Parole of the United States Department of Justice to waive such incapacity. These bills would make it unlawful for a person to willfully violate this provision or to knowingly permit another person to violate this provision.

Compliance with this type of provision is, of course, extremely important to life insurance companies. As an example, the members of our Association hold 99 percent of the reserves of insured pension plans in the United States.

The pertinent provisions of both House and Senate proposls referred to are set forth below:

H.R. 4200, As Passed by the Senate

"PROHIBITION OF FIDUCIARY SERVICES

"SEC. 16. (a) No person who has been convicted of, or has been imprisoned as a result of his conviction of, robbery, bribery, extortion, embezzlement, grand larceny, burglarly, arson, a felony violation of Federal or State law involving substances defined in section 102(6) of the Comprehensive Drug Abuse Prevention and Control Act of 1970, murder, rape, kidnaping, perjury, assault with intent to kill, assault which inflicts grievous bodily injury, any crime described in section 9(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(a)(1)), a violation of any provision of this Act, a violation of section 302 of the Labor-Management Relations Act of 1947 (61 Stat. 157, as amended; 29 U.S.C. 186), a violation of chapter 63 of title 18, United States Code, a violation of section 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of title 18, United States Code, a violation of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 539, as amended; 29 U.S.C. 401), or conspiracy to commit any such crimes or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve—

"(1) as an administrator, officer, trustee, custodian, counsel, agent, employee (other than as an employee performing exclusively clerical or janitorial duties), or fiduciary of any employee benefit plan, or

"(2) as a consultant to any employee benefit plan, during or for five years after a conviction or after the end of an imprisonment for any crime listed in this paragraph, unless prior to the end of such five-year period, in the case of a person so convicted or imprisoned, the Board of Parole of the United States Department of Justice determines that such person's service in any capacity referred to in subparagraph (A) or (B) would not be contrary to the purpose of this Act. Prior to making any such determination the Board shall hold an administrative hearing and shall give notice of such proceedings by certified mail to the State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Board's determination in any such proceeding shall be final.

"(b) Any person who willfully violates this section, or knowingly permits another person to violate this section, shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

"(c) For purposes of this section—

"(1) any person shall be deemed to have been 'convicted' and under the disability of 'conviction' from the date of the judgment of the trial court or the date of the final sustaining of such judgment on appeal, whichever is later, regardless of when such conviction occurred;

"(2) the term 'imprisonment' shall not include any period of parole; and

"(3) 'consultant' means any person who, for pecuniary benefit, direct or indirect, advises or represents an employer benefit plan, concerning the establishment or operation of such plan.".

H.R. 2, As Passed by the House

PROHIBITION AGAINST CERTAIN PERSONS HOLDING OFFICE

SEC. 113. (a) No person who has been convicted of, or has been imprisoned as a result of his conviction of, robbery, bribery, extortion, embezzlement, fraud, grand larceny, any crime described in section 9(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(a)(1)), or a violation of any provision of this title, or a violation of section 302 of the Labor Management Relations Act, 1947 (29 U.S.C. 186), or a violation of chapter 63 of title 18, United States Code, or a violation of section 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of title 18, United States Code, or a violation of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401), or conspiracy to commit any such crimes or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve or be permitted to serve—

(1) as an administrator, officer, trustee, custodian, counsel, agent, or employee of any employee welfare or pension benefit plan, or

(2) as a consultant to any employee welfare or pension benefit plan,

during or for five years after such conviction or after the end of such imprisonment, whichever is the later, unless prior to the end of such five-year period, in the case of a person so convicted or imprisoned, (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) the Board of Parole of the United States Department of Justice determines that such person's service in any capacity referred to in paragraph (1) or (2) would not be contrary to the purposes of this title. Prior to making any such determination the Board shall hold an administrative hearing and shall give notice of such proceedings by certified mail to the State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Board's determination in any such proceeding shall be final. No person shall knowingly permit any other person to serve in any capacity referred to in paragraph (1) or (2) in violation of this subsection. Notwithstanding the preceding provisions of this subsection, no corporation or partnership will be precluded from acting as an administrator, trustee, custodian, counsel, agent, or employee of any employee benefit plan or as a consultant to any employee, welfare, or pension benefit plan without a notice, hearing, and determination by the Secretary that such service would be inconsistent with the intention of this section.

(b) Any person who intentionally violates this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(c) For the purposes of this section:

(1) A person shall be deemed to have been "convicted" and under the disability of "conviction" from the date of the judgment of the trial court or the date of the final sustaining of such judgment on appeal, whichever is the later event.

(2) The term "consultant" means any person who, for compensation, advises or represents an employee benefit plan or who provides other assistance to such plan, concerning the establishment of operation of such plan.

(3) A period of parole shall not be considered as part of a period of imprisonment.

(d) This section shall not apply to a conviction for a crime committed before the date of enactment of this Act.

We appreciate this opportunity to bring to the attention of the Subcommittee some of the problems which are raised by the proposed bills as they may affect life insurance companies. We will be pleased to provide any further information which you may need and we hope that we may have the opportunity to work with the members of the Subcommittee and its staff in developing legislation which will protect the rights of citizens and at the same time recognize the legitimate needs of life insurance companies for full and accurate information.

Statement by Mr. Louis T. Williams of the Association of Federal Investigators

Mr. Chairman, my name is Louis T. Williams, Executive Secretary, Association of Federal Investigators; a national, non-profit, non-political and non-sectarian

association with membership drawn from twenty-six (26) separate Federal Investigative and Enforcement organizations.

I want to thank you and this committee for the opportunity to express the Associations' views on the proposed legislation as expressed in S 2963 and S 2964. Our members share the deep concern of this committee in striking a balance between safeguarding individual privacy and the legitimate valid needs of the criminal justice system, and the society which it serves. Accordingly, we believe it is time to separate the wheat from the chaff and fact from fiction, and state that it is man, not machines that invade individual privacy. To continue to infer that improved technology in collection, storage and dissemination of information is, per se, insidious, immoral, criminal, or an invasion of privacy is to delude the society which we serve. An invasion of privacy is an invasion of privacy regardless if it occurs through writing in hieroglyphics and transmitting through the use of smoke signals or by using the most sophisticated technical system available.

In today's multi-billion dollar economy, the increasing transitory population, high crime rate, with business and commerce being done by machine rather than personal knowledge, to rely on credit or identification cards requires individuals employed in the criminal justice system to use every legal means to combat crime, and this includes the use of any new or improved technical system.

Invasion of privacy is clearly defined by the Fourth and Fifth Amendments of the Constitution as interpreted by the courts. The framers of the Constitution recognized that these rights at times give way to other needs of society. Accordingly, the collection, storage and dissemination of criminal justice information should be based on the Governments right to know and due constitutional regard for individual privacy. Therefore, our members are in general agreement that uniform Federal legislation is necessary to govern criminal justice information systems. However, certain provisions of this legislation as proposed by S 2963 and S 2964 give rise to serious doubt and concern. This is especially true of the following noted section, and we earnestly implore the committee to consider the Association's comments.

S2963, Title II Section 201(b) reads:

"Criminal justice information may be collected only by or disseminated only to officers and employees of criminal justice agencies. Provided, however, that beginning two years after enactment of the Act such may be collected only by or disseminated only to officers and employees of criminal justice agencies which are expressly authorized to receive such information by Federal or State Statute. Criminal justice information shall be used only for the purpose of the administration of criminal justice."

This provision gives rise to the following questions:

1. If the proposed legislation is based on a Federal interest that can now govern the collection, storage and dissemination of criminal justice information and this proposed system is not now an invasion of privacy for the two year stated period of time, why require the various states to engage in costly legislation to continue to use the system after the stated two year period of time?

2. There are approximately thirty four thousand (34,000) non-criminal investigators in the Federal government employed with Agencies charged with regulating transportation, commerce, communication, housing, food and drugs, lending money, making grants, health, welfare, education and etc. The expenditure of Federal funds now exceeds three hundred billion dollars and affects every member of our society. These investigators do not need or want arrest authority or other police powers in order to obtain criminal justice information. However, they and their Agencies are charged with protecting the integrity of individuals and Federal programs for which they are responsible. In addition, non-criminal investigations frequently lead to administrative proceedings or judicial action.

There has been a history of scandals in highway and housing construction, food and drugs, agriculture, small business and other programs clearly demonstrating the constant need for the free exchange of information between all investigative and enforcement personnel to quickly and efficiently ferret out those who circumvent, evade or deliberately break rules, regulations, or Federal statutues. To deny the noncriminal investigator access to criminal justice information will prohibit him and his agency from the proper performance of their duties as prescribed by Congress.

Title II Section 206(b) concerning sealed information:

The Association does not agree with the granting to a convicted criminal greater rights than those that accrue to a non criminal. Most certainly an individual's

reputation, position in society, possible employment, obtaining credit, being bonded, etc., is based on individual conduct and personal behavior. To deny that this exists is to be blind to life. It is true that a criminal act should not be held against an individual forever, but to withhold information that the act occured is to give greater rights to a criminal than to one who did not break the law. Accordingly, the Association believes criminal information should not be sealed but be available on a need-to-know basis and the use of the information left to the discretion of the official responsible for making decisions.

Title III Section 301 creates a Federal Information Systems Board:

The Association does not believe that a demonstrated need for this board exists. For several years Federal enforcement organizations have taken the initiative in protecting individual privacy in the collection, storage and dissemination of criminal justice information. We believe that if legislative safeguards are established, appropriate local, state and Federal criminal justice officials will exercise due regard for these established standards. Accordingly, the Association recommends that this section be deleted from the proposed legislation.

On Section 306(a) regarding an annual audit, the Association believes that any audit made of the Federal agencies which collect and disseminate information pursuant to this act should be preformed by the General Accounting Office.

The Association recommends that the responsibility for accuracy and completeness of criminal justice information be placed at the appropriate local, state and Federal level with the National Crime Information Center responsible for an index of criminal justice information and facilitating the interstate exchange of such information.

In conclusion, Mr. Chairman, I want to thank you and the Committee for inviting the Association to comment on this proposed legislation.

PREPARED STATEMENT BY FRANK A. SCHUBERT, ADMINISTRATIVE ASSISTANT TO THE DIRECTOR, CITY OF DAYTON, OHIO, DEPARTMENT OF POLICE

I have reviewed and discussed with various members of the Dayton Police Department Senate Bills 2963 and 2964 which were forwarded to me by Senator Sam J. Ervin, Subcommittee Chairman.

The Dayton Police Department is very much in sympathy with the sponsors of the two bills and is most aware of the types of abuses in the collection and dissemination of criminal justice information which the proposed legislation seeks to correct. The Dayton Police Department, in the absence of such legislation, has established its own written Records Release policy which incorporates many of the features found in the two Senate Bills under consideration. Our departmental policy was promulgated because of our genuine concern with protecting our criminal justice records from being used for purposes for which they were not intended. A copy of the Dayton policy is enclosed as an example of the kind of self-regulation that Police Departments do, in fact, take upon themselves in the interests of fairness to our citizenry.

While we have basic agreement with the authors of the two Senate Bills, 2963 and 2964, we nevertheless have specific comments we would like the Subcommittee to consider with respect to each Bill. For purposes of brevity, we have primarily listed areas where we believe modifications are in order, and not those portions of the proposed legislation with which we concur.

SENATE BILL 2963

This Bill is in our estimation clearly preferable to S. 2964 in that it is stronger and more likely to be implemented as intended. The creation of the Information Systems Boards provides a mechanism for growth and development in the future and is a desirable aspect of the legislation. We basically support this legislation, except as indicated below:

Section 202

This section, while adequately providing for legitimate police concerns after the investigative stage, does not adequately recognize the police need for raw arrest data for investigative purposes. Such information is necessary to:

(1) Substantiate other rumors and tips about a subject which have been developed from other sources. The fact that John Doe is identified as being a drug pusher by an informant can be corroborated by records from other jurisdictions which show that he has, in fact, been arrested for this offense.

Because of the law of search and seizure, it is common for drug pushers to be apprehended, but due to improper evidence gathering by the police, evidence is suppressed and no conviction follows. To the police, he is still a drug pusher; and, we maintain that, for investigative purposes, it is in the public interest that we do so regard him. This is not to be interpreted as condoning unlawful searches and seizures, for that is not our intention. We are merely arguing that we should be allowed to have access to raw arrest information, regardless of convictions, for purposes of investigation.

(2) A raw arrest record can also be used to check on the credibility of persons who furnish the police with information. By asking a subject about his past and then checking his record, we are able to make an assessment as to whether he is telling the truth. Considering the number of ways cases fall out of the prosecution track, it is essential that police not be restricted to instances where a conviction has been obtained.

(3) Criminal suspects consort with other persons who commit crimes, and it is useful from an investigative standpoint to be able to determine identities of such persons and then make a records check to determine whether they have been arrested in the past. Again, for reasons other than police error, such as the reluctance of witnesses to testify in cases, and the refusal of elected prosecutors to take cases to trial which are not "sure winners," many persons who have been properly arrested never go to trial. Police departments need to be able to have access to raw arrest data in such circumstances for use in subsequent investigations.

Section 206 (1) and (2)

We believe that the time period in (b)(1)(C) is reasonable; however, we believe that (b)(1)(A) should be modified and the time period raised from seven years to ten years. Records over ten years old are of little investigative value and could, in our estimation, legitimately be sealed.

We propose that (b)(1)(B) be modified so that the time period for non-felonious crime is ten years, and not five years as presently proposed. The reason for proposing the time extension is that many felonies in the vice and organized crime areas are plea-bargained by prosecutors from felonies to misdemeanors in exchange for guilty pleas. To seal such records after five years would bar police investigators from learning of such offenses and limit police investigative leads.

We also, for reasons listed above, do not agree with the provisions of Section 206(c) insofar as it would permit the sealing of cases which the prosecutor decides not to take to trial. As persons who are familiar with the criminal justice system will attest, there are many reasons why cases are "non-papered" by prosecutors, and many of these do not relate to the adequacy of the case preparation by the police. In particular, we would point to the development of informal, non-judicial dispositions of shoplifters, bad check-writers, and property damage complaints where good arrests are made, but prosecutors "non-paper" when the culprit makes restitution to the victim. Also, the fact that prosecutors are typically elected officials who seek to run for election on 99.9% conviction records should not be ignored. The legitimate need of police to have access to raw arrest data in such instances should not be withheld because of such practices of the prosecutors.

Section 207

We would oppose the language which permits persons to obtain copies of their own records based on our own experience in this area. We tightened up our departmental policy to prohibit this one year ago because we discovered that employers were sending their prospective employees over to the Police Department for a copy of their record. We know that many persons never are apprehended who commit crimes and that such persons could very well obtain employment from employers who would deny jobs to those who we had been fortunate enough to apprehend. The determination as to who got the job would be made by the employer on the basis of police records which do not exist for such purposes, and we therefore plugged up this "loop-hole." Our current policy only allows persons to examine their record at the police station, and make whatever notes they would like; however, we don't provide any documentation of the existence or absence of a record.

If a police agency issues a copy of an individual's record to that individual, employers will subtly require that they be supplied with "references" and are likely to discriminate against persons who don't affirmatively offer to volunteer their records. The civil remedies in the bill will not, in our estimation, help the poor who are usually the victims of arrest record abuses because of the problem

such persons have in obtaining legal representation. The provisions of the Bill for $100 and lawyers fees is a noble effort to deal with this problem, but it presupposes that attorneys will, in fact, take on such cases, and it further presupposes that attorneys will be sought out by those who believe themselves to be victimized. We are not that confident.

Title III

The Federal Information System Boards are a good idea. We do believe however, that there is a need at both the federal an state levels for specific police representation to be mandated in the legislation. If one examines where many of the problems are found, and the place where most leakage of record information is likely to occur, it is probably in the police departments. It is important that police representation be mandated in order that the policy-makers are more sensitive to the realities involved in trying to regulate this area. It might lead to better regulations and more effective policies.

SENATE BILL 2964

This Bill contains some of the provisions of S. 2963 and a number of other provisions to which we would like to raise objections:

Section 5(d)(2)

This section would permit an individual to have discovery to departmental work product in the form of special reports, reports of arrest, and other reports which are prepared for internal purposes of managing and controlling the police department. To permit discovery of these reports is to encourage our police officers to withhold information from their reports which is essential for police management. Officers are likely to write such reports as if they were going to be delivered to defense counsel, and this will weaken the extent to which police management will be able to determine exactly what is going on in the field.

Section 6(a)

Our concern with this section is similar to the concerns expressed regarding Section 207 of S. 2963. It is fine to allow persons to see copies of their arrest records for purpose of reviewing their accuracy, but as soon as it becomes possible to obtain a copy of one's record from the police department, significant abuses are likely to result to the detriment of the poor and minority group members in particular who tend to be arrested more than others. We do not believe the protections of Section 6(d) of the Bill are adequate to prevent the abuses from occurring.

Section 8(c)

We think the language in this section is perferable to that in S. 2963. We, in Dayton, have made clear efforts to insure that abuses do not occur; and, while police departments should be tightly regulated with regard to the dissemination of raw arrest records, they should not be prohibited from obtaining such records for investigative purposes from other criminal justice agencies.

Section 9(b)(1)

We find the time period reasonable in (3); however, we believe that (1) should be modified and the time period raised from seven years to ten years. Records over ten years old are of little investigative value and could properly, in our estimation, be sealed.

We would also argue that 9(b)(2) should be extended from five to ten years for the reasons outlined regarding the parallel provision in S. 2963. The reason for proposing the time extension is that many felonies in the vice and organized crime areas are plea-bargained by prosecutors from felonies to misdemeanors in exchange for guilty pleas. To seal such records after five years would bar police investigators from learning of such offenses and limit police investigative leads.

Section 14

Our concerns here are similar to those expressed regarding Section 308 of S. 2963. The incentives to bring suit, in our opinion, are insufficient, and the legal system cannot be expected to be an adequate means of controlling abuse any more than the civil remedies have been effective in preventing police abuses of indigents. We believe that the approach of S. 2963 is a positive effort, but that some type of simplified process analogous to small claims court needs to be established to make the remedies more viable.

PREPARED STATEMENT OF W. MARK FELT, FORMER ASSOCIATE DIRECTOR OF THE FBI

These comments and remarks are respectfully submitted to the Subcommittee for consideration in connection with legislative proposals dealing with Privacy and Security of data accumulated and maintained within the Criminal Justice System. Having spent over thirty-eight years with the United States Government, including over thirty-one years with the Federal Bureau of Investigation where I reached the position of Acting Associate Director, I am intensely interested in questions of personal privacy and regulatory steps which are proposed to insure personal privacy is maintained.

This statement is submitted not as criticism but rather to raise questions and to stimulate additional discussion. I have reviewed portions of the testimony which has been available to me. I heartily endorse the testimony of Director Clarence M. Kelley of the Federal Bureau of Investigation. I am particularly impressed by the statement of Colonel John R. Plants, Director of the Michigan Department of State Police, that Criminal Justice information "is probably the best handled of most of the data banks that are operating in the country, because we have had a concern for privacy and security for years." I agree with his principle of "functional centralization."

If I were to differ from Director Kelley and Colonel Plants, it would be to express even more forcefully the concern that in our zeal to protect the rights of the individual we do not go too far and impair the effectiveness of law enforcement. The United States is a Nation plagued by crime and the situation is critical. We are afraid to walk the streets of our Capital, where even United States Senators are viciously attacked. Similar fears exist in many of our major cities. Locks, window bars, and burglar alarms have become best seller items. The dollar costs of crime, estimated at from thirty to fifty billion dollars per year, have become a substantial part of our rapidly mounting cost of living. Suffering and deprivation because of crime are intolerable.

With this background, we need to very carefully examine proposed legislation which will affect the operational capacities of law enforcement agencies. Boiled down to essentials, the several proposed bills in present form would primarily give additional protection to the person who commits a criminal act. A few situations can arise wherein a bystander becomes innocently involved with the Criminal Justice Process, and under the proposed bills such a person would have a greater degree of protection than he has now. However, just how serious is the problem of such bystanders compared with the overall interests of a society struggling under the heavy burden of crime? Are there any statistics available to show the number of instances in which the rights of citizens to privacy have been invaded by the dissemination of Criminal Justice information? Do we know the extent of personal injury sustained? Do we know that civil recourse was not adequate or would not have been adequate if pursued?

My opinion and position are based upon my knowledge that when a person commits a criminal act in the United States his chances of getting caught, let alone punished, are very remote indeed. In the first place, there is good reason to believe that many crimes are never detected at all. Secondly, many detected crimes are never reported to the police for various reasons such as embarrassment, fear of retaliation from the criminal, and sometimes a feeling that it wouldn't do any good. Recent surveys conducted under a grant from the Law Enforcement Assistance Administration in five major cities indicate crime victims report to the police less than half of the known offenses.

The really shocking statistic is that of those crimes which *are* reported, it is estimated only 20% are cleared by an arrest. What happens to those who are arrested? Most will escape the consequences entirely. Some will get a reduced charge through "Plea Bargaining." Only 5% of those persons committing crimes actually end up in jail.

These statistics should not be construed as a criticism of Law Enforcement but rather as a commentary on our "Open Society" and our very strict compliance with Constitutional protection of the rights of the individual. These statistics make it abundantly clear that we already go to great lengths to protect the rights of individuals who commit crimes. . . . And to restrict the exchange of documented information between Law Enforcement Agencies, particularly the concept of "Purging" or "Sealing" of criminal records, is to go one step further by helping a person who has committed a crime to conceal vital information from the police officer who is investigating the case. Would we also require newspaper morgues to purge from their files records of news stories about the convictions of kidnappers,

bank robbers, extortioners, bombers and other criminals? I feel very strongly about this. "Purging" or "Sealing", although well intentioned, will become nothing more than Government sponsored "Cover-Up" and "Obstruction of Justice."

I fully understand and appreciate the need to improve our programs for the rehabilitation of convicted criminals. Our corrective systems are not effective because an estimated 75% of the prisoners presently in our penitentiaries will again be arrested to face criminal charges. Certainly I am aware that giving a released convict a fresh start may well be a factor in successful rehabilitation, but "Purging" or "Sealing" of criminal records will "hamstring" the investigation of new crimes as they are committed. The answer to this problem may well be some sort of State and Federal guaranteed employment and support of ex-convicts.

Concerning the matter of dissemination of criminal records outside law enforcement channels, there are legitimate needs for this, but I fully agree that strict regulations should guarantee maximum privacy consistent with the needs of the community. In the last analysis, no system whether manual or computerized will be any more secure than the integrity of the persons who operate it. For this reason, I favor the sanctions, both civil and criminal, which are provided for in both S. 2963 and S. 2964 against improper use of criminal record information. When criminal sanctions are to be applied it must be clear that criminal intent is an essential element of the violation.

Concern for the "Right of Privacy" has been brought into sharp focus by the rapidly expanding use of the computer to store and retrieve information. I don't believe there is any contention we are going to do anything materially different with the computers than we previously did with a manual system of records. Neither does there appear to be any serious disagreement that as our society expands and becomes enormously more complex, both government and industry must increasingly rely upon computer technology. We have already reached the point of no return. It has been estimated if we did away with all computers now in use in the United States and attempted to perform the same functions manually, it would require more workers than we have people.

Acknowledging the use of computers is inevitable, legitimate concern seems to be that there must be regulations set up now to prevent a future "Big Brother" from interfacing all of the computers, thereby creating "Secret Dossiers" on everyone. We all agree that such regulations are necessary and desirable. We must be sure, however, that the Hearings thoroughly explore every ramification. For example, would not the creation of a "Federal Information Systems Board," as proposed in S. 2963, actually be the creation of a "Big Brother" which would control all government data banks in any way it saw fit? If such a Board is created, I strongly recommend that Criminal Justice data banks be excluded from the control of the Board.

Perhaps it will not be necessary to create a Federal Board to oversee the government use of computers. In theory, once all computer systems were operating satisfactorily, the Federal Board would have no important function. An alternative would be to provide for more hearings and studies at the Legislative level. For example, the General Accounting Office is now conducting a study as to the uses made of criminal record data at the local level. The results of this study will have an important impact on proposed legislation. The complexity of this matter would indicate that other studies might be indicated before legislation is finalized.

Consideration must be given to the effect of computer-oriented regulations on current manual operations which may not be computerized for some time pending installation, technology, or funding. Consideration must also be given to the impact of regulations upon the extensive exchange and dissemination within the law enforcement community of information which may never be computerized. Is it intended that intelligence information include "raw" files which have been obtained from investigation of alleged criminal investigations? Keep in mind the point mentioned above that only a small percentage of cases investigated end with guilty pleas or convictions.

Will the proposed regulations apply to the exchange and dissemination within the intelligence community of the Federal Government of information from "raw" files obtained from investigations relating to the National Security? Can there be dissemination of information from such files to the White House by agencies in the Executive Branch?

I am not sure I understand just what is meant by the "Right of Privacy." It is not defined in the Constitution or in any Federal Statutes with which I am familiar. It is my understanding that as generally used in the past the "Right of Privacy" might be described as the right of an individual to withhold, consistent with the law, his person and property from scrutiny by others having motives of curiosity,

gain, or malice. In shaping the final form of legislation relating to Privacy and Security we must keep in mind that we now will be going much further because we are dealing not with the individual's own records but with the records of governments.

While I agree with the need for effective regulations, Law Enforcement must not be denied the benefits of modern technology. Neither must other government operations be denied the economies and efficiencies which technology has placed in front of us. We must be sure we do not now impose restrictions which will be economically impossible to comply with in the future. The guidelines must be reasonable and must carefully balance the rights of the individual against the rights of society.

GOVERNMENT MANAGEMENT INFORMATION SCIENCES,
Cincinnati, Ohio, April 4, 1974.

Senator SAM J. ERVIN, Jr.,
Chairman, Subcommittee on Constitutional Rights, Old Senate Office Building, Washington, D.C.

DEAR SENATOR ERVIN: The membership of G–MIS (Government Management Information Sciences Users Group), a national organization of state and local government data processing professionals, has invested a tremendous amount of time over the past three years in encouraging a unified effort among federal, state and local government and among computer hardware manufacturers in the development of effective and manageable guidelines, processes, and legislation for insuring security and confidentiality in the administration and operation of personal information systems. The products of this investment of time and technology are the Administrative Guidelines for Security and Confidentiality in State and Local Government Data Centers, and its companion product, a model State Fair Information Practices Act required to promulgate effective enactment of those guidelines. A copy of the G–MIS Model Act is included with this testimony.

The model state act represents the latest state of legislative development based on the research and analysis executed by representatives of not only G–MIS, but also of NASIS (National Association for State Information Systems), and SAFE (Secure Automated Facility Environment Project).

NASIS is an organization of the individuals in each of the fifty states who are responsible for coordinating and controlling the technology of information systems within their respective areas

SAFE was formed in Illinois to study the technological and administrative elements of information privacy and security and to analyze the state of the law with respect to the individual's right to privacy in information systems.

The model legislation is the result of significant research and discussion involving lawyers, legislators, administrators and information technologists within these organizations. It is an attempt to address to the longstanding dilemma posed by society's need for information versus the individual's right to privacy. These organizations are concerned with the prospect of 15 or more federal statutes, 50 different state statutes, and many unaccountable attempts at local legislation, some of which may be passed under emotional duress. The confusion that is mounting from these independent efforts intensifies rather than reduces the dilemma. The solution will come from administrative and statutory regulations which can interact in concert at all levels of government—federal, state and local. Therefore, to insure manageable and consistent right to privacy legislation, the product must be the result of collective effort. Herein lies our purpose for testifying on the Senate Bills 2963 and 2964.

The G–MIS model legislation shows a high degree of commonality to the Senate Bills. For this, G–MIS is very pleased and encouraged. We will limit our comments to these areas which we feel a need for additional clarification and refinement.

1. Lack of local representation on the policy board and the advisory committee is significant and apparent. Since most information stored at the state and federal levels originates from local sources, it is important that local governments have a representative role on boards and/or committees created by federal legislation.

To provide this local representation, G–MIS suggests two alternatives:

a. It is recommended that at least one of the three Presidential nominees representing the states on the Federal Information Systems Board also be a local government representative; i.e., a State Legislator representing a reasonably-sized metropolitan area.

b. The second suggestion is to require that one of the six Presidential nominees on the Systems Board be a representative nominated by a national organization which is a representative of local government, such as G–MIS, ICP, ICMA, Association of County Governments, etc.

G–MIS would also strongly recommend that Presidential appointments and/or terms be staggered so that the entire Board would never be replaced simultaneously. This would not only provide necessary continuity but eliminate periods of inactivity while a complete new Board develops the necessary expertise.

2. We are pleased to find that neither bill now specifically imposes a "dedicated" criminal justice system. However, without specific definitions or clarification, a dedicated system would, in fact, be imposed. We are concerned, for example, with the requirement that: ". . . The Security of information in a criminal justice information system subject to this Act shall be assured by management control by a criminal justice agency." (S. 2964, Section 11 a).

Is the mayor or a city manager, who has authority to hire and fire the police chief, a member of a criminal justice agency? Can a computer center which designs, develops, implements and operates the criminal justice information system under the direction of the criminal justice community be considered a criminal justice agency?

If "management control" is defined as synonymous to "dedication", states and local government face expenditures of billions of additional dollars—a likelihood that only permanent federal subsidies could make possible. All this, for the mistaken notion that "dedication" is the answer to security and privacy—a premise which is not justified by current level of technology; a premise which is not even supported by the National Advisory Commission Standards developed under a U.S. Department of Justice contract in 1973 which specifically states in Standard 7.6, Separation of Computerized Files, page 109, that, "Many of the concerns over nondedicated systems could be resolved through a combination of law and technical system design procedures. System security can be instituted as well in a nondedicated system as in a dedicated one."

If, on the other hand, "dedication" is not intended by the Senate bills, the terms "Criminal Justice" and "Criminal Justice agency" must be defined in the law, and not left to the discretionary judgment of the Board or the Attorney General. The experiences of the current administration, where the office of the Attorney General has changed so often could lead to administrative confusion. This possibility underscores the desirability of a regulatory board and membership appointments for staggered terms to insure continuity as identified in point one (1).

G–MIS would recommend that the following definitions be added to the Bill to insure appropriate "management control" enactment:

a. "Criminal Justice Agency" means a public agency or component thereof which performs as its principal function a criminal justice activity.

b. "Criminal Justice" means any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control or reduce crime or to apprehend criminals, and the activities of administration, prosecutors, courts, correctional, probation, pardon, or parole authorities.

3. S. 2963 provides for an effective interface between the federal government and the state government community through the State Information Systems Board. The G–MIS Model Legislation provides a similar interface between the State and the Local Government community by the establishment of the Local Information Practices Control Board. The Local Board, because of its proximity to the information source, can provide greater assurance of timely and concerned responses. The effectiveness of a program of security and privacy rests on the acceptance of the control mechanism by the operators of personal information systems and the citizens who are concerned about their rights to privacy. The State Board and the Local Board, working dependently, provide a mechanism for checks and balances.

G–MIS recommends that S. 2963 be expanded to incorporate provisions for the formation of Local Information Systems Boards to provide a chain of checks and balances from the local to state to federal levels. This should do much to eliminate that stigma of bureaucracy that undermines so many federally regulated activities—the right to privacy is not forfeited because of the onus of the process.

S. 2964 places overall administration of the bill to the Attorney General, and each federal agency with a personal data system is instructed to write its own procedures. It must be assumed, therefore, that effective administration of this bill would be the responsibility of the Office of the Attorney General. G–MIS prefers the concept proposed in S. 2963, which establishes a Federal Information System Board as administrators.

4. Senate Bills 2963 and 2964 are specific to criminal justice information systems. The G–MIS legislation develops a concept of a general right of privacy which applies to all programs handling personal information. The right to privacy is no less important for such data as tax information, financial data, health information, welfare records, etc. G–MIS suggests that specific program privacy legislation could be developed within the framework of a general right to privacy.

Contrary to the fears of some in the criminal justice community, a single board regulating all personal information systems will not degrade systems security for criminal justice systems. On the contrary, it will add an extra dimension of security to all personal information systems, which certainly deserve the same thoroughness and concentration of security as evidenced in the efforts for criminal justice information systems. Equally important is the fact that a single board would develop significant expertise and would minimize citizen confusion in the pursuit of his individual rights, since the board would develop regulations, inspect and investigate alleged violations of all personal information systems.

In summary, G–MIS recommends that the Subcommittee on Constitutional Rights consider inclusion of language to provide greater local government participation at the policy-making level; to provide for a Local Information Systems Board to facilitate the administration of the bill; to provide explicit definition of "management control by a Criminal Justice agency" in the law to prevent inappropriate interpretation; and institution of a general right to privacy as opposed to multiple legislation for specific program areas.

In conclusion, G–MIS expresses its appreciation for being afforded this opportunity to express its views in the very important areas of national legislation addressed in Senate Bills 2963 and 2964.

Sincerely,

ANDREWS O. ATKINSON,
Superintendent, Regional Computer Center,
Executive Director, G–MIS.

INFORMATION PRACTICES ACT

AN ACT To protect an individual's right to privacy and confidentiality and to prohibit the unreasonable acquisition, use and retention of information by state and local governments.

(Enactment Clause, as required by state law)

SECTION 1. *Short Title.* This act shall be known and may be cited as the "Information Practices Act."

SECTION 2. *Legislative Intent.*

(a) The (name of legislative body) finds and declares:

(i) That the use of information for purposes other than those purposes to which an individual knowingly consents, can seriously endanger an individual's right to privacy and confidentiality.

(ii) That information collection methods are not limited to political boundaries and, therefore, it is necessary to establish a unified statewide program for the regulation of information collection practices and to cooperate fully with other states and with the United States in regulating such information collection practices;

(iii) That the collection, storage and dissemination of information containing criminal, statistical and other personal information are closely related and must be dealt with in a unified manner;

(iv) That in order to increase individual participation in the prevention and correction of unfair information practices, opportunity for hearing and remedies must be provided.

(v) That in order to insure that information collected, stored and disseminated about individuals is consistent with fair information practices while safeguarding the interests of the individual and allowing the state to exercise its proper powers, this act is established.

(b) It is the purpose of this act to establish fair information practices to insure that the rights of individuals are protected and that proper remedies are established to prevent abuse of personal information.

SECTION 3. *Definitions.* As used in this act, unless the context otherwise requires, the following words and phrases shall have the meaning ascribed to them:

(a) "Act" is the (name of state) Information Practices Act.

(b) "Board" is the (name of state) Information Practices Board created by this Act.

(c) "Individual" is any man, woman or child.

(d) "Person" is any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representatives or agent.

(e) "Personal identifiable information" is any information that by some identifying character, including but not limited to any name, number, or description, and including any combination of such characters, it is possible to identify with reasonable certainty the individual to whom such information pertains.

(f) "Personal information system" is any method by which personal identifiable information is collected, stored or disseminated by any agency of this State government or, if authorized by Section 5 of this Act, by any local government of other political subdivision of this State.

(g) "Information Manager" is any person in control of a personal information system.

(h) "File" is the point of collection of personal identifiable information.

(i) "Unfair information collection" is any practice with respect to personal identifiable information which is prohibited by this Act or by the regulations promulgated hereunder.

(j) "Unauthorized information" is any personal identifiable information which is collected, stored or disseminated in a manner contrary to this Act or the regulations promulgated hereunder.

(k) "Purge" is the physical destruction of files, records or information.

(l) "Need to know" is the necessity of the person who wishes to collect, store or disseminate personal identifiable information in obtaining the specific information.

SECTION 4. *(Name of state) Information Practice Agency.*

(a) There is established in the executive branch of this state government an agency to be known as Information Practices Board. The Board shall be composed of nine persons who shall be appointed by the Governor with the advice and consent of (name of legislative body charged with confirmation of Governor's appointments). Two of such persons shall have been actively engaged in the management of information and record keeping systems in this State government, two of such persons shall have been actively engaged in information processing and record keeping systems in local governments in this state, two of such persons shall have been actively engaged in information processing and record keeping systems in criminal justice and law enforcement, and three of such persons shall not be representative of any of the aforementioned activities. Initially, three of such persons shall be appointed to serve until (term desired for staggering); three of such persons shall be appointed to serve until (term desired for staggering); and three of such persons shall be appointed to serve until (term desired for staggering). As terms of appointment expire, successors shall be appointed for terms to expire four years thereafter except all members of the Board shall serve until their respective successors are appointed and qualified. The Governor shall fill any vacancy by the appointment of a member for the unexpired term of such member in the same manner as in the making of original appointments.

(b) The Board shall appoint a Director who shall serve at the pleasure of the Board. The Director shall be a full time employee of the Board with the authority and duty to carry out and administer all policies and actions of the Board. The Board in accord with (title of State code prescribing merit employment) shall cause to be employed such personnel and shall cause to be provided such offices and other facilities as may be necessary to carry out the purposes of this Act. In addition, the Board may secure by agreement such services as it may deem necessary from any other department, agency or unit of state government, and may employ and compensate such consultants and technical assistants as may be required.

(c) The Board shall meet at the call of the Governor, its Chairman, or any three of its members. In no event shall the Board meet less than once every three months, and each member of the Board shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of his duties.

(d) The Board shall have the duty to collect and disseminate such information and acquire such technical data as may be required to carry out the purposes of this Act, including ascertainment of the routine practices and security procedures of personal information systems in the collection, storage or dissemination of personal identifiable information.

(e) The Board shall have the authority to require the submission of complete outlines or plans of personal information systems from managers of such systems, and to require the submission of such reports regarding actual or potential violations of the Act or of regulations thereunder, as may be necessary for purposes of this Act.

(f) The Board shall have the authority to conduct a program of continuing and regular inspection of personal information systems in order to detect unfair information practices.

(g) The Board shall have the duty to investigate violations of this Act or of regulations adopted thereunder.

(h) The Board may adopt such procedural rules as may be necessary to accomplish the purposes of this Act. Notice of the proposed adoption of procedural rules shall be given in accord with subsection (j) of this Section 4, and any person may submit written statements regarding such proposals.

(i) The Board, pursuant to procedures prescribed in subsection (j) of Section 4, shall adopt regulations to promote security, confidentiality, and privacy in personal information systems, consistent with the purposes of this Act. Without limiting the generality of this authority, such regulation shall prescribe:

(1) limits of authority and responsibility for all persons with access to personal information systems or any part thereof;

(2) advice and opinions with regard to requirements of law in the regulating of security, confidentiality and privacy in personal information systems;

(3) regulations to insure the security of personal information systems including the mechanics, personnel, processing of information and physical surroundings of all personal information systems;

(4) ethical standards and requirements for information managers and all other persons with access to personal information systems or any part thereof;

(5) standards for the need to know to be utilized by information managers in determining what types of information may be collected, stored, and disseminated;

(6) standards for direct and indirect access to personal information systems;

(7) requirements to assure the prompt and complete purging of personal identifiable information from personal information systems;

(8) requirements to impose a continuing program of external and internal auditing and verification to assure the accuracy and completeness of personal identifiable information.

(j) The Board shall consider written proposals for the adoption, amendment or repeal of Board regulations presented by any person, and the Board may make such proposals on its own motion. If the Board finds that any such proposal is supported by an adequate statement of reasons, is accompanied by a petition signed by at least 500 persons, is not plainly devoid of merit and does not deal with a subject on which a hearing has been held within the preceding six months the Board shall schedule a public hearing for consideration of the proposal. If such proposal is made by the (title of independent state agency responsible for research and development under Title III of this Act), or in the Board's discretion, the Board shall schedule a public hearing without regard to the above conditions. No substantive regulation shall be adopted, amended or repealed until after a public hearing has been held within the State. At least 20 days prior to the scheduled date of the hearing the Board shall give notice of such hearing by public advertisement in three newspapers of general circulation in the State of the date, time, place and purpose of such hearing; give written notice to any person in the State concerned who has in writing requested notice of public hearings; and make available to any person on request copies of the proposed regulations, together with summaries of the reasons supporting their adoption.

Any public hearing relating to the adoption, amendment, or repeal of Board regulations under this subsection shall be held before a qualified Hearing Officer appointed by the Board. All such hearings shall be open to the public, and reasonable opportunity to be heard with respect to the subject of the hearing shall be afforded to any person. All testimony before the Hearing Officer shall be recorded stenographically. The transcript so recorded, and any written submissions to the Hearing Officer in relation to such hearings shall be open to public

inspection, and copies thereof shall be made available to any person upon payment of the actual cost of reproduction of the original.

After such hearing, the Hearing Officer shall make recommendations to the Board concerning the proposed regulations and the Officer's own suggested revisions. The Board may revise the proposed regulations before adoption in response to suggestions made at the hearing without conducting a further hearing on the revisions.

Any person heard or represented at a hearing or requesting notice shall be given written notice of the action of the board with respect to the subject thereof.

No rule or regulation, or amendment or repeal thereof, shall become effective until a certified copy thereof has been filed (in the manner provided by State law regarding the filing of administrative regulations).

Any person adversely affected or threatened by any rule or regulation of the Board may obtain a determination of the validity or the application of such rule or regulation by petition for review (pursuant to appropriate State law regarding administrative review).

(k) The Board shall have the duty to represent the State of (name of state) in any and all matters pertaining to plans, procedures or negotiations for interstate compacts or other governmental arrangements relating to the regulation of personal information systems or otherwise relating to the protection of the individual's right of privacy.

(l) The Board shall have the authority to accept, receive, and administer on behalf of the State any grants, gifts, loans or other funds made available to the State from any source for purposes of this Act or other related privacy protection activities, surveys or programs.

SECTION 5. *Local Government.* At the request of any local government, other political subdivision or combination thereof in this State, the Board shall:

(a) Exercise all powers and perform all duties as provided for in this Act with regard to any personal information system operated, conducted or maintained by such local government, other political subdivision or combination thereof; or

(b) Shall adopt regulations to permit the establishment of a local information practices board by such local government or other political subdivision. Such local information practices board shall have such authority as may be necessary to regulate and control personal information systems within the jurisdiction of such local government, other political subdivision, or combination thereof.

Such local government, other political subdivision or combination thereof may withdraw such authority in the same manner by which such authority was requested.

SECTION 6. *Rights to be Protected.*

(a) An individual has the right not to have any personal identifiable information about him held in any secret personal information system.

(b) An individual has the right to be notified of the existence of all files maintained with respect to his personal identifiable information.

(c) An individual has the right to know the contents of files containing his personal identifiable information, and the dates and sources of inputs and requests for the information for those files, subject to necessary exceptions which shall be promulgated under this Act.

(d) An individual has the right to correct or amend any record of personal identifiable information about him held in a personal information system, subject to necessary exceptions which shall be promulgated under this Act.

(e) An individual has the right to be free from the use of personal identifiable information which he has provided for purposes other than those for which he has given specific and informed consent.

(f) An individual has the right to be free from the storage and continued collection of personal identifiable information no longer utilized for any valid purpose.

(g) An individual has the right to be free from willful or reckless errors in the collection, storage and dissemination of his personal identifiable information in personal information systems.

(h) An individual has the right to be free from the use by any personal information system of personal identifiable information concerning him which is irrelevant to the purpose for which the information is being collected.

(i) An individual has the right to be free from the use by any personal information system of any personal identifiable information concerning him for any illegal or unethical purposes.

(j) An individual has the right to be free from the use of personal identifiable information which cannot be verified upon his objection to its veracity.

(k) An individual has the right to be free from the collection, storage or dissemination of any anonymous personal identifiable information.

(l) An individual has the right to be provided a quick and simple procedure for obtaining a determination of the veracity of any item in the individual's file.

(m) An individual has the right to be free from coercion to furnish personal identifiable information for use in a personal information system.

(n) An individual has a right to know for what purpose personal identifiable information will be used.

(o) An individual has a right to have personal identifiable information removed from his file whenever feasible.

TITLE III. RESEARCH AND DEVELOPMENT

SECTION 7. (*Name of Independent State Agency*). The (name of independent State agency to be charged with responsibility for research and development) shall have on duty, on behalf of the Board, to investigate practical problems and implement stud[illegible] and programs relating to the technology and administration of regulation of [illegible]formation practices, to obtain, store and process relevant data, and to recommend technological, administrative and legislative changes and developments respecting regulation of information practices. The (name of independent State agency) shall:

(a) Cooperate with the Board and with other federal of State agencies in the selection of projects for study, in order that the (name of independent State agency) may give expert guidance to the Board in the formulation of regulations, the development of enforcement strategies, and other long-range program goals; and

(b) Sponsor an annual conference of information managers in the public and private sectors to evaluate the progress, or lack of progress, in furthering the protection of the individual's right of privacy through regulation of information practices.

The (name of independent State agency) shall file an annual report of its activities and recommendations with the Governor and with the (name of legislative body).

TITLE IV. PENALTIES

SECTION 8. Any person who violates any provision of this Act or any regulation of the Board promulgated thereunder shall be punished by a fine of not more than (dollar amount of fine desired).

TITLE V. MISCELLANEOUS

SECTION 9. *Common Law.* No existing statute or common law shall be limited or reduced by this Act.

SECTION 10. *Severability of Unconstitutional Provisions.* If any Section, subsection, sentence or clause of this Act shall be adjudged unconstitutional, such adjudication shall not affect the validity of the Act as a whole or of any Section, subsection, sentence or clause thereof not adjudged unconstitutional.

SECTION 11. *Liberal Construction.* The provisions of this Act and the regulations promulgated thereunder shall be liberally construed to protect the individual's right to privacy and confidentiality.

NATIONAL ASSOCIATION FOR STATE INFORMATION SYSTEMS,
Lexington, Ky., March 28, 1974.

Hon. SAM ERVIN, Jr.,
Chairman, Subcommittee on Constitutional Rights, Committee on the Judiciary, U.S. Senate, Old Senate Office Building, Washington, D.C.

DEAR SENATOR ERVIN: Attached please find the National Association for State Information Systems' position statement concerning the Criminal Justice Information Control and Protection of Privacy Act (S. 2963) and the Criminal Justice Information Systems Act (S. 2964).

This position statement was unanimously adopted by the NASIS Executive Committee at their meeting of March 24, 1974. It is our wish that this statement be included in the deliberations of your subcommittee and be made a part of the Subcommittee Record.

I would like to thank you for the opportunity to be heard on this subject and for the time that Messrs. Lawrence Baskir and Mark Gitenstein of the subcommittee staff have given to us.

Sincerely,

CARL VORLANDER,
Executive Director.

Attachment.

POSITION STATEMENT OF NATIONAL ASSOCIATION FOR STATE INFORMATION SYSTEMS (NASIS)

[The following statement has been prepared on behalf of the Executive Committee of the National Association for State Information Systems (NASIS) in opposition to certain provisions of S. 2963 and S. 2964:]

The computerization of state and local governmental operations and the concomitant development of information systems to assist in the planning, management, and control of such operations are of great importance to the effective delivery of public services and to the enhancement of the quality of life in this democracy.

Such developments must be accomplished efficiently and in full response to needs of administrators and operational personnel. Furthermore, it is imperative that rights of individuals be protected by maintaining the accuracy and integrity of data making up such systems and by preventing unauthorized use of the data, thus guaranteeing its confidentiality.

In no function of government have the developments in computerization been so rapid or effective as in criminal justice. In no area is the need for data security and privacy so well understood and machinery for intergovernmental cooperation so essential.

NASIS, a cooperating agency of the Council of State Governments, has had an active and deep concern over these matters. This concern has been expressed through the activities of its Federal-State-Local Liaison Committee, its Data Security and Privacy Committee and its Executive Committee.

So that there is no confusion about the NASIS position, it can be summarized as strongly in support of the basic objectives of the proposed legislation namely, to assure data security and privacy—but strongly opposed to certain of the methods prescribed for reaching those objectives. Our state data centers serve many agencies with sensitive data in addition to criminal justice and, thus, must provide secure systems to all users.

The conflict between the public's "need to know" and the individual's "right to privacy" has always presented tough decision situations, but the advent of computers and data banks has crystallized the problems and the expressions of concern. These questions were of crucial interest to NASIS members long before they became matters of public interest. At the state level our members have been involved with these problems and in many cases have taken leadership in both policy and technical approaches. We have been involved with security and privacy questions in all areas of governmental activities, including both where the data concerned have been declared by law matters of public record and where data have by law been declared not a matter of public record. We believe that NASIS speaks from as balanced an understanding of the problem as any group.

NASIS general opposition to the proposed legislation is the requirement of management control by a criminal justice agency as required by S. 2964. A number of states have by statute specified central responsibility for all computer activities. Should the federal government require that a law enforcement agency have mangement control computer operations, such states could meet the federal requirement only by violating state statute—an unlikely occurrence. More likely is that such states would not become part of the NCIC computerized criminal history system with obvious consequences to the entire criminal justice community.

Parenthetically, we would like to point out that the Federal Register of February 14, 1974, contained the proposed LEAA rules covering Criminal Justice Information systems funded by LEAA. Section 20.22(c)(1) specifically calls for the dedication of the systems to Criminal Justice agencies. NASIS is preparing a separate response to these proposed regulations which will be released shortly.

It needs to be specifically stated that NASIS is not objecting to any state's decision to dedicate a computer to criminal justice use or to put such a computer under the management control of law enforcement officials. NASIS is objecting to the attempt to force all fifty states to make exactly those decisions even though they may be contrary to statute or administrative regulation.

The remainder of our statement will outline our objections to specific sections of S. 2963 and S. 2964 which would have a profound effect on the design and operation of state criminal justice systems.

S. 2963

1. Section 206(a):

Proposed.—This section requires that an automated system must "as soon as technically feasible" inform any other information system or agency which has direct access to criminal justice information contained in the automated system of any disposition or any change in the information in the system.

Objection.—This requirement would impose a tremendous workload on the system and require difficult implementation procedures. While technically feasible it may not be economically and operationally feasible.

Recommendation.—Recommend removing the word "technically."

2. Section 206(c):

Proposed.—This section states, to insure that criminal justice agency personnel may use or disseminate criminal justice information only after determining it to be the most accurate and complete information available to the criminal justice agency, such regulations shall require that, if technically feasible, prior to the dissemination of arrest record information by automated criminal justice information systems, an inquiry is automatically made of and a response received from the agency which contributed that information to the system to determine whether a disposition is available.

Objection.—This requirement would also impose a tremendous workload on the system and require difficult implementation procedures.

Recommendation.—Change the wording to place a requirement on the reporting criminal justice agency to report all changes and impose a penalty for not doing so.

3. Section 207(5)(A):

Proposed.—This section proposes that in the case of a challenge to criminal justice information maintained by an automated criminal justice information system, such system shall automatically inform any other information system or criminal justice agency to which such automated system has disseminated the challenged information in the past, of the fact of the challenge and its status.

Objection.—It seems an unreal and impossible task to comply completely with this action which requires notification of all agencies which have, at any time, in the past required the challenged information.

Recommendation.—We recommend this notification of all past requesters be eliminated.

4. Section 207(5)(B):

Proposed.—This section proposes that if any corrective action is taken as a result of a review or challenge filed pursuant to this section, any agency or system which maintains or has ever received the uncorrected criminal justice information shall be notified as soon as practicable of such correction and immediately correct its records of such information.

Objection.—NASIS believes that the requirement of notification of corrective action be sent to anyone who "has ever received" the uncorrected information is completely unworkable.

Recommendation.—We recommend the words "or has ever received" be stricken from this section.

5. Section 301(a):

Proposed.—This section proposes that of the six members appointed by the President, three shall be either directors of statewide criminal justice information systems or members of the Federal Information Systems Advisory Committee at the time of their appointment.

Objection.—NASIS objects to the fact that three of the six members appointed by the President to a federal information systems board shall be either directors of statewide criminal justice information systems or members of the Federal Information Systems Advisory Committee.

Recommendation.—We recommend that at least one of the three appointees be a statewide information systems director.

While we did not object to the wording in this section which requires that three of the Presidential appointments be private citizens versed in the areas of privacy, constitutional law, and information systems technology, we do believe that individuals possessing the required three bodies of knowledge would be difficult to find. Perhaps these individuals should be required to be knowledgeable in only one of these specified requirements. We would also like to recommend that the words "not from the criminal justice community" be inserted after the word "citizens."

6. Section 304:

Proposed.—Proposed in this section is that beginning two years after enactment of this Act, no criminal justice agency shall collect criminal justice information from, nor disseminate criminal justice information to, a criminal justice agency which is located in a State which has failed to create a State Information Systems Board. The State Information Systems Board shall be an administrative body which is separate and apart from existing criminal justice agencies and which will have statewide authority and responsibility . . .

Objection.—NASIS does not object to the creation of a State Information Systems Board; in fact, we recommend this action. However, we do object to the mandatory requirements that this board be created within two years after enactment of this act. In many states, this could be an impossibility due to biennial legislative session.

Recommendation.—We recommend that the two year requirement be eliminated from this section.

S. 2964

1. Section 11(a):

Proposed.—This section requires that the security of information in a criminal justice information system subject to this act shall be assured by management control of a criminal justice agency.

Objection.—NASIS objects to the term "management control" by a criminal justice agency as the term is not defined in the bill and in the past, criminal justice agencies have interpreted "management control" as meaning absolute operational control by criminal justice employees or computer systems completely dedicated to criminal justice use.

Recommendation.—If management control remains, NASIS recommends that the wording be changed to read as follows: "shall be assured by management control by a criminal justice agency or an official designated by the governor or legislature."

2. Section 11(b)(2):

Proposed.—This section requires that systems design standards must take "maximum" advantage of security provided by existing technology.

Objection and Recommendation.—NASIS would recommend inserting the word "practical" following the word "maximum." The use of the "maximum" alone would seem to negate the optimum economical solution.

NATIONAL ASSOCIATION OF MANUFACTURERS,
Washington, D.C., April 11, 1974.

Hon. SAM J. ERVIN, Jr.,
Chairman, Committee on the Judiciary, Subcommittee on Constitutional Rights, U.S. Senate, Washington, D.C.

DEAR SENATOR ERVIN: The National Association of Manufacturers is pleased at the opportunity afforded by your letter of March 25, 1974 to comment on S. 2963 and S. 2964. You and Senator Hruska are each sponsor or co-sponsor on both of these bills, which would regulate the operations of criminal justice information systems—perhaps these might be called, in general terms, data banks on criminal records of individuals. Clearly, it is intended by you, as well as Senator Hruska, that these two bills be more a goad to discussion and thinking, than a precise guide to statutory enactment. Therefore, we will offer only general comments on these two bills, approaching them as a composite subject matter for discussion rather than comparing them. In view of the novel and peculiar character of the legislative subject matter represented by the two bills, we would strongly urge that the two weeks of hearings held in early March on the instant legislation

be not considered sufficient; and that further hearings be held for gathering up more specific analytical offerings concerning these legislative proposals. We fear that, if such is not done, a very strange beast might emerge from the legislative process, fathered by some amalgam of political, constitutional, civil-libertarian over-anxiety, rather than founded upon cool, rational, legal, public-law and constitutional-law thinking.

The NAM represents the broad spectrum of manufacturing companies throughout the country. This constituency is interested in the instant proposed legislation, for one reason, because it is interested in seeing that crime is put down and prosecuted. Peace and non-violence is better for business; and crime poses a threat to property and business operations. Therefore, manufacturers are interested in assessing whether the proposed legislation would inhibit the use of criminal data resources by criminal law enforcement agencies more than is warranted by the contribution that would be made to the protection of legitimate rights of individuals caught up in the data banks.

In our view careful attention needs to be paid to the definition of terms such as "privacy of the individual" or "right of privacy" as used in connection with this proposed legislation. Similarly, constitutional rights, civil liberties, due process rights and the like are used very loosely and in their broadest sense to confer the utmost "privacy" on the individual without giving proper consideration to the legitimate concerns of society and the general "need to know" which must be satisfied if we are to have an ordered society. Assuredly these goals must be balanced but the scales should not tip heavily in either direction.

As we see it, the proposed legislation would undermine to a considerable extent the ability of business to secure access to the criminal data banks for employment and credit checking purposes. This restriction on the parties to whom information can be made available out of the criminal data banks is not warranted by any rational legal-analytical considerations having to do with constitutional rights, civil liberties, or due process rights. Business enterprises are as legitimate and needful a user of criminal data bank information as is a criminal prosecution or criminal justice agency of government, or some other agency of government.

Two other aspects might be mentioned—by way of general discussion—where the proposed legislation is guilty of greatly overreaching. First, the legislation attempts to attack problems of incomplete or inaccurate information in the criminal data banks, and attempts to restrict access by unauthorized or unwarranted parties to these banks, by superimposing a heavy structure of detailed federal supervision and regulation upon even the most local and intrastate of criminal data banks and criminal prosecution or criminal justice units. Furthermore, provision is made for intervention by the Attorney General, sitting in the Nation's Capital, in the most individual daily operating activities of the most far flung state or local criminal agency in the country. State and criminal agencies are made subject to severe criminal punishments, for doing acts contrary to the proposed legislation, even though they are not involved in criminal data bank systems and are outside the reach of the justifications offered for federal intervention.

A second aspect of overreaching may be seen in the provision for penalties, both civil and criminal, for violating the commands of the legislation—especially the penalties by way of civil actions in court. A new cause of action, not known to the present lawbooks whether state, local or federal, is provided; and the winning plaintiff is favored with the possibility of the most punishing awards against a losing defendant. For example, a plaintiff under the legislation, with nominal actual damages of less than $100, could go into federal court, receive an actual damages award of a standard $100, receive exemplary and punitive damages of presumably any amount, receive his attorney's fees, and also receive reimbursement for other legal and judicial expenses.

Criminal data banks, and criminal justice and prosecution agencies, relate overwhelmingly to the business of enforcing state and local criminal laws. The pervasive, oppressive and heavy-handed imposition of federal oversight and regulation, both executive and judicial, that the proposed legislation would place over these state-local operations would inject a constant interference and obstacle, militating against the workmanlike carrying out of these operations. NAM believes that any federal legislation on the subject matter at hand is best directed to resolving problems of incomplete or otherwise inaccurate information in the criminal data files, and to preventing access by parties who have no right to know. It is most important that any such federal legislation refrain from trying to resolve these problems by interfering in matters which are and should remain strictly the concern of state and local government.

Very truly yours,

R. D. GODOWN.

NATIONAL DISTRICT ATTORNEYS ASSOCIATION,
Chicago, Ill., April 3, 1974.

Senator SAM J. ERVIN,
Committee on the Judiciary Subcommittee on Constitutional Rights, U.S. Senate, Washington, D.C.

DEAR SENATOR: I've just received your letter of March 29 concerning copies of two Senate bills; Senate bill 2963 and 2964 and I have sent these bills on to the Association's president. I shall advise you as to the position of the Association as soon as I hear from our Federal Legislation Committee.

Best personal wishes.

Yours very truly,

PATRICK F. HEALY,
Executive Director.

PREPARED STATEMENT BY ROBERT T. CZEISLER, SENIOR ATTORNEY, SEATTLE-KING COUNTY PUBLIC DEFENDER ASSOCIATION; AND NANCY E. GOLDBERG, DEPUTY DIRECTOR OF DEFENDER SERVICES FOR NLADA, ON BEHALF OF THE NATIONAL LEGAL AID AND DEFENDER ASSOCIATION

INTRODUCTION

The NLADA is the professional association of organizations representing indigents in criminal proceedings. As such we are vitally concerned with the rights of accused who have been arrested but not convicted. Whenever there has been a dismissal or an acquittal, our client's just concern is to clear his criminal record in order to avoid the well-documented disabilities flowing from having a criminal record.

The monumental nature of the collection and dissemination of criminal records can be seen by looking at the Federal Bureau of Investigation's Identification Division, which is a central depository for fingerprints voluntarily submitted by governmental and civilian agencies, such as insurance companies. These fingerprints are disseminated to contributing agencies throughout the country. Chairman Ervin in his introduction of S. 2963 and Senator Hruska in his introduction of S. 2964 ably testified to the current abuses being practiced by the state and federal governments and the future perils to the citizen's privacy with the greater use of computers. Similarly, Professor Arthur Miller of Harvard Law School and Professor Alan Westin of Columbia Law School have published great works on the influence of technology on our privacy rights. Federal and state courts have decried collection of arrest records without any effective control on its distribution and authenticity. Recently, the United States Court of Appeals said that the FBI's Identification Division is "out of effective control." *Menard v. Saxbe*, 15 Crim. L. Rptr. 2105, 2106 (1974). Since the scope of the problem has been thoroughly discussed by these groups, we shall confine our comments to the particulars of this bill.

NLADA applauds Congress' efforts, through S. 2963, S. 2964 and similar legislation to protect the privacy of American citizens against unwarranted intrusions and to ensure that our constitutional rights remain intact. We welcome this invitation to comment upon a matter so vital to the interests of indigent defendants who are frequently unable to afford the court actions necessary to object to improper uses of criminal justice information.

Prohibition against dissemination of arrest records

Section 202 (a) of S. 2963 prohibits dissemination of arrest records not resulting in a conviction of guilt. NLADA supports this provision for the reason that persons who are innocent of crime should not be subject to having these records used against them in any fashion.

The President of the International Association of Chiefs of Police, Francis B. Looney, has disputed the value of Sec. 202's restrictions on the dissemination of arrest records and has indicated his belief that arrest records not reflecting a later conviction ought to be utilized as a basis for the issuance of an arrest warrant. Mr. Looney argues in effect that probable cause for the making of an arrest should be based in part on the past criminal record of the suspect. However, the reasoning that a person's past arrests or even past criminal convictions have any bearing upon a subsequent charge is contrary to fundamental principles of law. In our system of justice, the only issue relevant to determining probable cause to believe that a defendant has committed a particular offense is whether there is evidence relating to the commission of that offense, not some prior offense. Thus, in *Spinelli v. U.S.*, 393 U.S. 410, 418–19 (1969) the Supreme Court rejected the government's

argument that past or present reputation for dealing in narcotics should be a factor to be considered in determining probable cause.

In the U.S. Supreme Court case of *Beck* v. *Ohio*, 379 U.S. (1964) the defendant was arrested for gambling violations while driving his car. The arresting officer indicated that his previous arrests for gambling operations were considered in determining that there was probable cause to arrest the defendant in this case. However, the prior arrests were evidently not the sole criterion for making the arrest. Mr. Justice Harlan, dissenting, observed that " 'Information was given to the police by an informer that defendant would be at a certain locality at a certain time pursuing his unlawful activities. He was found in that locality as predicted, driving an automobile.' I regard this as the crucial point in the case, for if the informant did give the police that information, the fact of its occurrence would sufficiently indicate the informant's reliability to provide a basis for petitioner's arrest." Notwithstanding the strong evidence of probable cause supplied by an informer whose tip was corroborated, the high court in *Beck* held that the arrest was made without probable cause. Thus, the facts in *Beck* indicate the Court's unwillingness to allow police to utilize arrest record information in determining probable cause for an arrest.

Mr. Looney buttressed his argument that arrest records may be used to determine probable cause by citing, without explanation, the case of *Draper* v. *U.S.* However, *Draper* v. *U.S.*, 358 U.S. 307 (1959) involved no such attempt to use past arrests or convictions as grounds for probable cause. *Draper* involved the sufficiency of a reliable informer's tip that the defendant was dealing in drugs, had drugs in his possession, would be on a specific train, and gave a detailed description of his clothing. The Court in upholding the arrest reaffirmed the principle that an arrest must be based upon probable cause that an offense has been or is being committed. "Probable cause exists where 'the facts and circumstances within (the arresting officers') knowledge and of which they had reasonably trustworthy information (are) sufficient in themselves to warrant a mean of reasonable caution in the belief that an offense has been or is being committed.' *Carroll* v. *U.S.*, 267 U.S. 132, 162 (1924)." *Draper* v. *U.S.*, *supra* at 307, 313.

It is clear from Mr. Looney's testimony with respect to Sec. 202, where he states that "a police agency would not be able to use the past offenses of suspects to support a finding of probable cause," that he regards a past arrest as identical to a past offense. As we stated above, a past conviction has no more relationship to determining probable cause for arrest in a subsequent set of circumstances than does a past arrest. But it cannot be overemphasized that a past arrest is quite different from a past conviction although Mr. Looney's statement reflects the belief of some law enforcement officers that a past arrest is a past offense. The present bill is intended to remedy this very evil. The sorry state of most "rap sheets" which show little or no follow-up after arrest has contributed to this presumption.

Although Mr. Looney expressed his interpretation that Sec. 202 effectively prohibits the dissemination of arrest records for purposes of determining probable cause, that prohibition does not appear to be succinctly stated in the bill. NLADA recommends that the bill spell out the prohibition that the arrest record information may not be disseminated to another criminal justice agency for use in determinations of probable cause. NLADA opposes Sec. 5(d) of S. 2964 which would allow the attorney general to determine what the proper uses of such information would be.

Recipients of criminal justice information

NLADA supports the provision of S. 2963 (Sec. 201(b)) which would prohibit the dissemination of criminal justice information to employers and licensing agencies. This restriction complies with the holding of *Menard v. Mitchell*, 328 F. Supp. 718, 727 (1971) that "the Bureau is without authority to disseminate arrest records outside the Federal government for employment, licensing or related purposes whether or not the record reflects a later conviction." The Court in that case noted that, "When arrest records are used for . . . (strictly law enforcement) purposes, they are subject to due process limitations within the criminal process, and misuse may be checked by judicial action. The same safeguards are not present when an arrest record is used for employment purposes, often without the knowledge of the person involved." One of the reasons why employers should not be furnished with criminal justice records, the court noted, was the difficulty of supplying an individual with a copy of the records so that he or she might have an opportunity to correct misinformation. First, the FBI has too great a workload

to be furnishing the information to individuals each time it is requested by an employer, and secondly, "as a practical matter an individual must submit his prints to get a check made of his record. This is cumbersome." (*Menard v. Mitchell*, *supra* at p. 722.) Thus, the prohibition against releasing criminal justice data outside of law enforcement activities both protects individuals and saves a great deal of taxpayer dollars.

Criminal intelligence information

NLADA strongly supports Sec. 208 of S. 2963 which bars the maintaining of criminal intelligence information and opposes Sec. 5 of S. 2964 insofar as it presupposes the maintenance and use of such information both by criminal justice components and non-criminal justice components of criminal justice agencies. This type of information is very tenuous indeed and can be particularly damaging to individuals. Moreover, there is no effective means of verifying this type of information. While Sec. 6(a) of S. 2964 provides for some system of review of "criminal offender record information," no such means is suggested for review of criminal intelligence information which is more insidious in that it is more difficult to document.

Defense access to information

S. 2963 and S. 2964 unnecessarily restrict defense counsel and defendant access to criminal justice information both for purposes of pursuing an adequate defense and for purposes of challenging the accuracy of the information.

Under Sec. 201(b) of S. 2963, criminal justice information may be disseminated only to "officers and employees of criminal justice agencies." Under Sec. 102 (16) "criminal justice agencies are confined to a criminal court or a governmental agency." Naturally, this includes the prosecution. However, many public defenders and all criminal defense lawyers are not governmental agencies. Thus, many defense counsel are prohibited from receiving criminal justice information as a matter of course. These records are a vital aid for purposes of representing clients at bail hearings, in plea bargaining, for trial preparation and at sentencing hearings. Given the presumption of innocence which is embodied in the Fifth Amendment to the U.S. Constitution, the defense counsel must at the very least have access to whatever criminal justice information is available to the prosecution. Section 207 (a) of S. 2963 which provides that defense counsel must start a review procedure to obtain such information places an unconstitutional burden upon the defense. Many public defender organizations automatically receive "rap sheets" on their clients under existing laws or procedures. Defense counsel ought not to be required to allege that he seeks to "challenge, purge, seal, delete, correct or appeal" in order to merely secure information which is necessary to adequately defend the accused. This language implies that simple discovery is not a sufficient purpose for requesting the material, and tends to narrow the scope of discovery currently available in many jurisdictions.

In addition, Sec. 207 allows the defendant access to criminal justice information only in accordance with locally established regulations. It fixes no deadline for an individual to receive this information. In jurisdictions where the right to a speedy trial is being protected, such as Washington State, a misdemeanor trial may occur within three days for in-custody cases or two months for non-custody cases.

The problems in the bill regarding defense counsel access to "rap sheets" and other criminal justice information could be addressed in two ways. One method would be to expand the definition of criminal justice agencies and Sec. 102 (16) of S. 2963 to include defenders and criminal defense lawyers. Another method would be to add to Sec. 207(a) the concept that simple criminal discovery by the defense is a valid purpose for requesting access to the information. Section 207(b) should be revised to require a three-day limit for access to the information.

S. 2964, Sec. 5(d)(2) is particularly burdensome to financially disadvantaged individuals in that it allows access to information only by means of a court order where there is no statute or regulations prescribing access. Individuals wishing to challenge the veracity of criminal justice information, unless they are in the midst of a criminal prosecution, will ordinarily be ignorant of the method of obtaining a court order and may be unable to afford the services of an attorney to pursue this avenue. If the purpose of the bill is truly to provide citizens with a means of review of data concerning them, there should be a more affirmative statement of their right to review that data. Perhaps, under certain circumstances, individuals should receive a copy of such data at their last known address. At a minimum, individuals should have easy access to all information concerning themselves which is being stored by criminal justice agencies.

Purging of criminal justice information

NLADA supports Sec. 206 of S. 2963 in that it provides for purging of certain criminal justice information after a period of time. However, Sec. 206 does not provide a solution to the problem faced by a job applicant who is asked whether he has ever been arrested or convicted of any crime and whose record has been purged. A possible solution would be to provide the following:

"Any detention which did not result in a conviction and which has been purged under Sec. 206 (b) (1) (C) or any other federal or state law shall not be considered an arrest. Any conviction which has been purged pursuant to Sections 206 (b) (1) (A) and 206 (b) (1) (B) or any other federal or state law shall no longer be considered a conviction."

Such a provision would aid in accomplishing the statutory intent that stored criminal justice information should not indefinitely haunt an individual who is attempting to contribute to society and support himself and his family.

Conclusion

In summary, NLADA generally supports the passage of S. 2963 with the exception of its limitation upon defendant and defense counsel access to information. On the other hand, NLADA believes that S. 2964 delegates too much discretion to the prosecution in determining the regulation of dissemination of data and fails to spell out certain safeguards which are provided by S. 2963. Although NLADA would prefer to see S. 2963 provide more specifics, e.g. with respect to the use of the past records for probable cause determinations, NLADA would be generally supportive of the bill in its present form.

NATIONAL NEWSPAPER ASSOCIATION,
Washington, D.C., April 12, 1974.

Re Criminal Justice Information control and protection of privacy Act of 1974 (S2963) and Criminal Justice Information Systems Act of 1974 (S2964).

Hon. SAM J. ERVIN, Jr.,
Chairman, Subcommittee on Constitutional Rights, U.S. Senate, Washington, D.C.

DEAR SENATOR ERVIN: The National Newspaper Association joins with our colleagues who have personally testified before the Constitutional Rights Subcommittee in expressing deep concern over the potential hazards to the public's right-to-know presented by the subject legislation.

This statement is submitted on behalf of the Association and in particular, in behalf of the Freedom of Information Subcommittee of NNA's Government Relations Committee. The subject legislation was discussed thoroughly at a recent meeting of the Government Relations Committee and the concerns expressed herein are a direct result of concerns expressed by member publishers during that meeting.

NNA as you know, is the national trade organization representing all types of daily and weekly community newspapers. Of more than 7600 paid circulation weekly newspapers in the United States, NNA members number more than 5300. Of the more than 1750 daily newspapers in the country, NNA represents more than 980.

NNA member publications range in size from rural weeklies of only 100 circulation, to dailies averaging 10,000 and more. Some NNA members serving surburban areas publish several newspapers with total circulation of 300,000.

These figures are cited to give you a better idea of the scope of the problem the subject legislation presents to our members. As we understand, S. 2963 and S. 2964 would make it impossible for newspaper reporters to obtain from criminal justice agencies certain information on individuals collected or disseminated as a result of arrests, detentions, or the initiation of criminal proceedings by criminal justice agencies. The prohibited information includes that concerning arrests, correction and release, convictions, wanted persons, criminal history and identification. The scope of the information covered by the bills could not be much broader.

It is true that formal court records would still be open to public inspection. In metropolitan areas or county seats, this may not present too much of a problem for newspapers with the resources available to allow sufficient time for reporters to conduct research in the courts. The legislation, however, would almost always require a personal examination of such records by reporters as most times, court personnel is too busy to search out the information and release it over the phone or by other means. Also, information on separate cases involving the same individual would be found in separate files, with no common indexing system by defendant's name in most cases.

This would result in an excessive amount of time being devoted to the tracing of a single individual's criminal record. In addition, when a reporter finished researching records in one court, he would not have any guarantee that he possessed a complete criminal history of that particular individual as courts in other cities and states could have tried and convicted the same person.

In rural areas, however, such searches at the courthouse would more than likely be prohibitive for smaller newspapers. In most states, the local criminal justice system corresponds to the county governments. There is a courthouse in the county located at the county seat. Sometimes trials and hearings are held in towns other than a county seat, but even in those cases, all the records are ordinarily centrally maintained at the county courthouse.

There are more than 3000 counties in the United States. The smallest within the United States is Arlington County, Virginia, 24 square miles. Some, however, are as big as 20,000 square miles, (one in Alaska is 88,281 square miles) particularly in the western part of the United States. While many newspapers are located in county seats, since there are more than 9300 newspapers in the country today, many are published elsewhere.

The point is, that for many small newspapers in rural and sparsely populated areas, a publisher simply could not afford to send a reporter (who is many times also the editor and publisher) several miles away to spend hours checking court files for a past criminal record that may not even exist. Even if one does exist, it may not exist in that particular county.

There are many times when such information is invaluable to smaller communities and the public officials in those communities. It is of public importance in elections and appointments of public officials, and when municipalities or counties choose contractors. It is important in several other areas in addition to being of great interest following local arrests and convictions.

NNA fully appreciates the concern which the Senate Constitutional Rights Subcommittee has with the misuse of criminal justice information and with the improper or even proper dissemination of inaccurate information regarding individuals. NNA shares that concern, but NNA also views the subject legislation as possibly being a first step towards the establishment of a star chamber judicial system as well as a secret police system—in spite of the well-meaning intentions of the sponsors and supporters of this legislation.

We say this because if secrecy for past criminal acts and convictions resulting therefrom can be justified, it is but a short step to a successful contention that criminal court proceedings themselves should likewise be kept secret so as to protect the innocence of those who are not convicted.

Open and accessible criminal records—the same as open and accessible criminal trials—are the best, indeed the only, means of assuring that police and court procedures are properly conducted in the public interest. Indeed, the light of public inspection is the one constant factor that assures the maintenance of a basically honest system of government.

The only means of guaranteeing the accuracy of criminal justice information records is to make them publicly available—not only to the media, but to individuals themselves who are the subject of such records in order that they may be able to inspect the records for accuracy and insist on changes when they are inaccurate.

We realize that the subject legislation does provide some means whereby individuals can check the accuracy of criminal records involving them. To be forthright however, we have little faith in the protection to be afforded by such provisions once the entire system is closed to public examination.

Rather than automatically closing the availability of such records after a period of time, would it not be better to afford individuals an opportunity to formally request a court of record to expunge the information?

If criminal justice information records are shrouded in secrecy, an individual having no reason to suspect that information about him is included in such a system would have the sole (and unknown) burden of verifying the accuracy (or probable inaccuracy) of that information. If the records were not closed to the media, a reporter routinely following upon a story might discover such records, and in bringing them to the attention of the individual, cause a previously unknown inaccuracy to be corrected. Likewise, too, how will newspapers or public officials be able to check the accuracy of such records if criminal justice agency officials "leak" information from such records concerning individuals they are attempting to harm?

We are also concerned that a reporter who receives a "tip" that an individual was once arrested will have no means whatsoever of verifying such information.

The accused person (who may have been convicted) will be able to deny the charge, knowing that the reporter has no means whatsoever of discovering the truth, unless the informant knows in what state and county the conviction occurred.

If a story based on such a "tip" is published, what defense would the publisher have against a libel or related action?

Our colleagues from the media have asked for more time to study the subject legislation before it becomes final. We share in that request, but in addition, it is our hope that the testimony presented by various witnesses in this matter would alert the Committee to the need for extreme caution before legislating in this area. Pitfalls abound, and it is our view that the surface has just been scratched. In addition to the media, many members of the business community are not even aware that this legislation is pending. We feel sure that others could raise serious objections that have not been considered by us or others who have testified to date.

We would make one positive suggestion, however. If legislation in the criminal justice information field or in the field of privately collected information is enacted, it is our hope that it would provide adequate means of informing members of the public that records about them—criminal or otherwise—might exist and tell citizens exactly how they could go about securing access to the information for purposes of ascertaining its accuracy.

We must admit to some bias in this area, but it is the view of this association that the best means of providing information to the public would be through public notices, published once or twice a year in local newspapers. We think the public notice provision in Section 305 of S. 2963 (S. 2964 contains no similar provision) is inadequate. The Federal Register has a total circulation of only 36,000. Unfortunately, it is never seen by the bulk of the American public.

Private foundations must make their annual reports as filed with the Internal Revenue Service publicly available. In order to assure public knowledge of the availability of the report, 26 USC 6104 requires foundations to publish a notice of the availability of the reports in a newspaper having general circulation in a county in which the principal office of the private foundation is located. The notice must simply state that the annual report is available at the foundation's principal office for inspection by any citizen who requests it within 180 days of such a publication. In addition, the notice must state the address of the office and the name of its principal manager.

There are many other examples where the federal government requires public notices in newspapers, but we feel that none is more important than the subject now at hand. A compilation of many of these requirements recently prepared by this association is attached.

In summary, we join with others in the media who have voiced concern over the restrictions which the subject legislation would place on the free flow of public information. Everything connected with the collection of this data from the police to the courts to the corrections facilities and to probation procedures is publicly funded and publicly known. The commission of a crime is a public—not a private act. Those committing crimes should not be allowed to expect to hide their past deeds behind a veil of government secrecy. Those who have not been convicted of crimes should be guaranteed access to the information system in order to assure themselves that false or inaccurate records are not being maintained by criminal justice agencies.

NNA also fears that any legislation on this subject would give reason to those local criminal justice agency officials who would use any subterfuge or excuse to keep from revealing information to the press or the public, information that may still be lawfully available under any law that may eventually result from the Committee's consideration of this legislation.

We regret that time was unavailable during the course of your hearings on the subject legislation for the National Newspaper Association to testify. We submit this letter in the hopes that you will make it and the attachment a part of the record of hearings which were recently completed.

Thank you for your attention to the concerns which we have endeavored to express in this letter. We will be most happy to meet with staff members of the Constitutional Rights Subcommittee to clarify any points which we have made or to provide additional information.

Sincerely yours,

WILLIAM G. MULLEN.

Enclosure.

Federal Laws Affecting Newspapers

Dec. 1973

491 National Press Bldg.
Washington, D.C. 20004
202 783-1651

Prepared by NNA

Federal Requirements For Newspaper Public Notices

PART VI

INTRODUCTION

This compilation contains only specific references to newspaper publications found in the United States Code (U.S.C.) and the Code of Federal Regulations *(C.F.R.)*. Each cited statute and regulation in this part is accompanied by a brief paragraph describing the notice provisions *contained therein. In most instances* the exact language of the law or regulation has been summarized.

Every effort has been made to assure the completeness of this work. Because of the nature of federal statutes and regulations, however, some newspaper notice provisions *may have been overlooked. As these come to the attention* of NNA or as new public notice requirements are put into federal law, they will be noted and included in subsequent editions.

Many of the requirements do not clearly specify the frequency of publication. NNA has attempted to *determine* the usual practice of the responsible federal department or agency and has included this information in parentheses, *where available.* No federal regulatory or statutory definition of "newspaper" has been *found.*

Note on use of this work:

When checking under a particular subject heading, refer to same subject heading under Part B, *C.F.R.* as well as *under U.S.C. for details* as to publication requirements. Part A, U.S.C. refers to laws passed by *Congress.* Part B, *C.F.R.* refers to implementing regulations written by federal departments and agencies.

PART A— NEWSPAPER NOTICE REQUIREMENTS FROM U. S. CODE

Agriculture

7 USC 161[1] —

Interstate Quarantine-Nursery Stock and Plant Products

Whenever Secretary of Agriculture deems it necessary to quarantine any state or portion thereof to prevent the spread of a dangerous plant disease or insect infestation, he shall publish notice of his action in such newspapers in the quarantined area as he may select.

Armed Forces

10 USC 7666 —

Navy and Marine Prize Property – Sale

Once prize property is ordered *to be sold by the Court,* the sale shall be fully and conspicuously advertised in newspapers designated by the Court.

[1] Numbers appearing before "USC" and "CFR" are title reference. Numbers following "USC" and "CFR" are section designation.

Bankruptcy

11 USC 51 —

Bankruptcy – Designation of Newspapers for Publication of Orders

Judges of the courts of bankruptcy shall designate a newspaper published within their respective territorial district and in the county in which the bankrupt resides or in which the major part of his property is situated, for the purpose of publishing such notices and orders as the court may direct. The court, in its discretion, may designate additional newspapers as well. (NOTE: Title 11, the Bankruptcy Title of the U.S. Code, contains a number of general notice provisions which *do not specify* how the notice is to be given. Section 51, however, gives courts full authority to designate newspaper notice.)

11 USC 205 —

Reorganization of Railroads Engaged in Interstate Commerce – Bankruptcy

After the petition has been approved, the debtor will be required by the court *to publish notice of a* hearing to be held not less than 30 days after publication at which time trustees shall be appointed. The publication shall be in such newspapers and at such times as the court shall direct.

The court may authorize the trustees to issue cash certificates, etc. only after 15 days notice *published in such* newspapers as the court directs.

Banks and Banking

12 USC 28 —

Banks and Banking – Publication of Certificate of National Bank

When a certificate to conduct business as a bank has been issued, the banking association shall have the certificate published in some newspaper published in the city or county where the association is located or, if none is published there, *in the one* printed nearest thereto. The notice shall run for at least sixty (60) days after the issuance of the certificate to ensure adequate notice. (The Department of the Treasury has interpreted this provision to mean once a week for nine weeks.)

12 USC 161 (a) and (c)

Banks and Banking – Bank Examinations, Reports to Comptroller of the Currency

The *quarterly reports of condition* which must be filed each year with the Comptroller of the Currency *must* also be published in a newspaper published in the area where the bank association is established or if none is published there, then in the one published nearest thereto in the same county. In like manner, *the annual reports of any affiliate*

associations must also be published in a newspaper. Proof of publication requirements are to be determined by the comptroller.

12 USC 182 —
Banks and Banking – Notice of Intent to Voluntarily Dissolve
When a bank association decides to go into liquidation, certified notice of this intention must be published for two months in every issue of a newspaper published in the city in which the association is located or if none is published there, in the one printed closest thereto. The insertion shall notify creditors that the association is closing up its affairs and that they should present their claims against the association for payment.

12 USC 193 —
Banks and Banking – Notice to Present Claims in Receivership
After a receiver has been appointed, the comptroller shall publish notice calling for all persons who have a claim against the association to present their claims and make legal proof thereof. The advertisement is to be published in any newspaper designated by the comptroller and shall run for three consecutive months.

12 USC 214a(a) —
Banks and Banking – Notice of Conversion of National Bank into State Bank
This section provides for notice stating the time, place and object of a stockholders' meeting. The notice is to be printed in a newspaper of general circulation in the place where the national bank association which is merging, converting, or consolidating with the state bank is located. It shall appear at least once a week for four consecutive weeks prior to the meeting. In the case of a merger or consolidation, however, one notice ten days prior to the meeting may be acceptable if the comptroller consents and two-thirds of the stockholders waive the four week notice. The publication requirement can be dispensed with entirely if waived by all shareholders.

12 USC 215/215a —
Banks and Banking – Consolidation/Merger of National Bank or State bank with a National bank
Although Sec. 215 concerns consolidation and Sec. 215a refers to a merger, the publication provisions in each are identical. When a national or state bank wishes to consolidate or merge with a national bank, unless there has been an emergency waiver, notice of the stockholders' meeting, stating time, place and purpose must be published in a newspaper of general circulation printed in the place where the association is located. The notice shall run for four consecutive weeks (presumably once a week). If no newspaper is published there the notice shall be printed in the one of general circulation published nearest thereto.

12 USC 1766(4)(A) —
Banks and Banking – Federal Credit Unions – Power of the Director
The liquidating agent of a federal credit union in involuntary liquidation, in accordance with the rules promulgated by the Director of the Bureau of Federal Credit Unions shall cause notice to be given to creditors and members through publication once a week for three successive weeks in a newspaper of general circulation in each county in which the union maintained an office or branch for transaction of business on the date it ceased unrestricted operations. This may be unnecessary, however, in the event the aggregate value of property and assets totals less than $1,000.

12 USC 1818 —
Banks and Banking – Termination of Insured Bank Status Under the Federal Deposit Insurance Act
Calls for publication of the bank's termination of its status as an insured bank. (See 12 *CFR* 307.1)

12 USC 1828(c) —
Banks and Banking – Regulations Governing Insured Banks–Merger transactions
Notice of any proposed transaction which requires approval (i.e., merger, consolidation, transfer of assets) must be published in accordance with the following regulations:
(a) Publication shall be prior to the granting of approval.
(b) Form of the notice must be approved by the responsible agency.
(c) Publication must be at appropriate intervals during a period of at least 30 days.
(d) The notice must be published in a newspaper of general circulation in communities where the main offices of the involved banks are located or if no newspapers are published there, then in the newspaper nearest thereto.

12 USC 1843(c)(8) —
Exemptions for Bank Holding Companies from Regulations Concerning Ownership of Nonbanking Organizations
The Federal Reserve Board may determine, after due notice and opportunity for hearing, that the activities of a company are so closely related to banking or managing or controlling banks as to be a proper incident thereto. (See 12 *CFR* 225.4)

Commerce and Trade

15 USC 188 —
Foreign and Domestic Commerce – Publication of Commercial Information
The Secretary of Commerce has discretionary authority to publish notification of commercial information received from diplomatic and consular officers which he deems important to the public interest. Publication is to be in such newspapers not exceeding three in number, as the Secretary may select.

Conservation

16 USC 460F —
Recreational Facilities – Sale of Cottage Site Developments
Refers to publication of the sale within the vicinity of lands available for sale in accordance with regulations prescribed by the Secretary of the Army. (See 33 *CFR* 211.74)

16 USC 476 —
National Forests – Sale of Timber
The Secretary of Agriculture may offer for sale as much timber in a forest as he feels is compatible with the maintenance of the forest. Notice of timber sales in excess of $2,000 must be published in one or more newspapers of general circulation in that state or territory for not less than 30 days. The Department of Agriculture interprets this to mean only one publication. Publication requirement may be waived in emergencies. (See 42 USC 4461. Also in 36 *CFR* 221.8)

16 USC 583d —
Conservation – Sustained Yield Forest Management
Prior to establishing any sustained yield unit, or cooperative agreement, notice must be published in one or more newspapers of general circulation in the vicinity where the timber is located. The notice shall include:
(1) location of the proposed unit;
(2) name of each proposed cooperator;
(3) duration of proposed cooperative agreement;
(4) location and estimated quantity of timber to be provided by each cooperator and by the Federal government;
(5) estimated rate of cutting such timber;
(6) time and place of the public hearing (to be held not less than 30 days after the first publication).
Prior to any non-competitive sale of federally owned timber with stumpage value greater than $500, notice must be published once a week for four consecutive weeks in one or more newspapers of general circulation in the vicinity where the timber is located. This notice shall include:
(1) quantity and appraised value of the timber;
(2) time and place of public hearing (not less than 30 days after first publication) (if requested);
(3) place where requests for public hearing are to be made. If such a request is made, newspaper notice of the hearing shall be given not less than ten (10) days prior to the hearing.

Food and Drugs

21 USC 117 —
Food and Drugs – Animals, Meats, Dairy Products – Notice of Contagion
The Secretary of Agriculture must notify any transportation facility doing business in or through any infected locality of the existence of a contagion or contagious disease by publication in such newspapers as he may select.

21 USC 123 —
Food and Drugs – Animals, Meats, Dairy Products – Quarantine
Whenever the Secretary of Agriculture determines that an area must be quarantined as a result of the presence of animals or live poultry infected with contagious infections or communicable diseases, he shall publish notice of the quarantine in such newspapers printed in the quarantined area as he may select.

Internal Revenue Code

26 USC 6104 —
Internal Revenue Service – Publicity for Exempt Organizations and Trusts
After filing a private foundation's annual report as required by another section, it must make the report available to the public and publish a notice of such availability, not later than the day prescribed for filing the annual report, in a newspaper having general circulation in the county in which the principal office of the private foundation is located. The notice must state that the annual report is available at the foundation's principal office for inspection by any citizen who requests it within 180 days after the date of such publication, and must state the address of the private foundation's principal office and the name of its principal manager.

26 USC 6335(b) —
Internal Revenue Service – Sale of Seized Property
In the event of a sale of seized property, the Secretary of the Treasury shall have notice of the sale published in some newspaper printed or generally circulated in the county where the seizure was made. It shall describe the property and state the time, place and conditions of sale. The notice must be published at least ten (10) days, but not more than forty (40) days, prior to the sale.

Judiciary and Judicial Procedure

28 USC 1655 —
Judiciary – Procedure for Lien Enforcement Against Absent Defendants
In situations where a defendant cannot be served personally in a District Court action on real or personal property, the Court may direct service to be by publication at least once a week for six consecutive weeks.

28 USC 2002 —
Judiciary – Sale of Realty Under Execution or Judicial Sale
Prior to any public sale of realty under any order, judgment or decree of any court in the United States, notice must be published once a week for at least four weeks in at least one newspaper regularly issued and of general circulation in the county, state or judicial district wherein the realty is situated. In the event that the realty extends over such boundaries, the court may determine whether or not further publication is to be required. The notice shall contain as detailed a description of the realty involved as the court may direct. This section does not apply to Title 11, Bankruptcy Sales or to proceedings involving banks wherein receivers or conservators are appointed by the Comptroller of the Currency.

28 USC 2715 —
Postal Service – Attachment
The marshall shall cause publication of an executed warrant of attachment in postal suits to be published for two months in the case of an absconding debtor and four months in the case of a non-resident debtor. The notice is to appear in a newspaper published within the district where the property is situated and its form shall be pursuant to the order under which the warrant was issued.

Mineral Lands and Mining

30 USC 28 —
Mineral Lands and Mining – Improvements on Claims Pending Patent
Provides for co-owners of a mine to claim the share of a delinquent partner who doesn't pay for improvements required while the patent is pending. The full section requires some improvement every year until a patent is granted. Seizure of the delinquent partner's share may occur after publication once a week for 90 days in a newspaper published nearest to the claim.

30 USC 29 —

Mineral Lands and Mining – Patent Procurement Procedures

Whenever an application is filed for a patent for any land claim, the manager of the land office where the application is filed shall cause notice of the fact to be published for sixty (60) days in the newspaper published nearest to the site. (The Department of the Interior has interpreted this to mean weekly publication for 8 or 9 weeks.)

30 USC 39 —

Mineral Lands and Mining – Publication Charge

The Director of The Bureau of Land Management shall have the power to designate a newspaper for publication purposes and set the charges himself if the rates charged are excessive.

30 USC 40 —

Mineral Lands and Mining – Verification of Affidavits

Where the mineral or agricultural character of land is contested, testimony is to be taken and if a party cannot be found, a notice must be published once a week for at least thirty (30) days in a newspaper designated by the manager of the land office, as the one published nearest the land.

30 USC 201(a) —

Mineral Lands and Mining – Division of Land Into Leasing Tracts

When the Secretary of the Interior has decided to offer coal lands for lease, publication of the offering must be made in a newspaper of general circulation in the county wherein the lands are situated before any competitive lease is issued.

30 USC 527 —

Mineral Lands and Mining – Determination of Unpatented Mining

An applicant, offeror, permittee or leasee under mineral leasing laws may file a request for publication of notice describing the lands involved and notifying other parties of their right to object in a newspaper of general circulation in the county where the lands are situated. The notice (describing the lands covered in the application) must run in Wednesday editions of a daily paper for nine consecutive weeks, or for nine (9) consecutive issues in a weekly or on the same day of the week for nine (9) consecutive weeks in a semi or tri-weekly.

30 USC 613(a) —

Mineral Lands and Mining – Procedure for Determining Uncertainties in Titles to Surface Resources

The head of the federal agency which has the responsibility for administering surface resources of any lands belonging to the United States, may file a request for publication to inform mining claimants of the determination of surface rights. The notice shall include a description of the land, date by which claims must be made and the place where such claims must be reported. Appearing in a newspaper of general circulation in the county wherein the land is situated, the notice shall run in Wednesday editions of daily newspapers for nine (9) consecutive weeks, or for nine (9) consecutive issues in a weekly or in the same issue of the same day of the week for nine (9) consecutive weeks in a semi-weekly or bi-weekly.

Money and Finance

31 USC 1241(c) —

Money and Finance – Fiscal Assistance to State and Local Governments – Reports on Use of Funds (Revenue Sharing)

Each report submitted by a state or local governmental unit setting forth the amounts and purposes for which funds will be and were received and spent, shall be published in a newspaper printed in the state and having general circulation in the geographic area of the recipient government. Each governmental unit shall advise the news media of the publication of its reports.

Navigation and Navigable Waters

33 USC 410 —

Navigable Waters – Regulations as to Floating Loose Timber

Whenever the Secretary of the Army shall prescribe or modify regulations pertaining to the floating of loose timber and logs in waterways, he shall cause such regulations to be published at least once in a newspaper or newspapers which he deems best adapted to the giving of notice to interested and affected persons.

33 USC 414 —

Navigable Waters – Removal of Sunken Water Craft by the Secretary of the Army

Whenever any navigable water in the United States shall be obstructed by a sunken vessel for 30 or more days, the Secretary of the Army may cause it to be removed. In his discretion he may give notice of not less than thirty (30) days of such obstruction by publication addressed "To Whom It May Concern" in the newspaper closest to the locale. In removing the obstruction, there must be public advertising of not less than 10 days for salvage bids. (Presumably such advertisement will be published in a newspaper meeting the above requirements.)

Postal Service

39 USC 3685 —

Postal Service – Second Class Mail

The owner of a publication having periodical publication privileges shall publish once a year in such publication the information outlined under 39 *CFR* 132.6.

Public Health and Welfare

42 USC 1857d —

Public Health Conference – Abatement of Air Pollution by Conference Procedure

When calling a conference to deal with air pollution in a particular area, the Administrator of the Environmental Protection Agency shall give notice in a newspaper or newspapers of general circulation in the area on at least three different days prior to the conference stating the matters to be discussed.

42 USC 2232 —

Public Health and Welfare – License Applications under the Atomic Energy Act

The Commission may not issue any license for utilization or production facility for the generation of commercial power until it has published notice of the application in such trade or newspaper publications as it deems appropriate.

42 USC 4461 —

Public Health and Welfare – Disaster Relief and Timber Sale Contracts

See 16 USC 476, *supra*. Secretary of Agriculture may shorten the notice period required therein to seven (7) days when a speedier sale will aid rebuilding the disaster area, sustain the economy, or salvage the value of the timber. The Department of Agriculture interprets this to mean only one publication. (Also in 36 *CFR* 221.9)

Public Lands

43 USC 251 —

Homestead – Notice of Intent Prior to Final Proof

Before final proof shall be submitted by any person claiming to enter agricultural lands under homestead or pre-emption entries, he shall file with the land office a notice of intention describing the lands involved and stating the witnesses who will be called. The land office shall then publish such notice once a week for thirty (30) days in a newspaper designated as being published nearest to the land. (The Department of the Interior interprets this to mean once a week publication (on the same day of the week) for five consecutive weeks.)

43 USC 253 —

Homesteads – Contest – Bureau of Reclamation

Notices of contest under homestead, pre-emption and tree-culture laws shall be printed in some newspaper printed in the county where the contested land lies or if no newspaper is published there, then the newspaper published in the nearest county.

43 USC 315g —

Public Lands – Donation or Exchange of Grazing Land

With respect to an exchange of grazing land between the United States, a state, or private party, no exchange shall become effective until a notice describing the lands involved shall have been published for four (4) consecutive weeks in a newspaper of general circulation in each county wherein such lands are situated. (The Department of the Interior has interpreted this to mean once a week publication on the same day of the week.)

43 USC 374 —

Public Lands – Sale of Lands Acquired in Connection with Irrigation Projects

Lands originally acquired under the Reclamation Act for irrigation works may be sold when the Secretary of Interior determines that they are no longer needed. Notice of a sale must be printed in a newspaper of general circulation in the area for at least thirty (30) days before the auction may be held. (The Department of the Interior has interpreted this to mean once a week (on the same day) publication for five consecutive weeks.)

43 USC 375 —

Public Lands – Sale of Land which has been Improved at the Expense of the Reclamation Fund

When the Secretary of Interior decides to place such lands for public sale, notices must be given as in 43 USC 374.

Public Printing and Documents

44 USC 509 —

Public Printing and Documents, Advertisements for Paper

The Joint Committee on Printing shall fix upon standards of paper for the different descriptions and the public printer shall advertise in six (6) newspapers or trade journals published in different cities for sealed bids to furnish the government with paper. (The Government Printing Office has interpreted this to mean two (2) publications of each advertisement. The advertisements appear quarterly and are now published in The Wall Street Journal, Dayton Daily News, Detroit Free Press, Chicago Tribune, Boston Herald-American and the Washington Star-News.)

44 USC 510 —

Public Printing and Documents – Specifications in Advertisements for Paper

The advertisements required by 44 USC 509 shall specify the minimum portion of each quality of paper required for either three months, six months, or one year as determined. If the minimum exceeds 1,000 reams, advertisements shall state that proposals will be received for 1,000 reams or more.

44 USC 3702 —

Public Printing and Documents – Advertisements by Agencies not to be Published without Written Authority

Advertisements, notices, or proposals for an executive department of the government or for a bureau or office connected with it may not be published in a newspaper without written authorization from the head of the department. Further, no bill for advertising or publication may be paid unless a copy of the written authorization is presented with it.

44 USC 3703 —

Public Printing and Documents – Rate of Payment for Advertising by Agencies

All forms of advertising required by law for the several departments of the government may be paid for at a price not to exceed the commercial rate charged to private individuals with the usual discounts. The heads of the several departments may secure lower terms at special rates when the public interest requires it however. The rates shall include the furnishing of lawful evidence, under oath, by the printer or publisher that the publication has been made.

Shipping

46 USC 52 —

Shipping – Registry and Recording – General Provisions

When the Commissioner of Customs grants an application to change the name of a vessel of the United States, he shall cause the order to be published at least four (4) times in some daily or weekly newspaper at the place of documentation.

Transportation

49 USC 1(19) —

Transportation – Application for Certificates of Public Necessity and Convenience

Notice of any application to engage in transportation by railroad, extend lines, acquire or build new railroads, or

abandon lines, etc., shall be published by the Interstate Commerce Commission for three (3) consecutive weeks in a newspaper of general circulation in each county in which said railroad will operate. (The Interstate Commerce Commission interprets this to mean one publication in each week.)

PART B - NEWSPAPER NOTICE REQUIREMENTS FROM CODE OF FEDERAL REGULATIONS

Banks and Banking

12 CFR 5.2(b) —
Banks and Banking – Supplemental Application Procedures for Charters, Branches, Mergers, and Relocations
After the regional administrator of national banks has notified an applicant that an application has been accepted for filing, the applicant has fifteen (15) days to publish a notice containing the applicant's name, subject of the application, and date filed. The notice must be published at least once in a newspaper of general circulation in the community where the head office is located and also in a newspaper in the community where the applicant proposes to engage in business.

12 CFR 225.4(b)(1) & (2)
Banks and Banking – Nonbanking Activities
These two provisions cover 1) a bank seeking to engage for the first time in activities permitted under accompanying regulations and 2) a bank seeking to acquire the assets of or shares in a company engaged solely in those activities. In both cases, the bank must publish a notice of the proposal during a specified thirty day period in a newspaper of general circulation in the communities to be served.

The Federal Reserve Board publishes forms for these notices (FR-Y-4a and FR-Y-4b) which are available from the FRB Publications Office.

12 CFR 307.1(a) & (b) —
Banks and Banking – Federal Deposit Insurance Corporation – Insured Non-member Bank in Liquidation
(a) After FDIC acknowledges notification of a non-member insured bank's liquidation and termination date, the bank must publish notice of the termination of its insured status in not less than two issues of a local newspaper.
(b) If unclaimed deposits still remain, the bank must publish Notice of Liquidation in a local newspaper of general circulation. It must state the proper place to claim deposits and what happens if they are not claimed.

12 CFR 307.2(a) —
Banks and Banking – FDIC – Member Bank in Liquidation
Notice to depositors under this section is identical to the notice provisions in 12 *CFR* 307.1(a) and (b).

12 CFR 307.3(a) —
Banks and Banking – FDIC – Deposits Assumed by Insured Bank
Notice to depositors under this section is identical to the provisions of 12 *CFR* 307.1(a). In addition, the bank must state that its deposits have been assumed by another insured bank.

12 CFR 543.2 —
Banks and Banking – Application to Organize Savings and Loan
Requires notice of filing of application for permission to organize a federal savings and loan association to be published in an English language newspaper having general circulation in the community to be served by the association. Regulation contains text of notice.

12 CFR 545.14 —
Banks and Banking – Application for Branch Savings and Loan Office
Requires notice of filing of application to establish branch office of federal savings and loan association to be published in same manner as 12 *CFR* 543.2. Regulation contains text of notice. (Also see 12 *CFR* 545.16)

12 CFR 545.14-4 and 545.14-5 —
Banks and Banking – Application for Satellite or Mobile Savings and Loan Office
Requires notice of filing of application to establish satellite or mobile office of federal savings and loan association to be published in same manner as 12 *CFR* 543.2. Regulation contains text of notice.

12 CFR 545.16 —
Banks and Banking – Change of Savings and Loan Location
Requires notice of filing of application for change of location of federal savings and loan association office to be published in same manner as 12 *CFR* 543.2. Regulation contains text of notice. Regional Federal Home Loan Bank Board official may waive publication requirement.

Also prescribes form of notice (to be added to notice required by 12 CFR 545.14) in case where savings and loan association has applied for permission to change home office to a branch office and to reestablish home office at new location.

12 CFR 545.23 —
Banks and Banking – Federal Home Loan Bank Statement of Condition
Within the month of January, each federal savings and loan association shall either mail to each of its members or publish a statement of its condition as of the preceding December 31. Such publication shall be in an English language newspaper of general circulation within the county in which the association's home office is located.

12 CFR 562.4 —
Banks and Banking – Application for Insurance of State Savings and Loan
Requires notice of application for federal insurance of accounts for a state-chartered savings and loan association to be published in same manner as 12 CFR 543.2. Regulation contains text of notice.

Highways

23 CFR 790.6(a) —
Highways – Notice in Lieu of Hearing
This regulation allows for the publication of two notices of opportunity for public hearing, specifying the place to which requests for a hearing are to be made. Note that the regulation merely says "publishing" without specifying the

mode of publication. It appears, however, in light of 23 *CFR* 790.7, 790.9, 790.10, that publication should be in a newspaper of general circulation in the area.

23 CFR 790.7 —
Highways – Public Hearings on Corridor and Design
When a public hearing is to be held, a notice shall be published at least twice in a newspaper having general circulation in the vicinity of the proposed undertaking and also in a newspaper having substantial circulation in the area concerned. The first notice shall be thirty (30) to forty (40) days prior to the hearing, while the second notice shall be five (5) to twelve (12) days prior to the hearing. In addition to the date, time and place of the hearing, the notice shall contain a description of the proposal and if possible, a map or drawing to give a visual idea of the undertaking. The notice should also state that relocation assistance programs and right-of-way acquisition plans will be discussed.

23 CFR 790.9 —
Highways – Notice of Request for Approval
When a state highway department requests approval of a design or location, it must also publish a notice describing what is to be approved including a narrative description and if practicable, a sketch or drawing of the plan. The notice, which must comply with the requirements of 23 *CFR* 790.7, *supra*, must also state where additional material on the project is available.

23 CFR 790.10 —
Highways – Notice of Action Taken after Hearing
The state highway department shall publish notice of action taken by the division engineer on each request for approval of location or design in a newspaper meeting the requirements of 23 *CFR* 790.7(a) within ten (10) days after receiving notice of the action. The notice shall state the location and/or design approved and if possible, include a map or sketch in addition to stating where such information is available.

Indians

25 CFR 141.8 —
Indians – General Regulations Concerning the Sale of Timber in Indian Forest Lands
Notice to be published in a newspaper of general circulation in the locale where the timber is situated will vary depending on estimated stumpage value of timber. If estimated stumpage value exceeds $1,000, but not $10,000, then the notice shall run for at least fifteen (15) days. For values of $10,000 up to and including $100,000, then the advertisement must run at least thirty (30) days. Sums greater than that require a minimum of sixty (60) days notice. (The Bureau of Indian Affairs interprets this to mean generally once a week publication. 15 days would therefore mean 2 publications a week apart and 30 days would mean four publications, etc.)

Money and Finance: Treasury

31 CFR 51.13 —
Money and Finance – Revenue Sharing
The planned use and actual use reports which are required to be submitted to the Secretary of the Treasury by each recipient government must be published prior to their submission in one or more newspapers of general circulation within the geographic area of the recipient government. Further, the newspaper must be published within the state unless the recipient government is located in a metropolitan area which transcends state boundaries in which case the newspaper must be one which is published within the metropolitan area.

National Defense

32 CFR 4.800 —
National Defense – Methods of Procurement and Paid Advertising
Section generally refers to the rules to be followed in using paid advertising. Two subsections deserve particular mention. 32 *CFR* 4.802-2 (Requests for Authority) requires specific authorization for newspaper advertising. 32 *CFR* 4.803-7 (Limitations), highlights the governmental attitude in this area. Treating paid advertising as a type of last resort, it states, ". . . (p)aid advertisements of proposed procurements shall be placed only when it is anticipated that effective competition cannot be obtained otherwise . . . ".

Navigation and Navigable Waters

33 CFR 211.74 —
Navigation and Navigable Waters – Real Estate Activities of the Corps of Engineers
The District Engineer, U.S. Army Engineer District, shall give public notice of land available for sale for cottage site development and use by publication in two (2) newspapers having general circulation in the vicinity in which the land is located. There shall be two (2) notices in each at no less than fifteen (15) day intervals.

33 CFR 211.104 —
Navigation and Navigable Waters – Reconveyance of Land Acquired for Grapevine, Garzalittle Elm, Benbrook, Belton and Whitney Reservoir Projects in Texas to Former Owners
If the District Engineer determines that land is not required for public purposes, he shall give notice to former owners by publication at least twice at not less than fifteen (15) day intervals in two (2) newspapers having general circulation in the vicinity where the land is located.

33 CFR 211.144 —
Navigation and Navigable Waters – Conveyance for Public Port or Industrial Facilities
The District Engineer shall give notice to any interested agency of any land available for development of public port or industrial facilities. If agencies involved are all located within the state, two (2) notices at fifteen (15) day intervals in two (2) newspapers having general circulation within the state will suffice. If not, and agencies in an adjoining state are also interested, then the same requirements of publication must be met in newspapers of the neighboring state.

Parks, Forests & Memorials

36 CFR 293.5(a)—
Forests – National Forest Wilderness Areas
At least 30 days prior to proposed establishment, modification or elimination of National Forest Wilderness Areas, the Chief, Forest Service must publish a notice of such proposed action and intent to hold a public hearing, in a newspaper of general circulation in the vicinity of the land involved.

Postal Service

39 CFR 132.6 —

Postal Service – Second Class Mail

The information called for in 39 USC 3685 is as follows:

(a) identity of editor, managing editor, publishers and owners.

(b) if owned by a corporation, identity of corporation and its stockholders.

(c) identity of known bondholders, mortgagees, and other security holders.

(d) extent and nature of circulation of the publication.

(e) such other information as the Postmaster General deems necessary to determine whether the publication meets the standards for second-class mail privileges.

Protection of Environment

40 CFR 124.32 —

Protection of the Environment – State Programs In Connection with National Pollutant Discharge Elimination System (NPDES)

Sets *minimum* public notice procedures for state and interstate agencies participating in NPDES. Notice shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the proposed determination to issue or deny an NPDES permit for the proposed discharge. Notice procedures shall include publication in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation.

40 CFR 125.32 —

Protection of the Environment – National Pollutant Discharge Elimination System

Regional EPA staff shall formulate public notice procedures that will inform interested and potentially interested persons of discharge and the determination to issue or deny a permit for the discharge. Public notice shall also be given of hearings on the matter. Procedures must include at the minimum publication in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation, *except* that public notice of hearings shall be published in at least one newspaper of general circulation within the geographical area of the discharge in all cases.

Public Contracts

41 CFR 5B.203-3 —

Public Contracts, Property Management – Newspaper Publicity In General

This section contains general rules concerning publication for projects coming under the Public Building Service. Projects in excess of $25,000 must be published in a local newspaper with the widest circulation. If there is more than one newspaper, and many projects are to be advertised over a twelve month period, then the advertising is to be spread among them. Projects under $2,000 require three (3) notices in consecutive issues of a daily newspaper or one (1) notice in a weekly newspaper published nearest the location of the project. Projects estimated to cost between $200,000, and $1 million require additional publications in two (2) local trade papers. Projects exceeding $1 million must also be published in four (4) trade newspapers.

Public Lands: Interior

43 CFR 1824.1-1 —

Public Lands – Qualification of Newspapers

Respecting applications for claims on lands by homesteaders, entry-men, etc., notice of intended final proof must be published in a newspaper of established character of general circulation in the vicinity of the affected land. The newspaper must have been in continual publication for the preceding six months and the place of publication must be well known. Finally, the paper must qualify as second-class matter for postal rates.

43 CFR 1824.1-2 —

Public Lands – Discretion of the Manager of the Bureau of Land Management

Although the Manager has discretion as to the selection of newspapers, it is official and not arbitrary. He is limited to reputable papers of general circulation published nearest the land applied for. Rates may not exceed those set by state laws.

43 CFR 1824.3 —

Public Lands, Publication in General

Unless otherwise specified, when publication is required for thirty (30) days under the article, it shall mean publication in the Wednesday issue for five (5) consecutive weeks if a daily paper is designated. If a weekly paper is chosen, then publication shall mean once per week for five (5) weeks; in a semi-weekly or tri-weekly newspaper, it shall be in one (1) issue per week for five (5) consecutive weeks. In like manner, publication for sixty (60) days shall mean the Wednesday issue of a daily paper for nine (9) weeks, nine (9) consecutive weeks in a weekly and in any issue for nine (9) weeks in a semi- or tri-weekly.

43 CFR 5430.0-6

Public Lands – Advertisement of Timber Sales

Competitive timber sales shall be advertised in a newspaper of general circulation in the area in which the resource is located. Notice shall be published on the same day of the week once a week for two (2) consecutive weeks, except that sales amounting to less than 500,000 board feet need be published once only. (The Department of the Interior has expanded this to mean for over 500,000 board feet, once a week publication for four (4) consecutive weeks and under 500,000 board feet, once a week for two (2) weeks.)

43 CFR 5430.1 —

Public Lands – Advertisements

Advertisements under this article shall include the following: location of the resources being offered by the county, section, town, etc; estimated quantity and total appraised value; minimum deposit to be submitted with bid and the time and place for the submission of such bids.

Public Welfare

45 CFR 185.41(b) —

Notice of Hearing on Application for Emergency School Aid

Any agency applying for Emergency School Aid must advertise in a newspaper of general circulation (or otherwise make public) that a hearing will be held prior to submission of the application.

45 CFR 185.41(e)(f) —

Membership in School District Advisory Committee

Each meeting of an advisory committee must be advertised in a newspaper of general circulation (or otherwise made public) prior to the date of such meeting.

The names of the members of an advisory committee and a statement of the purpose of the committee must be published in a newspaper of general circulation (or otherwise made public) prior to the public hearing required by 45 CFR 185.41(b).

Telecommunications

47 CFR 1.580 —

Telecommunications – Broadcast Applications

Sets forth requirements in connection with broadcast applications (AM, FM, TV) filed with Federal Communications Commission. Minor applications are excluded from publication provisions. Notice of applications for new broadcast stations, applications for major changes in facilities and renewal applications must be published twice a week for two consecutive weeks in a daily newspaper of general circulation in the community in which the station is located or proposed to be located.

If there is no daily newspaper, the notice must be published in one or more weekly newspapers of general circulation in the community once a week for three consecutive weeks. If there is no weekly, notice must be published at least twice a week for two consecutive weeks in whatever daily newspaper has the greatest general circulation in the community.

The renewal application notices must be published during the six weeks preceding the mandatory filing date for applications. In most other cases, the notice must be published during the period immediately following the filing of such application or amendment or within the two week period immediately following notification by the Commission pursuant to other regulations.

Where the application is for a change in the location of a station, the notice must be published both in the community in which the station is located and in the community in which the station is proposed to be located.

Newspaper notice need not be given if the station in question is the only operating station in its broadcast service which is located in the community involved or if it is operating as a non-commercial station.

If the application seeks a license or renewal of a license for a television broadcast translator station, an FM broadcast translator station or an FM broadcast booster station, the applicant must publish notice at least once during the two weeks prior to filing the application (or when notified otherwise by the FCC) in a daily, weekly or biweekly publication having general circulation in the community. If there is no publication of general circulation in the community, then the applicant shall determine appropriate means of giving the required notice.

(Note: The FCC has adopted new rules relating to the filing of *renewal* applications which will eliminate the newspaper public notice requirement entirely for licenses expiring on or after December 1, 1974.)

47 CFR 1.594 —

Telecommunications – Designation for Hearing

When an application covered by 47 CFR 1.580 is designated for hearing notice must be published at least twice a week for two consecutive weeks within the three week period immediately following release of the Commission's order specifying the time and place of the commencement of the hearing. The notice must be in a daily newspaper of general circulation published in the community in which the station is or is proposed to be located. If there is no daily newspaper, the notice must appear in one or more weekly newspapers once a week for three consecutive weeks within four weeks immediately following the release of the Commission's order. If no weekly newspaper, the notice must be published at least twice a week for two consecutive weeks within three weeks of release of the Commission's order in the daily newspaper having the greatest general circulation in the community. Where the application designated for hearing is for a change in the location of a station, the notice must be published both in the community in which the station is located and in the community in which the station is proposed to be located. If the station is the only operating station in its broadcast service which is located in the community involved, or if it is a noncommercial educational station or a standard broadcast station operating as a noncommercial educational station, newspaper public notice is not required. When an application for a television broadcast translator station, an FM broadcast translator station, or an FM broadcast booster station is designated for hearing, notice must be published at least once during the two week period immediately following release of the Commission's order in a daily, weekly or biweekly publication having general circulation in the community. If there is no publication of general circulation in the community, the applicant must determine an appropriate means of providing the required notice to the general public.

Transportation

49 CFR 25.91 —

Transportation – Relocation Assistance Advisory Programs

Within fifteen (15) days after approval to begin any phase of a project which will cause the displacement of any person, an adequate number of advertisements shall be run in newspapers normally read by the occupants of the dwellings to be taken. The advertisements shall state:

1. The area of the project.
2. The date approval was given for that phase of the project.
3. Eligibility requirements for receiving moving and displacement of housing payments, advising occupants that they must notify the agency before moving to guarantee eligibility.
4. That homeowners must sell to the agency in order to be eligible for assistance.
5. Where the brochure describing the program may be found.

49 CFR 252.5(16)—

Railroads – Notice Requirements Under Emergency Rail Facilities Restoration Act

In the event that a loan is approved by the Federal Railroad Administrator, the applicant must publish a notice for three (3) consecutive weeks in a newspaper of general circulation within the general area of the branch lines to be affected under the agreement.

49 CFR 1121.5

Railroads – Abandonment Applications

Notice of an abandonment application must be published in a newspaper of general circulation in each county in which the line is situated at least once during each of three consecutive weeks, the last publication to be made at least 20 days prior to the date on which protests must be filed.

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References are to U.S. Code or Code of Federal Regulations which are contained in the foregoing pages in numerical sequence. All U.S.C. provisions are listed in the text ahead of all of the C.F.R. provisions.

PINKERTON'S, INC.,
New York, N.Y., April 5, 1974.

Mr. SAM J. ERVIN, Jr.,
Chairman, Committee on the Judiciary, Subcommittee on Constitutional Rights, U.S. Senate, Washington, D.C.

MY DEAR SENATOR ERVIN: In reply to your letter of March 26, 1974 we would like to register our opposition to Senate Bill 2963 and Senate Bill 2964 which are now pending before your subcommittee on Constitutional Rights.

Pinkerton's, Inc. is one of the largest and oldest investigative and security agencies in the country. As you may know, Pinkerton's has been in business since 1850 and presently employs roughly 30,000 people at approximately 110 locations.

We specifically object to the restrictions contained in the legislation in question that would limit our access to criminal record information on applicants for employment. We agree that access and use of such information should be controlled but we feel that duly licensed private investigators should be exempted from the general provisions of this legislation.

The overwhelming need for the business community to protect and preserve the integrity of its operations is self-evident. This need was highlighted by the recent amendment to the General Business Law of New York State authorizing members or member organizations of a National Security Exchange to require their employees to be fingerprinted as a condition of employment (Chapter 1071 of the New York Laws of 1969). Unfortunately this law did not address itself to the broad problem involved—it was confined merely to the securities industry. Obviously there are countless other segments of the business community in equal need of the protection afforded by thorough preemployment checks of personnel. The airline industry, to name but one, is in dire need of this protection—a need that was recognized by the enactment during a recent session of the New York-New Jersey Airport Commission Compact. (Chapter 951 of the New York Laws of 1970.)

Licensed private investigators are the agencies serving the overwhelming majority of the business community in providing pre-employment background checks on potential employees. In recognition of the important function served by the private investigator the law (Article 7 of the General Business Law of New York) mandates that they be licensed, subject to the continuing supervision of the New York Secretary of State, and that their work product be confidential. Similar licensing laws exist in approximately 40 additional states.

We wish to stress that there is nothing "confidential" about the receipt of information from public agencies with respect to criminal records. Such information is available for public examination in the files of the courts. Though this public information is available in the many local courts throughout each state it is obviously impractical to conduct a search of each court's file to obtain the information in every instance. Accordingly there is a need under proper safeguards to obtain the necessary information from a central depository such as the central criminal identification record bureau or similar agency of each state. Such information properly controlled and distributed to qualified and licensed private investigators under the appropriate controls previously mentioned, would provide for the legitimate needs of the entire business community. It would thus permit businesses with a valid need for such information to obtain accurate and effective pre-employment checks and would make such information uniformly available subject to explicit procedural safeguards.

In conclusion, we feel there is a justifiable need for pre-employment investigations including the thorough check of an applicant's arrest and conviction record. This information is vitally necessary to us as an employer required to carefully screen our employees to meet the licensing requirements of our industry. It is also equally important for us to obtain this information so that it may be conveyed to our clients under appropriate safeguards where the need exists.

We appreciate the opportunity given to us to record our opposition to this pending legislation.

Very truly yours,

JOHN J. HORAN.

RETAIL CLERKS INTERNATIONAL ASSOCIATION,
Washington, D.C., March 29, 1974.

Hon. SAM J. ERVIN, Jr.,
Chairman, Subcommittee on Constitutional Rights,
U.S. Senate, Washington, D.C.

DEAR SENATOR ERVIN: Thank you for your letter of March 22, 1974, soliciting comments by the Retail Clerks International Association, AFL-CIO, respecting S. 2963 and S. 2964.

While I don't believe that a formal statement for the record is necessary, I did want to respond to you informally on this matter.

This union is vitally concerned with the problems that advanced technology is bringing to bear upon our Constitutional rights to privacy.

Your bill, S. 2963, and Senator Hruska's, S. 2964, address but a part of this enormous problem. This is not meant to be criticism, for you have introduced other related legislation, but merely analysis.

Our union has been and is becoming increasingly conscious of all means of invasion of employees' privacy.

Private employers, even outside the so-called national security area, have access to government dossiers respecting employees and applicants for employment. Polygraph testing is not at all uncommon. Now an even more insidious device, known as a psychological stress evaluator, can be used without the target even being aware of the probing.

The march to 1984 will become a race if legislation such as yours is not adopted. Because your bill is stronger and more comprehensive than Senator Hruska's, we offer our support of its enactment.

We also encourage you to press forward in the fight to protect individuals from polygraph and psychological stress evaluator testing.

With best wishes, I am
Sincerely,

JAMES T. HOUSEWRIGHT,
International President.

TRANSPORTATION CARGO SECURITY COUNCIL,
Washington, D.C., March 18, 1974.

Hon. SAM J. ERVIN, Jr.,
Chairman, Subcommittee on Constitutional Rights, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: We understand that your Subcommittee is currently giving consideration to S. 2963 and S. 2964, bills which propose regulation of computerized criminal justice information. Among other things, we understand that these bills would preclude dissemination of criminal records information to the private sector.

The Transportation Cargo Security Council has a direct and substantial interest in the subject of this proposed legislation. The Council is comprised of 33 individuals representing all facets of the transportation industry—transport labor unions, insurers, importers, users and carriers of all modes. It was established in 1971 as a result of a conference jointly sponsored by the Department of Transportation and the Transportation Association of America, for the purpose of combatting cargo pilferage and theft of all types. The Council works closely with the federal Interagency Committee on Transportation Security (ICOTS) in a joint government-industry approach to the problem which was deemed important and desirable to achieve significant results in the area of cargo security.

It is our view that an important adjunct to a comprehensive cargo security program is an informational base pertaining to criminal records of any persons whose duties place them in a position to access cargo in the course of its transportation. Therefore, we would urge that the proposed legislation be appropriately amended so as to make criminal records information available to the private sector in conjunction with bona fide cargo security programs. To safeguard the rights and privacy of individuals, it is our proposal that this information (1) cover only records of convictions, forfeitures and nolo contendere pleas; (2) be limited to a past period of seven years prior to the date of inquiry, and (3) be made available only on written authorization of the individual whose records are sought.

We believe that the rationale underlying this proposal, as discussed in further detail in the statement appended hereto, amply warrants this very limited accessibility of criminal records information.

Thank you for your attention and courtesy.
Sincerely,

HAROLD F. HAMMOND.

Enclosure.

PREPARED STATEMENT OF HAROLD F. HAMMOND, CHAIRMAN, TRANSPORTATION CARGO SECURITY COUNCIL

My name is Harold F. Hammond. I am Chairman of the Transportation Cargo Security Council, and my statement is on behalf of the Council.

The Transportation Cargo Security Council is a joint labor-management organization created for the purpose of actively combatting the problem of pilferage and theft of freight while in transit. It was established in 1971 as the result of a broad government-industry conference jointly sponsored by the U.S. Department of Transportation and the Transportation Association of America, and includes representatives of transport labor unions, insurers, importers, shippers and receivers of freight, and freight carriers of all modes of transportation. Concurrently, the federal Interagency Committee on Transportation Security (ICOTS) was established as the governmental arm of this joint project, and works in close conjunction with the Council.

Transportation cargo theft and pilferage has been amply demonstrated to be a serious national problem, costing the American people an estimated $1 billion or more per year. Not only has the magnitude of this problem received recognition from both industry and the Executive Branch of the federal government, through establishment of the Council and ICOTS, respectively, but it has also been accorded similar recognition by the Legislative Branch through bills introduced in the Congress in recent years. Two such bills—S. 2974 and H.R. 3960—are currently pending before the Congress.

As one of the many aspects of its activities, the Council has for some time had under review the question of dissemination of criminal records information. It is our position that, subject to the necessary safeguards to fully protect the rights of individuals, this information can be a valuable aid in cargo security efforts. As an indication of the importance of this information in connection with cargo security activities, it should be noted that internal pilferage—that is, theft by employees or others in a similar capacity—is responsible for a very significant proportion of cargo losses. ICOTS is on record as estimating that, with the exception of the railroad sector, some 85% of all freight stolen from the U.S. transportation system is taken in individually small thefts by persons who rightfully have access to the cargo. Thus, while we are entirely cognizant of the difficult and important moral, ethical, legal and Constitutional issues involved, we believe recognition should also be given in this area to the legitimate and valid objectives of cargo security.

It is to this purpose that we present this statement. We believe any legislation enacted in the area to which bills now before your Subcommittee speak should incorporate provisions permitting the controlled dissemination of certain criminal records information to the private sector for cargo security purposes.

Transportation companies have, in the normal course of their business, many of the same responsibilities shared by agencies of the federal government. For example, in its handling of registered mail the transportation industry may be likened to the U.S. Postal Service. In its handling of customs in-bond cargoes, the transportation industry performs activities similar to those of the U.S. Customs Service. In the same fashion, transportation companies also have responsibilities like those of banks and banking institutions, dealers in negotiable securities (both governmental and private), and many others. We believe it is important that, in view of the similarity of responsibilities which exists, the transportation industry be accorded the ability to apply some of the same security procedures as are employed by these public and private institutions in their own endeavors.

The Council has adopted a policy calling for availability of the following types of criminal records information in conjunction with cargo security programs: (1) Records of convictions, forfeitures and cases in which an individual pleaded nolo contendere for a past period of seven years—that is, seven years prior to the date of inquiry, and (2) records of arrests and dispositions where the alleged crime took place within the transportation industry, for the same past period.

With respect to the second type of information enumerated above—arrest and disposition records—the Council believes this information has considerable value in cargo security programs. However, it is also recognized that serious considerations of public policy, as well as individual's rights, are involved in this area. Furthermore, this area also raises administrative problems in its implementation—first as to definition of what crimes are considered as having occurred "within the transportation industry," and second as to segregation of these records. In recognition of these areas of difficulty, therefore, the Council's request to your Subcommittee does not extend to any records other than those of convictions, forfeitures and/or nolo contendere pleas.

This information—and we stress this point—is currently a matter of public record in the court in which the action took place. The problem confronting those responsibile for cargo security activities is the lack of a central source bank for this data. The multiplicity of jurisdictions in the country, and the necessity for performing security checks in each such jurisdiction in order to develop a complete data base, makes the task at present a pragmatic impossibility. Nevertheless, the fact that this information is, however difficult of practical access, a matter of public record renders any considerations of personal privacy moot in this context.

We observe that the balancing of the rights of business and the rights of individuals regarding availability of criminal records information was explored in considerable detail during 1966–68 by a special commission within the Washington, D.C. jurisdiction. After extensive hearings and deliberations, it was determined to authorize the business community to obtain conviction and forfeiture from the Metropolitan Police Department for the past ten years, subject to presentation of the individual's signed authorization and payment of a $1.50 processing fee by the prospective employer. It is our understanding that this system has worked to the satisfaction of all, and has not resulted in any abuses which might infringe upon the rights or privacy of individuals.

On an ad hoc basis—that is, without the extensive formal hearings which preceded implementation of the District of Columbia system—similar practices are maintained in many, if not most, urban communities throughout the United States. In Philadelphia, for example, business firms may secure either a "name check" or a "fingerprint check" on an individual by presenting the individual's authorization therefor and paying a nominal fee. The results of such a check include all records of arrests, convictions, forfeitures, etc., in the metropolitan police files. Numerous other communities permit similar security checks. Even in those communities that forbid such procedures, it is our understanding that the principal motivating force is the administrative problems associated with this type of security check, rather than any broader questions of ethics or law.

Our proposal is that the draft legislation now under consideration by your Subcommittee be amended so as to permit accessibility of federal criminal records information to transportation companies in conjunction with bona fide cargo security programs. This information, we suggest, should be made available only on the individual's written authorization. It should cover only a past period of seven years; this time period comports with the Fair Credit Reporting Act of 1971, in which Congress forbade the reporting of adverse information by consumer reporting agencies where the information was over seven years old, and also with the practice of the Department of Transportation in purging records from the National Drivers Register.

We believe the existence or absence of a criminal record, and the pertinent information concerning that record, is a legitimate part of cargo security programs. Certainly such information is not the sole criterion for action in this area—that is, for example, existence of such a record would not alone justify adverse action, nor would absence of such a record ensure favorable action, with respect to an individual. However, as a part of the overall personnel evaluation process which must form the nucleus of any effective internal cargo security program, such information is of very significant importance. We therefore urge your favorable consideration of an amendment to the proposed legislation along the lines we have outlined in this statement.

We thank the Subcommittee for its attention, and respectfully request that this statement be incorporated into the official records of hearings on these bills.

Respectfully submitted,

HAROLD F. HAMMOND,
Chairman, Transportation Cargo Security Council.

U.S. COMMISSION ON CIVIL RIGHTS,
Washington, D.C., April 1, 1974.

Hon. SAM J. ERVIN,
Chairman, Subcommittee on Constitutional Rights,
Russell Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Please find enclosed the statement of the U.S. Commission on Civil Rights on "The Criminal Justice Information Control and Protection of Privacy Act of 1974" and the "The Criminal Justice Information Systems Act of 1974." The Commission is pleased to submit its views in furtherance of its jurisdiction to investigate denials of equal protection of the laws because of race, color, religion, national origin and sex and to study and collect information concerning denials of equal protection in the administration of justice.

Our statement focuses on several major areas: use of arrest and conviction records, access to and the accuracy of subject files, and remedies available in the event the act(s) is violated. If you have any questions or wish additional copies, please have a member of your staff contact Bud Blakey (254–6626).

Sincerely,

JOHN A. BUGGS, *Staff Director.*

STATEMENT OF THE U.S. COMMISSION ON CIVIL RIGHTS ON S. 2963 AND S. 2964

The Commission on Civil Rights is pleased to have this opportunity to comment on the proposed legislation, sponsored by Senator Sam J. Ervin (S. 2963, the "Criminal Justice Information Control and Protection of Privacy Act of 1974") and Senator Roman Hruska (S. 2964, the "Criminal Justice Information Systems Act of 1974"), which impose certain restrictions upon the type of information our Nation's criminal justice agencies may gather and disseminate.

We agree with all the other witnesses who have testified before this Subcommittee that law enforcement agencies must develop the massive potentialities of computers to gather, systematize and disseminate information. However, we also believe that this development must proceed in a deliberate and controlled fashion. The specter of machines dominating human life can no longer be viewed as science fiction. It is time now to take the necessary steps so that in a critical area of our free society—criminal justice—technology works for and not against individual security, privacy and dignity. Both of the bills before this Subcommittee share this perspective. On the one hand, each bill acknowledges the positive contributions that computer technology can make to effective law enforcement and thus the protection of the citizens of this country. On the other hand, they also stress that no matter how useful systematized criminal justice information programs may be, the right of private citizens to be free from governmental intrusion into their private lives requires maximum protection.

Although the Commission's principal function is to investigate denials of equal protection of the laws based on race, color, religion, sex, or national origin, the Commission also has jurisdiction to study and collect information concerning denials of equal protection in the administration of justice. Our statement flows from these dual statutory responsibilities of concern for civil rights and for the fair administration of justice.

ARREST RECORDS

A major concern of the Commission with the proposed legislation involves the dissemination of arrest records. The number of people who are arrested and who therefore are potential victims of abusive use of their arrest records is staggering. It is estimated that 50 percent of all males and 12 percent of all females will experience a non-traffic arrest sometime in their lives.[1] Already, one-quarter of our present population has a non-traffic arrest record.[2] Many law enforcement agencies release these records to both public and private employers and to other institutions such as credit agencies. In 1967, the District of Columbia Police Department alone released 3,500 arrest records a week for purposes other than law enforcement.[3] Unfortunately, employers use this information in making a variety of decisions related to employment. Surveys have shown that public employers especially consider such information in their employment decisions.[4]

[1] President's Commission on Law Enforcement and Administration of Justice, Task Force Report on Science and Technology, app. J, 216, 223–224 (1967).
[2] H. Miller, "The Closed Door," p. 147 (1972).
[3] H. Miller, "The Closed Door," p. 124 (1972).
[4] Thus, Prof. Miller found that at least 25 states inquire whether an applicant for government employment had ever been "arrested," "charged," or "cited" for a criminal offense. Some 55 to 170 surveyed county governments asked their job applicants similar questions. Id. at 11.

Finally, it must be kept in mind that the misuse of arrest records has a special impact upon minorities. This country continues to suffer from less than even-handed enforcement of the laws with respect to minorities. Minority group members for this and other reasons are subject to arrest far out of proportion to their numbers in the population. The President's Commission on Law Enforcement and Administration of Justice reports that of persons over 18, blacks were arrested about five times as often as whites.[5] There is a 90-percent probability that a black male city resident will be arrested sometime in his life; for white urban men, the possibility drops to 58 percent.[6] The 1972 Uniform Crime Reports relates similar statistics for Native Americans. Although there are no figures available for Mexican Americans, the Commission's investigation in "Mexican Americans and the Administration of Justice in the Southwest (1970)" indicates a disproportionately high arrest rate among Chicanos in five Southwestern States. Minorities, arrested more often than whites due to discriminatory law enforcement practices and various socio-economic factors, are therefore more likely to be refused employment by employers with access to arrest records.[7] Thus, a criminal justice information system which allows ready access to arrest records for non-law-enforcement purposes threatens both the right of privacy of all individuals and the right of minorities to be free of discrimination.

Because of this destructive potential of arrest records, the Commission favors the flat ban on the dissemination of arrest records to non-criminal-justice agencies as proposed by sec. 201 of S. 2963, rather than the access to some arrest records permitted by S. 2964. No studies prove that arrest records have any bearing on employment success. Individuals with no arrest records—either criminals who are successful in not getting caught or individuals lucky enough to avoid improper arrests—may be just as bad or good employment risks as those with arrest records. Arrest records, as only accusations of wrongdoing, have no claim to relevancy in non-criminal-justice systems.

CONVICTION RECORDS

The Commission is also opposed to the dissemination of conviction records. Criminal convictions should not be allowed to become barriers to an individual's re-entrance to society. Our aim must be to rehabilitate convicted law breakers; we need not allow their past to prevent them from building a new and better future.

The Commission recognizes, however, that many public employers and various state and local licensing procedures require disclosure of criminal convictions. Apparently reflecting these perceived needs, the approach adopted by both Bills is to permit the dissemination of conviction records for non-criminal-justice purposes if State or Federal statutes expressly authorize such dissemination. S. 2964 would also permit such disclosure where an "Executive order" expressly provides for such dissemination.

Both bills thereby encourage the Federal and State governments to rethink their policies with respect to the dissemination of conviction records to non-law-enforcement agencies. We hope their conclusion will be not to allow conviction records to serve to exclude convicts from public employment and licensed occupations, or, at least, only to permit dissemination of conviction records for certain crimes for specific sensitive positions. Moreover, the decision to disseminate such conviction records should be made only after full and vigorous public debate indicating that such information is essential to protecting the public interest. We see severe danger in allowing public employers to have access to such information: once they do, the argument for access by private employers becomes stronger.

ACCESS AND ACCURACY

Even if distribution of nearly all criminal justice information is confined to dissemination within criminal justice agencies for criminal justice purposes, there is still the need for extreme care to protect individuals from erroneous action by criminal justice agencies due to recordkeeping mistakes. Inaccurate data causes problems for law enforcement as well as for individuals who are the subject of the misinformation.

[5] The President's Commission on Law Enforcement and Administration of Justice, "The Challenge to Crime in a Free Society," p. 44 (1967).
[6] Task Force Report on Science and Technology, supra n. 1 at 224.
[7] See *Gregory* v. *Litton Systems, Inc.*, 316 F. Supp. 401 (C.D. Cal. 1970), aff'd as modified, 472 F. 2d 631 (9th Cir. 1973).

An important way to promote the accuracy of the data in the system is to permit maximum and easy access to the information by the individual about whom the records are kept. The proposed legislation, unfortunately, adopts a somewhat restrictive approach in this regard. Access should be permitted for any purpose—simple curiousity should suffice—rather than for the purpose of challenge, or correction or the addition of explanatory material as proposed by S. 2963, sec. 207 and S. 2964, sec. 6(a). Such access must also include the right to examine not only the information kept on file but when and to whom such information was disseminated (see S. 2963, sec. 207(b)(4)) and the agency from whom the information was obtained.

Furthermore, all information within the criminal justice information system (other than criminal intelligence information) should be available to the individual. Therefore, "correctional and release information" or "criminal offender processing information" should be available on demand, not only where authorized by State or Federal statutes or regulations (S. 2963, sec. 202(d); S. 2964, sec. 5(d)). This kind of information is notoriously unreliable. Such ease of access is especially necessary if the information may be used for non-criminal justice purposes as envisioned in S. 2964, sec. 5(d)(4), a provision which the Commission opposes. If sources of information would be compromised by such access, this information should be made part of the criminal intelligence apparatus.

We are also concerned about the possibility of burdensome administrative requirements upon poor people who wish to examine their records. Fees and requirements must be kept to a minimum and waiver of fees be made easy to obtain. By promoting easy and inexpensive access by the individual about whom the information pertains, the legislation will do much to protect against abuse.

Primary responsibility for the accuracy of the data, however, must be placed on the participating institutions. We therefore applaud the approach taken by S. 2963, sec. 206 which in effect would hold all criminal justice agencies, not only the agency which originated the information, responsible for the security, accuracy, updating and purging of such criminal justice information. The burden to track down and correct the fault in the system which led to the inaccurate data should not be placed exclusively upon the individual who is the victim of the mistake.

We note that sec. 206 lacks the notification requirements suggested by sec. 6(c) of S. 2964. We find this latter provision salutary. We suggest, however, that the burden of notifying the individual be placed upon the disseminating agency and not upon the requester. First, there seems to be no way to enforce or adequately monitor whether requesters comply with this requirement. Second, the cost of notification should be viewed as a cost of operating the system. This is but one of the costs which must be assumed by disseminating agencies in order to afford maximum protection against abuses by non-criminal-justice agencies. It is no less a legitimate cost of the system than the hardware which transmits the information.

REMEDIES

Both bills recognize the importance of a private right to enforce the requirements of the Act by giving individuals broad and meaningful powers to sue for relief and recover damages and all costs (S. 2963, sec. 308; S. 2964, sec. 14).

Crucial to this right to a remedy is the requirement that the disseminating agencies keep what has been called a "transactional log"—a record of the source of all incoming information and the destination of all outgoing information. Without such a record, private individuals will not be able to obtain the facts they will need to trace the defects in the system and their effects. Accordingly, language must be added to the legislation clearly mandating the maintenance of such transactional logs.

With respect to criminal penalties, we note that S. 2963 provides a defense of "good faith reliance." We object to this standard. There is no good reason to give criminal justice agencies such a defense. They must be held to the highest level of responsibility. In fact, for all but individual criminal liability, the Commission favors an approach which imposes absolute liability upon any system which maintains, disseminates or uses criminal justice information in violation of the act.

Finally, the Commission favors the creation of the Federal Systems Information Board and corresponding State institutions to oversee the enforcement of the Act and to further investigate means for protecting individual security and privacy. We see the creation of such an independent Board as critical to the success of the Act and future legislation governing computer information systems. Although S. 2964 reflects the serious solicitude of the Department of

Justice for the constitutional rights of the subjects of the information, the Department's concern for these rights has not been as acute as it could have been.[8] By giving full power to the Attorney General to promulgate regulations pursuant to the Act, S. 2964 fails to recognize the importance of the input of "civilians"—persons other than those involved with the administration of criminal jutice—who reflect a State and local, as well as a Federal vantage point. An independent Board will go far toward successfully resolving the tension between the government's need for information and the citizen's right to be free from government intrusion into his private life.

CONCLUSION

By insuring that dissemination of criminal justice information is confined to criminal justice agencies, by guaranteeing that individuals can easily inspect and correct their records, and by providing for absolute liability for violation of the Act's requirement, the proposed legislation can do much to protect individuals from abuse by technological advances without jeopardizing the legitimate needs of law enforcement agencies. Additional expense and administrative protection must be the costs if law enforcement needs are to be reconciled with constitutional rights. These Bills are both laudatory efforts to protect these rights in an area where the danger to individual freedoms is high and the potential for inordinate harm to minorities is great.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., April 10, 1974.

Hon. SAM J. ERVIN, Jr.,
Chairman, Subcommittee on Constitutional Rights, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Department of the Treasury would like to submit its views on two bills affecting law enforcement information systems operated by Federal, State or local governments: S. 2964, a bill "To facilitate and regulate the exchange of criminal justice information," and S. 2963, the "Criminal Justice Information Control and Protection of Privacy Act of 1974." This report addresses each bill individually.

S. 2964

This bill would apply to any criminal justice system, whether automated or manual, which is either operated by the Federal Government, or funded in whole or in part by the Federal Government, as well as any interstate system, or a system operated by a State or local government which exchanges criminal justice information with such a system. The proposed legislation would also cover criminal justice information obtained from a foreign government or an international agency and included in a system subject to the bill. Thus, the bill is designed to ensure that every criminal justice information system would be subject to its provisions.

The principal features of the bill may be summarized as follows: The bill would limit direct access to criminal justice information systems to officers and employees of criminal justice agencies. Criminal offender record information would be disclosed only for criminal justice purposes unless otherwise authorized by law. Criminal offender record information is required to be accurate and complete. Individuals would be permitted to review their records for purposes of correction, and there is a provision for sealing criminal offender record information after a stated period during which the individual was free from supervision by a criminal justice agency. Administrative, civil, and criminal sanctions are provided against persons violating the Act or implementing regulations.

We endorse restrictions on the dissemination of criminal justice information and measures to assure the accuracy of such information. In designing such constraints, however, the individual's right to privacy must be balanced with the need of the government to obtain and use for legitimate official purposes information about individuals. While seeking to prevent abuses of data accumulation about individuals, particularly information relating to a person's encounters with the criminal justice system, we must insure that non-criminal-justice components of the Treasury Department are not deprived of the data without which their

[8] Thus, although the FBI's computerized criminal history (CCH) program was initiated in 1971, there are still no formal controls or regulations governing dissemination of the information. Proposed regulations, which themselves are not completely reassuring with respect to their protection of individual rights, were issued on Feb. 14, 1974 (39 Fed. Reg. No. 32).

governmental obligations cannot be accomplished effectively and beneficially for the public good. This rational utilization by the government of advanced data processing techniques is by no means inconsistent with individual privacy, rather it enhances the individual's right to be secure.

Consequently, we believe that certain restrictions concerning the use of criminal justice information by a non-criminal-justice agency should receive the most careful discussion and review.

The Treasury bureaus engaged in the collection of taxes and duties, such as the Internal Revenue Service, the U.S. Customs Service, and the Bureau of Alcohol, Tobacco and Firearms have both civil and criminal functions, and they use criminal intelligence information for licensing and background employment investigations. Although section 5(c)(3) would permit criminal intelligence information to be made available to a non-criminal-justice component of the same agency if the information is necessary for performance of a statutory function of the non-criminal-justice components, this exception does not adequately meet the legitimate needs of this Department for information from other agencies.

For example, when a non-criminal-justice component of a criminal justice agency in Treasury seeks data relating to employees who must occupy positions of great trust and sensitivity, a legitimate and very necessary objective of government will be frustrated if the non-criminal-justice component cannot go outside of Treasury's criminal justice agencies and seek information from the FBI or DEA. The problem is further complicated by the ambiguity of the Section 5(c)(3) "Same agency" clause which can be interpteted to restrict, for example, the IRS Audit Division to criminal intelligence maintained by the IRS Intelligence Division only, or, on the other hand, to view all of Treasury as one agency, thus, permitting IRS Audit to have access to criminal intelligence of IRS, Customs, ATF, and the Secret Service. Adoption of the former, narrow interpretation of the "same agency" clause would also work to eliminate the Treasury Enforcement Communications System (TECS) which enables all Treasury enforcement agencies to query for certain shared categories of data since they are all parts of one department.

Section 5(b) would limit direct access to criminal justice information systems to authorized officers and employees of criminal justice agencies. Read literally this means that supervisory officials of the Treasury Department and the Internal Revenue Service would not be permitted access to criminal justice information. The section should be revised to permit any official who manages or in any way supervises the investigative activities of a criminal justice agency to have such access. Otherwise, he is not in a position to perform his job effectively. For example, a district director of the Internal Revenue Service has many revenue related activities that consume more of his time than criminal law enforcement. He is not an employee or officer of the Intelligence Division, the only criminal justice agency at the district level in the Internal Revenue Service. This would also be true with respect to: IRS Regional Commissioners, District and Regional Commissioners of Customs, District and Regional Directors of ATF, and top headquarters officials in all Treasury bureaus. Treasury officials in the Office of the Assistant Secretary for Enforcement, Tariff & Trade Affairs, and Operations and other Treasury officials at the Deputy Assistant Secretary level and above are responsible for policy, supervision, and management of Treasury criminal justice agencies and will at times need direct access.

The direct access restriction of Section 5(b) is a serious encumbrance in two other aspects. This paragraph would preclude joint investigations by the Audit and Intelligence Divisions of the Internal Revenue Service. Information gathered by the Intelligence Division is frequently used by the Audit Division in determining civil tax liabilities. The discontinuance of this practice would be very costly and disturbing to the witnesses required to provide the same information, first to the Intelligence Division and then, in each instance, to the Audit Division.

The U.S. Customs Service would also be adversely affected by this paragraph, since much of its enforcement activity is of a hybrid nature, with both the civil and criminal aspects of a case handled by one person. This would prohibit the use of criminal justice data relating to civil violations of the customs laws or for purposes of licensing or employment where a non-criminal-justice agent is performing the hybrid enforcement function.

In particular, the task of the Customs Inspectors at U.S. ports of entry will be seriously encumbered, as will the management responsibilities of the Office of Operations in Customs' headquarters, which supervises the Inspectors. Neither the Office of Operations nor the Customs Inspectors fall within the bill's definition of a criminal justice agency; and under the provisions of Section 5(b) neither

could have access to the data maintained in Treasury's criminal justice information system, known as the Treasury Enforcement Communications System (TECS). The anomaly presented by this access prohibition in S. 2964 is that the Customs Inspectors, who are the first line of border security for the United States and who make the greatest number of queries to TECS, will be denied the capability to check the millions of people, vehicles, and cargo entering the United States. The total prohibition on Customs Inspectors' direct and nearly instantaneous access to a criminal justice information system is accomplished since S. 2964 applies to both automated and manual systems. Furthermore, the availability of access to a nonautomated system is not a meaningful alternative since this would reduce dramatically the amount of data available for a border check and because entry into the United States will become a tedious and obstructive burden upon the millions of law-biding individuals who wish to enter the United States.

We are also concerned that Section 5(b)(3) would have a substantial impact on the work of the U.S. Secret Service. Under its statutory responsibilities to protect the President of the United States, the Vice President and other high officials, including distinguished foreign visitors to the United States, the U.S. Secret Service maintains protective intelligence files on persons likely to endanger the President or others in high position. These files include both "criminal record information" and "criminal intelligence information," as defined in the bill, since the Service's responsibility extends not merely to the prosecution of crime, but also to its prevention. It is uncertain whether the protective intelligence functions of the Secret Service are within the scope of the term "criminal justice purpose." It has an investigative function, but it is directed toward the prevention of crime. This should be clarified in the bill.

We believe that the serious impediments to Treasury operations which are embodied in the bill's prohibitions against the use of criminal justice information for a non-criminal-justice purpose unless a statute specifically authorizes such a use can be corrected most appropriately by amending the bill to grant a specific exemption which would permit the Treasury Department and its enforcement agencies to exchange criminal justice information among themselves and with other Federal, State or local criminal justice agencies for the purposes of employment, licensing or the performance of statutory functions.

Section 5(e)(1) provides that criminal offender record information may be used for criminal justice purposes or for other purposes which are expressly provided for by Federal statute or Executive Order or State statute. We suggest that this provision should specify that background investigation for federal employment, conducted by agencies such as IRS Internal Security, provided for in Executive Order 10450, are sufficiently related to the criminal justice activity of crime prevention to warrant specific mention in the statute. While the Attorney General is given responsibility for this determination, we believe that it should be specified.

The Treasury Department believes that the prohibition set forth in section 8 on dissemination of criminal offender record information should not apply to background investigations with regard to applicants for appointment to the Federal Civil Service, because of the great importance of maintaining the integrity of the various component agencies of the Treasury. Criminal histories are widely used, and properly so, with reference to security investigations by Federal and State government agencies. The Department supports the concept of limited dissemination of arrest records. However, care should be taken not to be too restrictive in this regard and thereby hamper the legitimate needs of government, particularly in assuring that public servants are above reproach and not susceptible to illegal inducements and temptations.

With respect to Section 8(c), which limits dissemination of arrest records, we believe that Subsection (d)(6) should be amended to exempt specifically the Department of the Treasury and its component agencies. For example, the Customs Service's border inspections are essentially non-criminal-justice endeavors, yet a history of prior arrests can be part of the information which provides a "reasonable suspicion" on which to base a secondary Customs search.

Section 9 provides for the sealing of Criminal Offender Record Information. This provision not only deprives Treasury bureaus of information important to discovering long-term patterns of criminal activity, but particularly diminishes the ability of the Bureau of Alcohol, Tobacco and Firearms to perform its duties.

The existence of a prior criminal conviction, however remote, is the basis for various criminal violations of statutes administered by the ATF. 18 U.S.C. 842 (d)(2), 842(i)(2) (unlawful distribution, shipment, transportation, or receipt of explosives); 18 U.S.C. 922(d)(1), 992(g)(1), 922(h)(1) (unlawful distribution, shipment, transportation, or receipt of firearms and ammunition); 18 U.S.C. App. 1202(a)(1) (unlawful receipt, possession or transportation in commerce or affecting commerce, and firearm). If the access to the records of such conviction is restricted by requiring that such records be sealed upon the expiration of time, the ATF's enforcement of the provisions listed above would be severely hampered, because it is essential to prove the individual in question was previously convicted of a felony.

We must direct special attention to Sections 5(f) and 6(c) which provide, respectively, for records maintenance on every request for criminal justice information, and notice to offenders when their criminal offender records are sought. These sections impose an impossible burden on the Treasury Enforcement Communications System (TECS) if Treasury's participating components are treated as separate entities. For example, the Customs service alone averages 137,000 TECS queries daily. The required records from only Customs' queries could, thus, exceed 50 million a year. For the purposes of these sections, Treasury believes that it must be granted an exemption from the distinctions between its bureaus' criminal justice and non-criminal-justice uses of data and that Treasury and its component agencies must be treated as a single agency.

S. 2963

S. 2963, the "Criminal Justice Information Control and Protection of Privacy Act of 1974," would impose important restrictions upon law enforcement information systems operated by Federal, State or local governments.

Principal features of the proposed legislation may be summarized as follows: The bill is intended to insure that criminal history records will be used solely for the purpose of the administration of criminal justice, and there is a complete ban on the use of computerized criminal intelligence records. Operators of criminal justice information systems would be required to keep their records as accurate and up to date as is technically feasible. Every citizen would be given a right of access to the information in his file for the purpose of challenge and correction. Operators of data banks would be subject to civil and criminal penalties for violation of the Act. A joint Federal-State administrative agency, the Federal Information Systems Board, is created to enforce the Act, to direct the actual operation of interstate criminal justice data banks such as the National Crime Information Center, and to supervise the installation and operation of any criminal justice information system or criminal intelligence information system operated by the Federal Government.

As we stated in our discussion of S. 2964, we endorse restrictions on the dissemination of criminal justice information and measures to assure the accuracy of such information.

Certainly, it is essential to insure that criminal records are accurate and up-to-date and that the use of such records protects the rights of the individual while also achieving the legitimate objectives of government; however, we believe that we must also weigh the right of individuals to be secure from criminal predators and transgressors and to enjoy the protection of the law which their governments—Federal, State and local—are obligated to provide. Law enforcement agencies need information which is timely, accurate and responsibe to the requisites of the various components of the criminal justice community.

S. 2963 would prohibit any non-criminal-justice use of arrest records, and would permit criminal justice uses solely for the purpose of screening an application for employment with a criminal justice agency, adjudication of the charge resulting from the arrest, and in connection with subsequent arrests if the prior arrest is no more than one year old and prosecution is still pending on the prior charge. There are other legitimate needs for arrest data by criminal justice agencies, in addition to those specified. For example, arrest data, even without a conviction, will furnish leads to law enforcement officials. Such data can often identify a pattern of criminal activity, which ultimately can lead to a conviction.

Section 208(a) of S. 2963 provides that criminal intelligence information shall not be maintained in criminal justice information systems and subsection (b) of section 208 prohibits automated intelligence systems. These two proposals receive the most careful discussion and review.

The bill fails to consider and make due allowance for the extent to which various Treasury agencies properly employ criminal intelligence information in carrying out their statutory duties. One of the most significant uses of such information is that made by the United States Secret Service, which performs a unique function in its protection of the President and his family. Instantly available information

that only automated systems can provide is necessary if we are to maintain protection at the higest level. Criminal intelligence information is essential for this purpose, since our protectees travel to various parts of the country and abroad. The Secret Service must know what individuals might pose a hazard to its protectees, and everything possible about their background, regardless of the source of information, in order to correctly assess the potential danger to its protectees when they travel. The Report of the Warren Commission specifically recommended that the Secret Service protective intelligence system be automated. The Congress has appropriated funds to automate the system.

The Treasury bureaus which are engaged in the collection of taxes and duties, such as the Internal Revenue Service, the U.S. Customs Service and the Bureau of Alcohol, Tobacco and Firearms have both civil and crimimal functions, and they use criminal intelligence information both for licensing and for background employment investigations.

One of our principal concerns with the proposed legislation is to ensure that they permit maximum use of data processing facilities and capabilities for tax-related civil and criminal justice activities and to ensure the availability of information essential to background investigations to avoid placement of employees of demonstrated questionable integrity in positions of trust and responsibility. We believe both of these concerns can be accommodated, while providing the privacy of criminal justice information that is intended with this legislation.

For example, we are concerned with the effect of the proposed legislation upon the Bureau of Alcohol, Tobacco and Firearms' applications for relief from Federal firearms and explosives disabilities (See 18 U.S.C. §§ 845(b) and 925(c)). In addition, the Bureau's use of criminal record checks prior to the issuance of licenses and permits under Chapter 44 of Title 18 U.S.C. (Title I of the Gun Control Act of 1968), Chapter 40 of Title 18 U.S.C. (Commerce in Explosives), the Federal Alcohol Administration Act (27 U.S.C. § 201–211), and the Internal Revenue Code (pertaining to various alcohol and tobacco permits) would be restricted by the proposed Act.

The Treasury Enforcement Communications System (TECS) contains both criminal history and criminal intelligence information. The enactment of section 208 would eliminate one of Customs most efficient enforcement tools. Customs inspectors make over 137,000 TECS queries daily, and the criminal justice intelligence information provided by the system often provides a "reasonable suspicion" on which to base a secondary Customs search. Automated systems have been used to identify persons, methods, and trafficking patterns involved in the illicit importation of narcotics. These systems enable Customs to compare and coordinate diverse patterns of smuggling. To limit the type of information which could be maintained in TECS, or to prohibit its use entirely, would severely impair the effectiveness with which Customs carries out its enforcement mission.

Intelligence systems are vital to law enforcement, which should not be denied the benefits deriving from technological advances in investigating organized crime and other forms of criminal activity that crosses state lines. Access to and use of criminal intelligence information can be properly safeguarded through suitable controls over the collection and dissemination of such information.

The use of automated criminal intelligence systems contributes to the right of our citizens to be free from obstruction and harassment by government inefficiency and can protect their freedom from criminal encroachments on the political life of the United States. Every person who must cross a U.S. border to enter this country benefits from the nearly instant access of Customs Inspectors to criminal records and criminal intelligence by means of TECS. The tremendous delay is avoided which a manual system would require, while a more efficient and effective interdiction of narcotics and other smuggled contraband is achieved. Thus, freedom of movement is enhanced for the vast majority of people while criminals and contraband are prevented from infiltrating society.

The protective intelligence function of the Secret Service provides a bulwark against a political system where the President, some other top public officials, foreign statesmen and Presidential candidates must remain in guarded chambers, out of touch with the public because the danger of attack or assassination is not controlled effectively. The freedom to hear and see public officials face to face, the right to assemble and to petition peaceably for redress of grievances are all enhanced because our foremost political and government officials can move about in society with some genuine sense of security.

Title III of the bill provides for the creation of a Federal Information Systems Board, a Federal Information Systems Advisory Committee, and state boards.

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We question the need for and potential effectiveness of such organizations. The responsibility for the collection and dissemination of criminal justice information lies with the criminal justice agency, and management control should remain with that same agency. Lacking adequate management control over the operation of the system, law enforcement officials could not assure that the data is properly protected.

We are concerned that the proposed legislation will require very substantial expenditures for the numerous changes which must be made in the systems for collection, storage and exchange of data and in the recordkeeping operations which must accompany the information systems. Treasury recommends that the budgetary impact of this proposal should receive thorough study by the Congress.

We believe that full utilization of advanced data processing techniques is not inconsistent with the preservation of personal privacy. The mere potential for abuse is not a sufficient reason to dispense with their use in the investigation and prosecution of crime. Careful attention to the potential for abuses will enable us to devise methods for preventing these abuses, without impairing the value of data processing as an important tool of efficient law enforcement.

*   *   *   *   *   *   *

The Department of the Treasury believes that between the two bills discussed above the provisions of S. 2964 constitute a preferable approach to restrictions on the use of criminal justice information and the protection of individual privacy. Therefore, with the inclusion of all those exemptions and amendments discussed above which are essential to the operations of the Treasury Department, we endorse the adoption of S. 2964.

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

EDWARD C. SCHMULTS,
General Counsel.

PREPARED STATEMENT OF THE UNITED STATES LEAGUE OF SAVINGS ASSOCIATIONS [1]

The United States League of Savings Associations appreciates this opportunity to file a statement on the "Criminal Justice Information Control and Protection of Privacy Act," S. 2963, and the "Criminal Justice Information Systems Act," S. 2964.

We favor legislation which would authorize our members (and other financial institutions) to have access to FBI criminal offender record information (arrest and conviction records). We believe that the present section of the Department of Justice Appropriations Act of 1973 (PL 92–544), which authorizes savings and loan associations access to FBI arrest record information, should remain in effect. We feel that the language of S. 2964 provides our members with the necessary authority, along with the Appropriations Act, to continue to receive FBI criminal offender record information. We understand that there is some question as to the continuing applicability of this Appropriations Act in this area, and therefore, suggest that any legislation reported by this Subcommittee specifically authorize our members continued access to criminal offender record information.

We support legislation which would protect the individual's right to privacy; provide the individual with access to his own records for correction and verification; establish standards for dissemination of criminal justice information; and insure the accuracy and thoroughness of criminal justice records. At the same time, we urge the subcommittee to recognize the legitimate needs for access to criminal justice information by criminal justice agencies, as well as certain non-criminal justice agencies including savings and loan associations. Our comments are directed at those sections of the bills which affect the access by savings and loan associations to the criminal record information system provided by the FBI.

[1] The United States League of Savings Associations (formerly the United States Savings and Loan League) has a membership of 4,600 savings and loan associations, representing over 98% of the assets of the savings and loan business. League membership includes all types of associations—Federal and state-chartered, insured and uninsured, stock and mutual. The principal officers are: George B. Preston, President, West Palm Beach, Florida; Lloyd S. Bowles, Vice-President, Dallas, Texas; Tom B. Scott, Jr., Legislative Chairman, Jackson, Mississippi; and Norman Strunk, Executive Vice-President, Chicago, Illinois. League headquarters are at 111 East Wacker Drive, Chicago, Illinois 60601; and the Washington Office is located at 1709 New York Avenue N.W., Washington, DC 20006; Telephone: 785–9150.

Savings and loan associations[2] are authorized by the Department of Justice Appropriations Act of 1973 to receive FBI identification records on employees or applicants for employment "to promote or maintain the security of those institutions." This service has been an invaluable aid to savings and loan associations because it usually brings to their attention, the prior criminal record of any potential employee who would handle or have access to the monies of not only private citizens and business firms, but also local, State, and Federal government agencies. The embezzler, thief, or individual who has been convicted of a crime involving breach of trust or dishonesty, or has a history of such conduct, generally has no place as an employee of a financial institution. Our experience has demonstrated that access by our members to FBI criminal offender record information is essential if they are to meet their obligation to depositors, borrowers, and the general public who see the integrity of financial institutions as a reflection of the character of the institution's employees, officers, and directors.

This obligation to know the background of potential employees is not only one of common sense and good management practice, but is incident to the proper conduct of the institution as prescribed by Federal statute and regulation. 12 USC 1730(h) and 12 USC 1464(d)(5)(A) authorize the suspension of any officer or director of a federally insured savings and loan association if the individual is charged with a felony involving dishonesty or breach of trust. A conviction for such an offense could then result, and in almost all cases does result, in automatic removal from office and a specific prohibition from further involvement in the business affairs of the institution. Also, except with the prior written consent of the Federal Home Loan Bank Board or the FSLIC, the primary regulatory agency and insuring agency for Federal and many State savings and loan associations, no individual who has been convicted of a criminal offense involving dishonesty or breach of trust can serve as an officer, director, or employee of a savings and loan association. Willful violation of this requirement subjects the savings and loan association to a penalty of up to $100 for each day that the prohibition is violated. (12 USC 1464(d)(12)(b); 12 USC 1730(p)(2)).

The significance of the receipt of FBI criminal offender record information by savings and loan associations is also demonstrated by an official memorandum of the Federal Home Loan Bank Board's Office of Examinations and Supervision which requires that every federally insured institution be informed of the availability of this service and recommends that all savings and loan associations provide the FBI with fingerprint cards of their officers, directors, and employees. (Memorandum 44-2, Dec. 22, 1971.)

S. 2963 provides for the dissemination of conviction record information to noncriminal justice agencies provided that this dissemination is expressly authorized by State or Federal statute (S. 2963—sec. 201(c)). S. 2963 also specifically repeals the existing statutory authority for access by savings and loan associations to arrest record information (S. 2963—sec. 313). Specific statutory language would be required to continue savings and loan access to this information.

S. 2964 (sec. 5(e)(1)) provides for the dissemination of both conviction and arrest records if specifically authorized by Federal or State statute or Executive order. S. 2964 does not repeal the present authority under the Department of Justice Appropriations Act.

The U.S. League believes that both of these bills would have the most beneficial impact on the savings and loan association and its prospective and present employees, officers, and directors by their provisions which insure that criminal offender record information received by the association is accurate and complete. Arrest records which reflect a case of mistaken identity are inherently damaging to the individual. Further, they are of no value to the savings and loan association. An arrest record which does not reflect a disposition of the arrest, where such is available, does a disservice to both the individual and the savings and loan association. Our members which use FBI arrest record information, do so with discretion and with an attitude which recognizes that this information is only

[2] The Department of Justice Appropriations Act gives special recognition to Federally-chartered and Federally-insured savings and loan associations. All Federally-chartered associations are regulated by the Federal Home Loan Bank Board and insured by the Federal Savings and Loan Insurance Corporation (FSLIC). Most State-chartered associations are insured by FSLIC. These associations account for approximately 80% of our members. For purposes of this statement, the term "savings and loan association" refers to federally chartered and federally insured savings and loan associations.

We also believe that all savings and loan associations should have access to FBI criminal offender record information. This would include not only Federally-chartered and Federally-insured associations, but also members of the Federal Home Loan Bank System, such as, the co-operative banks in Massachusetts and various savings and loan associations in Maryland and Ohio, the accounts of which are insured by State-chartered insurance corporations.

one of several factors to be considered in evaluating potential employees. The result is not a blanket denial of employment because of the mere fact of an arrest, a youthful indiscretion, or an unwarranted arrest. Instead, each item of arrest record data is only one element to be balanced with the other aspects of an individual's background upon which the savings and loan association selects its employees. At the same time, we feel that the arrest of an individual for embezzlement, even though standing alone should not be a bar to employment, is a fact which deserves further explanation [illegible] the prospective employee who will have access to funds of the association.

We would also like to briefly comment on the provisions of both bills which provide for the sealing of purging of criminal justice information. We understand the need to give an individual a fresh start so that his record does not necessarily or unfairly follow him throughout his life. At the same time, we feel that more study should be given to the impact on the individual and the institution of the purging or sealing of records with an eye to establishing an initial period for purging of sealing after fifteen years rather than the proposed five- or seven-year period. Savings and loan associations still have the same responsibility under 12 USC 1464(d)(12)(b) and 12 USC 1730(p)(2) whether a conviction involving dishonesty or breach of trust is five- or fifty-years old, and any legislation in this area should give recognition to this potential conflict.

In conclusion, we believe that savings and loan associations should continue to have access to FBI arrest record information, and therefore, favor the language of S. 2964. We feel that adequate protection for the individual is provided by the section of the bill (S. 2964—sec. 8) with its restrictions on the dissemination of arrest records.

In any case, we urge the Subcommittee to recognize the legislative and regulatory requirements placed on savings and loan associations as cited above, and in any reported bill, specifically authorize access by federally insured and federally chartered savings and loan associations, at the very least, to criminal offender record information which would satisfy these requirements. We will be happy to assist the Subcommittee and respond to any further inquiries on what we believe represents an issue of vital concern to the individual, as well as, the savings and loan association.

Prepared Statement of the Vera Institute of Justice, Inc.

My name is Robert Goldfeld, and I am associate director and counsel of the Vera Institute of Justice.

For the past 13 years, the Vera Institute has been deeply involved in developing programs in criminal justice reform in New York City and in the replication of these programs elsewhere in the United States. Vera's first program, the Manhattan bail project, was operated initially as a demonstration project by the Vera Institute, was later incorporated into the practices of the New York City Department of Probation and served as the basis of "bail agencies" in many other jurisdictions. The project demonstrated that with limited background checks, a significant percentage of defendants could be released on their own recognizance and would return for scheduled court appearances. The project was influential in the passage of the Federal Bail Reform Act of 1966. Vera has also pioneered in the development of "diversion" programs, such as the court employment project which seeks to divert alleged offenders from the criminal justice system, upon agreement with the court and district attorneys, supplying these individuals with jobs, counselling and supervision. Most recently, Vera has been involved in the development of large-scale supported employment programs for former offenders and drug addicts. These programs are unique in that they divert welfare funds, which otherwise would have been given to such individuals for unproductive activity, supplement these funds from other public and private sources and provide regular paychecks fully subject to income taxation for such individuals for performing meaningful public service jobs. Preliminary research on these programs indicates they have a significant impact in reducing the recidivism of participants.

Although the Vera Institute is supportive of the goals of the proposed rules in that they would prevent unauthorized use of individual criminal justice records while enabling public criminal justice agencies to have necessary access to such data, we are concerned that the proposed limitations on dissemination of criminal justice information would substantially inhibit the assistance we have been able to provide to such public criminal justice agencies and our development of new

projects in criminal justice reform. I would like to give three examples of work we do which might be inhibited by these new rules.

1. For many years now the Vera Institute has been a consultant to the New York City Police Department and the New York City Criminal Justice Coordinating Council. Several years ago, as a consultant to the police department, Vera undertook a study of the use of a summons by the police in lieu of arrest for certain crimes. Vera developed a program modeled on the earlier Manhattan Bail Project in which a point system was used to determine whether an individual was likely to return for arraignment. On the basis of the results of a pilot program supervised by Vera in the New York City Police Department, the use of the summons was introduced and dramatically expanded in New York City. Over 35,000 summonses are now being issued each year, substantially reducing the detention population. Another example is a project we are developing with the police department where we are looking at the problems of victims of crime. In a local New York City precinct, we are interviewing victims and reviewing records to determine what services can usefully be provided to victims shortly after a crime. Such a project, if it becomes operational, would work closely with the courts to assist in assuring that these individuals appear as witnesses at trial. Obviously, we could not have developed the summons program with the police department, nor could we now be examining the problems of victims without access to criminal justice records.

2. Vera has actually taken over functions or operated programs which traditionally have been performed by public criminal justice agencies. The court employment project, for example, under a contract initially from the U.S. Department of Labor and currently with city funds, makes recommendations to the courts and district attorneys regarding supportive programs for selected defendants and makes recommendations as to the disposition of such cases on the basis of the individual's progress during the pretrial period. Vera now operates a Pretrial Services Agency under LEAA funding for the New York City courts in Brooklyn. Vera interviews all defendants in the Brooklyn criminal court and makes ROR recommendations. In addition, the agency operates a supervised release program when judges determine a form of conditional release is appropriate. Many such pretrial programs are currently being operated by private and public agencies throughout the country, often with the assistance of church groups, law schools and volunteers. To function adequately all of these agencies must have appropriate access to criminal justice information.

3. Each Vera project, whether operated by Vera itself or by a public criminal justice agency, has built-in evaluation and, at times, an extensive research component. Vera's Wildcat Services Corp., which provides supported employment opportunities to former offenders and former drug users, has research built-in to determine whether the employment opportunities made available actually reduce recidivism, welfare dependency and drug use. As part of this program we have developed an experimental control group of former offenders and addicts not admitted into the program. Preliminary findings indicate that program participants recidivate at one-half the rate of the individuals in the control group. Another study we are doing looks at the entire decisionmaking process in the handling of cases as they proceed through the criminal justice system. We are looking at hundreds of records and interviewing large numbers of participants in order to determine with some precision the factors which contributed to the final dispositions. If we are to continue in this work we must have access to criminal justice information.

Our recommendations are as follows:

First, we recommend that the proposed rules be modified to make clear that the definitions of criminal justice agency and criminal justice activity are broad enough to permit an agency such as Vera to have sufficient access to criminal justice information to provide consulting services to public criminal justice agencies.

Second, we recommend that some functions performed by public criminal justice agencies be undertaken by outside agencies and that the rules provide that criminal justice information be made available to those agencies for the performance of those functions.

Third, we recommend easing the restriction on use of criminal justice information for bona fide research purposes. The rules may make such information available only when authorized by Federal or State statute, or Federal Executive order, and this would critically inhibit research by qualified agencies.

In conclusion, we support the establishment of rules which limit the dissemination of criminal justice information to the public, private corporations or individuals. But we would urge that such rules permit access to information by

qualified private agencies performing legitimate roles within the criminal justice system. We do not underestimate the difficulties of drafting rules which will permit such access while protecting important rights of privacy, and we would be happy to work with department staff in developing language which will appropriately balance the interests involved.

Prepared Statement by the Division of Automated Data Processing, Commonwealth of Virginia

INTRODUCTION

The purpose of this paper is to present the views of the Division of Automated Data Processing for the Commonwealth of Virginia concerning U.S. Senate bills 2963 and 2964. As the agency responsible for state computing resources, the Division is vitally interested in definitive policy direction from the legislature. Both the Ervin bill (S. 2963) and the Hruska bill (S. 2964) are commendable attempts to resolve the complex policy issues concerning criminal justice information systems. However, there are some disturbing aspects to the Hruska bill, particularly in section 11, the "Security of Criminal Justice Information Systems." The position of this paper is that the concept of "management control," espoused in that section, is a notably unhelpful solution to the security problem. It will be argued that the security of information systems is a function of the effectiveness of controls, not their source. How those controls are implemented and the assignment of responsibilities must be a State- or local-level decision, based on the particular situation currently operative in that jurisdiction.

Furthermore, it is held that the Ervin bill is a much more viable approach to security controls. After stipulating the kinds of controls which must be present, the Ervin bill refrains from dictating the means to be used for their implementation. Rather, it includes provisions for determining that systems under the bill's purview actually do measure up to the prescribed standards. For these reasons, the Division of Automated Data Processing supports the Ervin approach and recommends its adoption by the U.S. Congress.

BACKGROUND

The development of a State-level information system in the criminal justice area is a priority concern in the Commonwealth of Virginia. A coordinated, integrated system is generally recognized as a vital tool in the continuing effort to improve the effectiveness of criminal justice activities. However, Virginia's development efforts have, up to this point, been seriously impacted by a conflict between two policies. On the one hand, there is a state policy which seeks to centralize data processing resources and some data processing functions. While part of the justification for centralization is economic, it is also an effort to provide for integrated systems of the level of, for example, a criminal justice information system. Running contrary to this state policy, on the other hand, are policy statements on the Federal level which seek to prescribe how a vital portion of a state criminal justice information system is to be organized and operated. The most notable source of this type of policy has been the National Crime Center of the Federal Bureau of Investigation. "Management control" of the Computerized Criminal History system by a criminal justice agency, coupled with dedication of certain hardware components are two of the more striking features of NCIC policy. Failure to conform with the NCIC edicts, furthermore, results in the elimination of Virginia from the interstate Criminal History program.

Clearly, these two policies are opposed. They prescribe two different development strategies which cannot be reconciled. The resulting situation is an administrative nightmare—a choice must be made as to whether to violate existing state policy or to forgo participation in a valuable information program at the Federal level. Either choice seems distasteful and, it might be argued, irresponsible. Consequently, the criminal justice information system development in Virginia has been seriously hindered by a reluctance to make an untenable choice.

It is the position of the Division of Automated Data Processing in Virginia that the policy conflict is totally unnecessary. The NCIC policy is a hamfisted solution to a very intricate and complex problem—how best to insure the confidentiality of criminal history information. It lacks any sensitivity to the quite different situations that exist in the various states. Furthermore, it raises serious doubts about the authority of a Federal agency to dictate management policy for a

distinctly state-level responsibility. In the following, a discussion of the security/confidentiality issue will be offered which is more attentive to the realities of the situation. In particular, the notion of "management control," as used by NCIC, will be shown to be a singularly unhelpful solution to the problem.

SECURITY AND CONFIDENTIALITY

The need for security of personal data systems is not the issue here. There is general agreement that only that information specifically needed for government operations should be collected. The data, once collected, must be complete and accurate. And, its dissemination must be only to those individuals or agencies who are authorized to receive it. The objectives of data security and confidentiality are clear. The source of the contention is the measures required to meet those objectives.

The "management control" stance maintains that the best way, or perhaps the only way, to realize these goals is by vesting "management control" of computer operations in a user agency. The first point which needs to be stressed is that this notion remains remarkably obscure. "Management control" is treated as if it were a simple attribute—either one has "management control," or one does not. But, there are gradations of controls. It is highly questionable whether absolute management control by a single agency is feasible, or even possible. The points specifically addressed in the NCIC statement include management control of data processing personnel, computer operations and budget. While this is certainly one understanding of the notion of management control, it is by no means the only interpretation. An agency, for example, who controls what data is input into the system, how the data is to be processed and who may have access to the data is also effectively managing and controlling the information system. These sorts of controls, which by the way are only cursorily addressed by NCIC, are the proper province of the criminal justice community. Other aspects of an information system—operations personnel, hardware, software, etc.—are the proper province of that agency which is technically capable of providing the best utilization of resources. While both of these types of controls might be best vested in a criminal justice agency in some instances, Virginia's approach to data processing runs counter to this tack. It is felt that providing of data processing services is the proper responsibility of the Division of Automated Data Processing. The user agencies maintain control over the specific uses of those services by developing systems which meet their needs.

The question to be faced then is whether this approach can provide the required security of personal information. The appropriate response, of course, if that it can be just as effective as the dedicated approach. The security issue is a function of the effectiveness of the controls, not the source of the controls. The "management control" approach makes the fundamental mistake of assuming that identifying the agency who must have control is a satisfactory response to the security/confidentiality problem. A more reasonable approach would be to cite what controls are required, and then leave it up to the respective states to determine the most effective means of implementing those controls.

S. 2963 AND S. 2964

In all fairness to NCIC, it must be pointed out that they were forced to develop a system of sensitive information in a virtual legislative vacuum. The lack of clear policy direction undoubtedly contributed to the "management control" type of solution. With no assurance of controls, it was thought wise to place responsibility for system management in the hands of agencies that NCIC could identify and trust.

Senate bills 2963 and 2964 are two current attempts to bridge the yawning legislative gap that has existed thus far. They both address important policy issues concerning the collection, dissemination and use of criminal justice information. Degrees of confidentiality for the different types of criminal justice data are recognized and dealt with. Rights of review, challenge and correction are detailed in both bills. This sort of legislative direction is welcomed by all who bear responsibilities for information systems.

Unfortunately, SB 2964 (the Hruska Bill) falls into the same trap as the NCIC approach. After defining specific policy guidelines concerning privacy and the confidentiality of criminal justice information, it legislates the means for instituting those guidelines. In Section 11 of the Bill, the "management control" specter once again appears. Only this time there is not even an attempt to clarify what the term means. Its significance will only become clear after the Attorney

General promulgates standards which will address, among other things, the "management control of criminal justice information systems." At this point, of course, it is impossible to predict what form those standards might take. The Attorney General's standards may reflect an understanding of management control which transcends the Department of Justice's efforts thus far. Nevertheless, the point of the Hruska Bill—the vesting of controls in a single criminal justice agency—is unmistakably clear.

There are actually two respects in which the approach of the Hruska Bill are disturbing. The first, alluded to earlier, concerns the assignment of controls to a criminal justice agency which might better be assigned to a more technically-oriented agency. The creation and maintenance of an effective computer environment requires a considerable amount of technological expertise and experience. In Virginia, the preponderance of that expertise is located within a single agency—the Division of Automated Data Processing. Moreover, it is felt that it is the proper responsibility of the Division of ADP to provide the automated facilities needed to support the development and operation of user-agency systems.

It is important to keep the role of a service organization, such as the Division of ADP, in proper perspective. There is no intent here to strip the user of his proper controls over a system. User agencies are still responsible for establishing the requirements for the systems they develop. Part of those requirements must define within broad legislative guidelines, the confidentiality and security aspects of the systems. These requirements act as effective controls over the resultant system, even though the implementation of the controls may be a joint effort between the user and the service organization. The important point is that lines of responsibility must correspond to levels of expertise if available resources are to optimized.

The second respect in which the Hruska Bill is disturbing is the concentration on a single criminal justice agency as the source of user controls. The development of an integrated system, such as that envisioned in Virginia, simply does not allow for control by one agency. The isolation of controls is counterproductive to the cooperation and coordination so vital to a criminal justice information system. A more viable approach is the placing of proper user controls in a body which is representative of the entire criminal justice spectrum. In Virginia, the approach has been to establish legislatively a commission composed of criminal justice agency representatives. This commission is specifically delegated the responsibilities for directing the development of a criminal justice information system. The advantages of this approach over the single agency approach is particularly relevant to the broad-based approach to criminal justice information envisioned for Virginia. It should be noted that the Hruska Bill does not allow a cooperative approach to user controls. By its definition of "criminal justice," a commission such as is planned for Virginia could not be considered a "criminal justice agency." Hence, it could not assume management responsibilities of a criminal justice information system and still comply with the Hruska provisions. The concentration on a single operational agency as the source of user controls is unnecessarily and, it can be argued, harmfully restrictive.

The Ervin Bill (S. 2963) takes a much more viable view of the security/confidentiality matter. The responsibility for implementing controls is left up to the respective states. The states are then able to assign specific responsibilities based on their specific situations. Furthermore, the Ervin Bill recognizes and effectively resolves the problem of user agency controls. The "State information systems board" defined in Section 304(b) provides a proper focal point for the administration of a criminal justice information system. Detailed policy and procedural decisions can be made which truly reflect the feelings of the entire criminal justice community.

It may be argued that the Ervin Bill does not provide the assurances that the Hruska Bill does. That is, by allowing for a dispersal of responsibilities, the means for evaluating the effectiveness of the controls might be said to be seriously curtailed. This argument does not survive serious scrutiny. The Ervin Bill provides for the only assurance measures which could be effective, regardless of the approach. Continuous reviews of the adequacy of the requirements and of their enforcement are the only means for evaluating specific systems. And audits are no less effective if computer professionals are given certain responsibilities for systems development and operation. It is noteworthy that the Hruska Bill also relies on the audit, as its assurance mechanism.

In summary, then, the Division of Automated Data Processing in Virginia views the Ervin Bill favorably for two reasons. First, it is an attempt by the legislators to address policy matters which are properly their concern. The emergence of clear direction from the lawmakers will do more than perhaps any

other single development to contribute to a solution of the security/confidentiality/privacy issue. Secondly, the Ervin Bill does not overstep its bounds by dictating management policy for State data processing installations. The measures for implementing the necessary controls are left to the discretion of each state, based on its particular situation and policies. Furthermore, provisions are made for a truly representative approach to the problem of proper user controls. This approach seems the most promising of a workable, effective solution to the security problem is to be achieved.

THE WACKENHUT CORP.,
Coral Gables, Fla., April 5, 1974.

Hon. SAM J. ERVIN, Jr.,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR ERVIN: In response to your letter of March 26, 1974, enclosing copies of S. 2963 and S. 2964, I wish at this time, on behalf of the Wackenhut Corporation, to submit a statement for the record of the Subcommittee on Constitutional Rights. The Preamble to S. 2963 recites that this Bill was introduced to "protect the constitutional rights and privacy of individuals upon whom criminal justice information and criminal justice intelligence information has been collected and to control the correction and dissemination of criminal justice information and criminal justice intelligence information, and for other purposes."

Section 101 of S. 2963, Lines 18 through 25 on Page 2, finds "that citizens' opportunities to secure employment and credit and their right to due process, privacy, and other legal protections are endangered by misuse of these systems; that in order to secure the constitutional rights guaranteed by the first amendment, fourth amendment, fifth amendment, sixth amendment, ninth amendment, and fourteenth amendment uniform Federal legislation is necessary to govern these systems; —."

Section 101, Lines 9 through 12 on Page 3 of S. 2963 finds that it is necessary "to protect the privacy of individuals named in such systems," and "it is necessary and proper for the Congress to regulate the exchange of such information."

S. 2963 states a noble purpose, i.e. the protection of the constitutional rights and privacy of individuals. However, nowhere in the Bill, but one minute and indefinite exception, does S. 2963 seek to protect the constitutional rights of individuals engaged in business and industry.

It is believed that the great majority of the citizens of the United States are law abiding people and have no arrest and/or conviction records. These people too, are entitled to the constitutional rights guaranteed by the first, fourth, fifth, sixth, ninth, and fourteenth amendments of the United States Constitution. Should not the business community be entitled to protect and preserve the integrity of its operations through preemployment check of personnel?

I note that the Honorable William B. Saxbe, Attorney General of the United States, in his testimony before your subcommittee on March 6, 1974 recited, as an example, that Congress has passed a law prohibiting the Federal Government from employing anyone who has been convicted of a crime arising out of a civil disorder. The Attorney General went on to state that "If the Federal Government is to follow this Congressional mandate, government agencies investigating potential employees must have access to information which is not in criminal justice information systems. . . ."

The Wackenhut Corporation is called upon by the business community to do pre-employment investigations of prospective employees for the business community and for the same reason that the Federal Government desires to insure itself that the persons employed by it are law abiding citizens.

The Federal Bureau of Domestic Commerce reported in 1972 that the economic impact "of ordinary crimes against business, including burglary, robbery, vandalism, shoplifting, employee theft, bad checks and arson, but not including cost of organized crime and extraordinary crimes such as airplane hijacking and embezzlement, add up to a total national cost of 16 billion dollars per year." It is apparent, therefore, that business, for the good of itself and the community, needs the ability to insure to the extent possible that it makes intelligent selections in hiring its personnel, particularly at a time when employee thefts and use of narcotics continue to rise throughout the nation.

What a field day organized and unorganized crime would have if it could infiltrate the business community at ease, being assured by Congress that the "target," the banking systems, brokerage houses and the airline industry, is prohibited from determining whether or not a potential employee has been con-

victed of a crime. A criminal act, even though it may affect directly only one individual or one small business establishment, affects us all one way or another.

The business community does not seek to keep honest people from employment. It vitally needs honest employees, and should be able, in the exercise of its constitutional rights, to attempt, to the extent possible, to employ honest individuals.

By prohibiting the business community "from receiving criminal justice information" S. 2963 denies an employer, be it an individual or a giant corporation, his constitutional rights to insure that he is not deprived of his life, liberty or property or equal protection of the laws. Amendment 14 of the U.S. Constitution spells out that no state shall deprive any person of life, liberty or property without due process of law. This provision is primarily aimed at governmental law enforcement agencies, but, what about the right of an individual, a single employer or a corporation giant to expect that he or it shall not be deprived of his life, liberty or property, not by a governmental law enforcement agency, but by criminal activity.

S. 2963 provides that "criminal justice information" can only be disseminated from one criminal justice agency to another. The bill does recognize that criminal justice agencies need "criminal justice information" to screen their applicants. Should not other employees as well have this same right?

It is noted that Section 201(c) states that conviction record information may be made available for persons other than the administration of criminal justice only as expressly authorized by applicable state or Federal statute. S. 2963, however, makes no provision for the dissemination of "criminal justice information" to those in private industry who need the information.

In your opening statement to the subcommittee on constitutional rights hearing on Tuesday, March 5, 1974, you raised the question as to what type of information should be available from police files to non-law-enforcement agencies, "especially commercial establishments". Later in your statement you admitted that S. 2963 provides that only conviction records can be released to non-criminal-justice agencies and then only to such agencies and persons as are specifically authorized by state or Federal statute. Then you admitted that you have doubts as to this when you state: "For example, if we completely cut this information off to persons outside the criminal justice community, we may inappropriately shroud crime and law enforcement agencies in a blanket of secrecy." You indicated in your statement that it is necessary to develop a proper balance between the public's right to know and an individual's right to privacy.

You included in your letter a memorandum prepared by your staff entitled Issues for Criminal Justice Data Bank Hearings. The second issue raised is "What type of information should be available from police files to non-law-enforcement agencies, especially commercial establishments?" The memorandum further asks "Should only conviction records be released to non-criminal-justice agencies." It is believed that S. 2963 and/or S. 2964 should provide, under stringent safeguards and on payment of an appropriate fee, for the availability of criminal record information, limited to conviction records, for persons being considered for government or private employment and that this information should be disseminated to employers and licensed private investigative agencies upon the written request. Such information is needed to complete background information on preemployment investigations. In this connection I enclose a copy of a Bill proposed as a part of the legislative program of the State of New York in 1972.

I am concerned about the individual business and governmental victims in our society who suffer from the many and varied acts of the criminal. Our society is made up of people who pay their taxes and support legislators and the entire criminal justice system. Yet, these same people are defenseless in accordance with the provision of Senate Bill S. 2963 to protect themselves from the criminal. A few years ago Congress passed a so called "Safe Streets Act." It would be nice if Congress would also pass a "Safe Business Act." Unfortunately, the present wording of S. 2963 assures only the man who has an arrest record that his record will be forever hidden except for costly and time-consuming procedures.

It is noted that S. 2963, in Section 308 provides for "Civil Remedies." It seems to me that criminal penalties should be sufficient and that Federal legislative process should not be a party to incite or encourage lawsuits. It may be good for our profession as lawyers, but I am more concerned for the good of the majority rather than for a small segment of our population.

It is urged that S. 2963 be changed to permit the dissemination of conviction record information to the private sector in order that its rights under the Constitution may also be protected.

Sincerely,

JAMES E. HASTINGS,
Vice President and General Counsel.

Enclosure.

THE STATE OF NEW YORK—1972

MEMORANDUM

Senate Bill——

Assembly Bill——

AN ACT To amend the executive law, in relation to the participation of licensed private investigators in the New York state identification and intelligence system.

PURPOSE OF THE BILL

To authorize the New York State Identification and Intelligence System to receive and process inquiries from licensed private investigators concerning records of criminal convictions and to establish safeguards concerning the dissemination of such records.

SUMMARY OF PROVISIONS OF THE BILL

Section 601 of the Executive Law would be amended to define the terms (licensed private investigator" [authorizing limited participation in the criminal record identification function of the New York State Identification and Intelligence System ("NYSIIS")] and "designated individual" [the subject of an investigation by a licensed private investigator]. The term "licensed private investigator" would refer exclusively to those persons licensed as private investigators by the Department of State under the provisions of Article 7 of the General Business Law.

Section 603 of the Executive Law would be amended to authorize NYSIIS to receive inquiries from a licensed private investigator and to process such inquiries for the purpose of ascertaining whether or not the NYSIIS files reveal the existence of a previous criminal record for a designated individual.

NYSIIS would be authorized to transmit to the licensed private investigator a report concerning a designated individual containing only a record of convictions (not arrests) of felonies or misdemeanors (not minor infractions or violations) and would be required to send written notice of such report to the designated individual, apprising the individual that a report was made; to whom it was made; upon whose request; and that the individual has the right to dispute the contents of such report with the licensed private investigator to whom it was transmitted.

NYSIIS would be authorized to charge the licensed private investigator a fee of $3 for each inquiry it receives concerning a designated individual.

Three new sections would be added to Article 21. The three new sections (§§ 603-b and 603-c) are summarized as follows:

Report to licensed private investigator.—The NYSIIS report would be limited to a record of convictions for felonies and misdemeanors. The investigator would be required to supply NYSIIS with specified information concerning the subject of the report and the person seeking the investigation.

NYSIIS would inform the subject of the report that a report has been mailed to an identified private investigator and that he has the right to make written demand to inspect such report and, if necessary, to dispute its contents.

Procedure in Case of Dispute.—The individual would be afforded the right to make a timely demand to inspect and, if necessary, correct the NYSIIS report at the office of the licensed private investigator. Frivolous or unsupported disputes could be rejected by the investigator. The investigator would be required to notify, at its expense, all persons to whom it has transmitted the erroneous data within six months of the correction.

Civil Liability of Licensed Private Investigator and Administrative Enforcement.—Licensed private investigators would be subject to specified legal and administrative sanctions for failure to comply with the disclosure requirements and for failure to make required corrections in a report.

STATEMENT IN SUPPORT OF THE BILL

This bill implements a recommendation of a New York County Grand Jury [Sixth Grand Jury for the March 1971 Term—concurred in by a previous New York County grand jury (Fifth Grand Jury for the September 1970 Term) and duly accepted and filed in the New York County Supreme Court, Part 30 on October 23, 1971] for: "* * * legislation that would assure, under stringent safeguards and on payment of an appropriate fee, the availability of specified

criminal record information for persons being considered for public or private employment. Such information should include only recorded criminal convictions. It should not include information about arrests not resulting in conviction, juvenile offenses and minor violations. An individual who is the subject of such a report should be furnished a copy so that he may dispute or explain any of the information contained therein."

The overwhelming need for the business community to protect and preserve the integrity of its operations is self-evident. This need was highlighted by the recent amendment to the General Business Law authorizing members or member organizations of a National Security Exchange to require their employees to be fingerprinted as a condition of employment (ch. 1071 of the Laws of 1969). Unfortunately this law did not address itself to the broad problem involved—it was confined merely to the secruities industry. Obviously there are countless other segments of the business community in equal need of the protection afforded by thorough preemployment checks of personnel. The airline industry, to name but one, is in dire need of this protection—a need that was recognized by the adoption, during the 1970 Session, of the New York-New Jersey Airport Commission Compact. (Ch. 951 of the Laws of 1970.)

Licensed private investigators are the agencies serving the overwhelming majority of the business community in providing preemployment background checks on potential employees. In recognition of the important function served by the private investigator the law (art. 7 of the General Business Law) mandates that they be licensed, subject to the continuing supervision of the Secretary of State.

In the past licensed private investigators have experienced serious difficulty in performing the essential service of providing preemployment checks. The difficulty has been occasioned by widely disparate and conflicting provisions of local law concerning the release by local police departments of arrest records. In many cities throughout the State, Buffalo, Rochester, Niagara Falls and Kingston, for example, this information is readily available. In other cities, notably the City of New York, the police department is prohibited from releasing this information, though there is nothing "confidential" about it, as it is available for public examination in the files of the court of conviction. Though this public information is available in the many local courts throughout the State, it is obviously impractical to conduct a search of each court's files to obtain it in every instance. Accordingly, there is a need to obtain the necessary information from a central depository, such as the files of NYSIIS. This bill would provide for the needs of the entire business community in obtaining accurate and effective preemployment checks and would make this information uniformly available, subject to explicit procedural safeguards.

Licensed private investigators assure the orderly operation of the criminal record system's service to the business community. An error in the information provided by or to a private investigator can be disastrous to an individual. By assuring all persons subject to a criminal record investigation an opportunity to check his reports to correct erroneous information, this measure will provide needed protection of the rights of individuals. At the same time, the bill makes uniform the procedures for the criminal record reporting system, so essential to the business community.

SUPPLEMENTARY MATERIALS

INTRODUCTION OF S. 2963, THE CRIMINAL JUSTICE INFORMATION CONTROL AND PROTECTION OF PRIVACY ACT OF 1974

Mr. ERVIN. Mr. President, with Mr. HRUSKA, Mr. MATHIAS, Mr. KENNEDY, Mr. BAYH, Mr. TUNNEY, Mr. YOUNG, Mr. BROOKE, Mr. MANSFIELD, Mr. ROBERT C. BYRD, Mr. BURDICK, Mr. ROTH, Mr. HUGH SCOTT, Mr. THURMOND, and Mr. FONG, I introduce for appropriate reference the "Criminal Justice Information Control and Protection of Privacy Act of 1974." The purposes of this legislation are to impose certain restrictions upon the type of information which can be collected and disseminated by law enforcement agencies on the Federal, State, and local levels; to place limitations upon the interchange of such information both among such agencies and outside the criminal justice community and otherwise to protect the privacy and reputations of persons about whom the agencies have collected information.

This legislation deals with the most prized but also the most perishable of our civil liberties—the right to privacy. Although the bill is limited to the activities of criminal justice agencies, its enactment would represent an important first step in reestablishing a workable balance between the information needs of Government on the one hand and the sanctity, individuality, and privacy of American citizens on the other. To understand the impact on personal privacy and the urgent need for this legislation, let me first review the significance of recordkeeping by law enforcement and other Government agencies.

I. GOVERNMENT RECORDKEEPING AND THE RIGHT TO PRIVACY

During the past few decades the demands by Government for personal and sensitive information about its citizens have escalated. This insatiable appetite for information among Government policymakers, and administrators is closely related to the increasing responsibility which we have placed upon government, especially the Federal Government, for our health, safety, and well-being. The Government is expected to manage the most complex economy in history; to collect and expend billions of tax dollars in a productive manner each year; as well as to study and attempt to ameliorate the various crises which seem to plague our country with depressing regularity, involving our environment, energy resources, crime, and so on. Most Americans are willing to cooperate by divulging information about virtually every aspect of their lives if they believe it will help the Government fulfill these responsibilities.

Yet if we have learned anything in this last year of Watergate, it is that there must be limits upon what the Government can know about each of its citizens. Each time we give up a bit of information about ourselves to the Government, we give up some of our freedom. For the more the Government or any institution knows about us, the more power it has over us. When the Government knows all of our secrets, we stand naked before official power. Stripped of our privacy, we lose our rights and privileges. The Bill of Rights then becomes just so many words.

Alexander Solzyhenitsyn, the Russian Nobel Prize winner, suggests how an all-knowing government dominates its citizens in his book "Cancer Ward":

"As every man goes through life he fills in a number of forms for the record, each containing a number of questions * * * There are thus hundreds of little threads radiating from every man, millions of threads in all. If these threads were suddenly to become visible, the whole sky would look like a spider's web, and if they materialized as rubber, banks, buses, trams and even people would lose the ability to move, and the wind would be unable to carry torn-up newspapers or autumn leaves along the streets of the city. They are not visible, they are not material, but every man is constantly aware of their existence. * * *. Each man, permanently aware of his own invisible threads, naturally develops a respect for the people who manipulate the threads."

Perhaps it should come as no surprise that a Russian can master the words to describe the elusive concept we in America call personal privacy. He understands, in a way which we cannot, the importance of being a free individual with certain inalienable rights, an individual secure in the knowledge that his thoughts and judgments are beyond the reach to the state or any man. He understands those concepts because he has no such security or rights but lives in a country where rights written into law are empty platitudes.

Privacy, like many of the other attributes of freedom, can be easiest appreciated when it no longer exists. A complacent citizenry only becomes outraged about its loss of integrity and individuality when the aggrandizement of power in the Government becomes excessive. By then, it may be too late. We should not have to conjure up 1984 or a Russian-style totalitarianism to justify protecting our liberties against Government encroachment. Nor should we wait until there is such a threat before we address this problem. Protecting against the loss of a little liberty is the best means of safeguarding ourselves against the loss of all our freedom.

The protection of personal privacy is no easy task. It will require foresight and the ability to forecast the possible trends in information technology and the information policies of our Government before they actually take their toll in widespread invasions of the personal privacy of large numbers of individual citizens. Congress must act before those new systems are developed, and before they produce widespread abuses. The peculiarity of those new complex technologies is that once they go into operation, it is too late to correct our mistakes or supply our oversight.

Our Founding Fathers had that foresight when they wrote the Bill of Rights. The first, fourth, and fifth amendments are among the most effective bulwarks to personal freedom conceived by the mind of man. Justice Brandeis in his classic dissent in the wiretapping case, *Olmstead* v. *United States*, 277 U.S. 438, 478 (1927), described with unsurpassed eloquence the importance of the right to privacy set out in the Constitution. These words do not go stale from repetition:

"The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognize the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men."

Government data collection on individuals is not a brand new phenomenon. The Federal Government has been collecting immense amounts of very sensitive information on individuals for decades. Income tax, social security, and census come to mind immediately. Various surveys by experts, private organizations such as the National Academy of Sciences, and a number of congressional committees have established the fact that the Federal Government stores massive amounts of information about all of us.

Several individual dossier files have received considerable publicity in recent years. For example, the Defense Department has several extensive files of very sensitive information, including dossiers on 1.6 million persons in its industrial security files. In the Justice Department alone, there is at least one civil disturbance file with 22,000 names; a file of approximately 250,000 names in the organized crime section; rap sheets or fingerprint cards on over 20 million individuals in the FBI's identification division files, and records on well over 450,000 persons in the FBI's National Crime Information Center—NCIC; and over 40 million names in the master index of the Immigration and Naturalization Service. The National Driver Register of the National Highway Safety Bureau contains 3,300,000 names. There are 69,000 names in the Secret Service files of persons considered potentially dangerous to the President, and the Secret Service computer contains hundreds of thousands of others.

Many of these records are in manual files as opposed to storage in computerized data banks. However, the trend is toward automation of the files so that information on an individual can be made instantly available to users. The FBI's 20 million fingerprint rap sheets are being automated. A survey which the Subcommittee on Constitutional Rights is conducting reveals that there are over 800 data banks in the Federal Government, many of which are automated, containing personal information on American citizens.

These figures and other information which the subcommittee's survey has revealed suggest that a revolution is about to take place within the huge information warehouses of the Federal Government. The revolution is going to be caused by two major developments within the Federal bureaucracy—both resulting from the application of highly sophisticated information technology to the Government's files.

First, with the advent of computers the Government is able to increase by geometric proportions the amount of information it can collect on individuals. Prof. Arthur Miller of the Harvard Law School, in his book "The Assault on Privacy," suggests that it will soon be technically feasible to store a 20-page dossier on every single American on a piece of tape less than 5,000 feet long. At the same time, the new technology permits the Government to reduce to microseconds the amount of time necessary to get access to the information. For example, the NCIC computer is able to locate one of its 450,000 criminal histories on an individual, reproduce it and transmit the file to a remote terminal in California or Florida in less than 5 seconds.

Second, and perhaps even more ominous than the computerization of the information, is the development of nationwide information networks by the Federal and State governments, utilizing telephone and other telecommunications lines. These information networks are designed to increase dramatically the number of people and agencies which can access the computerized data banks operated by the Federal, State, and local governments. When the NCIC computerized criminal history is fully operational, it will be one of the largest data bank-information networks of personal dossiers ever attempted. Eventually, roughly 40,000 State and local police departments will have instantaneous access to computerized files on an estimated 21 million individuals who at some time in

their lives have been arrested by State, local, or Federal police. The General Accounting Office estimates that this ambitious project may cost over $100,000,000 in Federal, State, and local revenues. Already LEAA's allocations over the past 4 years is estimated at $50 million, not counting State and local expenditures.

The NCIC system is not the first of these systems nor will it necessarily be the largest. As Eugene Levin, an expert on data bank-information networks has pointed out, the Department of Defense has done the pioneering work in this area. The Advanced Research Projects Agency of the Department of Defense has implemented a network which ties together many huge and dissimilar scientific computers. However, the difference between NCIC and the types of systems pioneered by Defense is that the former has sensitive personal information on individuals while the latter is designed to facilitate the transfer of innocuous scientific information.

Mr. Levin suggests the dangers that this new computer-communications technology will have upon our lives once Government begins to use it to collect and disseminate information on individuals:

"The greatest deterrent to extensive government surveillance of individuals has not been the lack of technology of 'bugging,' nor do considerations of legality, morality, or ethics seem to carry much weight. The deterrent has been 'data pollution,' which buries an investigator under bits and bytes. It has not been possible to handle (gather, filter, store, process, retrieve, format, disseminate) the huge volume of information on all individuals in anything approaching a useful time frame. Now it can be done."

If traditional Government recordkeeping practices and records policies have not yet posed an intolerable threat to personal privacy or reputations, it is only because of the benign inefficiency of these file-drawer record systems. Until very recently, significant amounts of information were not collected about individuals and therefore were not available to others. Use of information collected and kept on a decentralized basis is slow, inefficient, and frustrating. It requires an immense effort to collect information on a specific individual from a variety of different agencies, and then to have it sent out to the agency requesting it. It is ironic but true that what has thus far saved much of our privacy and our liberty has been the complacency, inefficiency, and intraagency jealousies of the Government and its personnel.

This decentralization, of course, is being radically changed by computerization and remote access through data networks. The information in Government files is often rather superficial and general and, in large part, dated and useless. The new technology allows for the collection of much more information on individuals as well as for systematic updating. With computerization and automatic remote access, the Government's ability to collect information increases astronomically and its capacity to broadcast what it ingests to every part of the Nation increases at the same rate. Once an individual gives up information about himself to the Government, he, and in most cases, the Government, loses control over it. The citizen cannot, and the Government usually does not, control who can see the information. Nor can he or the Government insure the accuracy of what is broadcast. Increasingly, these systems will influence, if not determine, whether an individual will get Government benefits, be extended credit, get a job, or be considered a criminal and be harassed by police.

II. CRIMINAL JUSTICE DATA BANKS: A MICROCOSM

Over the past few years the Subcommittee on Constitutional Rights, which I chair, has been studying the impact of Government computerized networks and recordkeeping of personal information in the hope of developing legislation to reverse these trends. In the course of this effort, I have come to the conclusion that the need for legislative action respecting criminal justice data banks cannot wait for the development of a comprehensive legislative solution which applies generally to all Government data collection. Therefore, I have drafted legislation which deals with this area in the hope that the experience of developing and enacting this legislation will provide guidance in formulating a more complete Government policy on privacy.

The question of Government collection and dissemination of criminal records and other routine law enforcement information must be the first target for data bank privacy legislation. If Congress can successfully develop privacy safeguards for law enforcement information, collection and dissemination, then our experience may make easier the establishment of a more comprehensive policy. Some of the most advanced technology is being used in local, State, and Federal criminal

justice data banks. The type of information being collected in such systems is as sensitive as any collected by Federal or State governments. The complexity of the questions of granting or denying access to subjects and other individuals are as difficult as those involved in any other area of government record-keeping. I hope that Congress' consideration of the "Criminal Justice Information Control and Protection of Privacy Act of 1974" will be the first step in its effort to come to grips on a national level with the assault on privacy by governments and private enterprise wherever it may exist.

Criminal recordkeeping has a long history. Since the 1920's the FBI has been providing a nationwide manual exchange of arrest records for State and local police departments. The purpose of this system is to supplement the files of State and local police departments by making available the arrest record of any person ever arrested for a crime by any police agency. The police utilize these records, called rap sheets, for investigative purposes, even though many of the records never indicate whether the subject has ever been prosecuted, much less convicted, of the crime for which he was arrested.

To my mind, a record of an arrest without any indication of a disposition of the charges arising out of that arrest is virtually useless for law enforcement purposes, and is highly prejudicial if used for non-law enforcement purposes. Yet I understand that in several states as many as 70 percent of the records do not contain dispositions. I would not be surprised to find that the percentage of incomplete records is even higher in FBI files since those files are based on State files and the FBI depends upon States and localities for record updating.

A record which shows a disposition of no prosecution, dropped charges, or acquittal may have more value, but it is also highly prejudicial if controls on its dissemination do not exist. The number of such records in Federal, State, and local files is significant. In 1972, there were 8.7 million arrests in the United States. Of those 8.7 million arrests, about 1.7 million were for what the FBI terms serious offenses—homicide, rape, robbery, assault, and so forth, According to the FBI, almost 20 percent of the adults arrested for these serious offenses are never even prosecuted and, of those prosecuted, approximately 30 percent are not convicted. For juvenile arrests and arrests for the 7 million less serious crimes, the percentage of no prosecutions and no convictions is much higher. This suggests that there are probably several million so-called criminal records on persons who were never prosecuted or convicted of the charge for which they were arrested, but which are added to the FBI files each year and available for distribution to any local police department, State civil service commissions, and certain private concerns.

The rap sheet distribution system by the Identification Division of the FBI operates without formal rules. Custom and several letters from the Director of the FBI to local police departments seem to be the only limitation on access to the information. The rap sheets are made available to government licensing agencies, government personnel departments, and, in all too many cases, either directly or indirectly to private employers. By 1973 the magnitude of the dissemination was immense. Each day the Identification Division receives over 11,000 requests for record searches, a large portion of which are from non-law-enforcement agencies.

Unfortunately, when an employer obtains this so-called criminal record information, he is not so concerned with whether the arrest contains disposition of charges of whether the subject was convicted. As far as most employers are concerned, the subject of such a record is a "criminal" and his application is automatically rejected. One survey of New York City employment agencies found that 75 percent would not accept for referral an applicant with an arrest record, whether or not he was convicted. Although the Bureau discourages dissemination of rap sheets to private enterprise for employment purposes, once the information is in the hands of local police, it is effectively out of the control of the Bureau. For example, a few months ago a grand jury in Massachusetts began hearing evidence that State police officers were selling police records to department stores and other private businesses and credit agencies. This unfortunate abuse continues in case after case.

The FBI sends rap sheets to State and municipal civil service commissions as a matter of course. One study found that most state, local and municipal employers consider an arrest record, even one short of a conviction, in determining employment eligibility. As many as 20 percent of these Government employees automatically disqualify someone with an arrest record regardless of the disposition on the record. When you consider these employment policies in light of the fact that the FBI may have rap sheets on almost 10 percent of the population and the fact that Federal, State, and local government employment totals 18 percent of the

work force, the impact of this dissemination should be obvious. The FBI does not now have the necessary authority and tools to deal with these and other problems. One purpose of this legislation is to supply the legislative authority that so far is absent.

In 1970, the Law Enforcement Assistance Administration funded a prototype computerized network for sharing criminal offender records. The experiment, called Project SEARCH—system for the electronic analysis and retrieval of criminal histories—took place in the summer of 1970 and demonstrated to the satisfaction of the Justice Department the feasibility of a nationwide computerized network for the exchange of such information. In December of 1970 Attorney General Mitchell authorized the FBI to assume operation of the project SEARCH computerized criminal history—CCH—project. The Bureau transferred the CCH file to its National Crime Information Center—NCIC—where it already had operational computerized files on stolen securities and persons with outstanding arrest warrants interfaced with a nationwide telecommunications network. The Bureau's ultimate plan is to convert rap sheets received after January 1970 to the CCH file and to also enter into the NCIC/CCH file arrests made by any state, local or federal police office. By 1984 there will be some 8 million records on American citizens contained in NCIC and instantly available to approximately 40,000 local police departments.

The law enforcement community is aware of the dangers inherent in collection and dissemination of criminal history information. According to a recent Justice Department report:

"The potential for misusing a criminal record has been amply demonstrated in court cases involving nonautomated records, particularly affecting employment eligibility. Thoughtful law enforcement officials recognize the danger which comes with automation and the interstate exchange of records. The potential problems arising from disclosure, whether authorized or not, are increased many times over those existing in the manual systems.

"Most modern law enforcement officials seriously desire to protect the individual's reasonable right to privacy, particularly in those cases where inclusion in the file may have been a mistake or an unjustified result of the formality of criminal justice processes."

Both Project SEARCH and NCIC have made good faith efforts to develop privacy and security guidelines for the operation of their computerized criminal history files. Project SEARCH created a special committee on privacy and security. Their original Privacy and Security Report, Technical report No. 2—popularly called "Tech 2"—was the first comprehensive proposal for adopting privacy rules to the operation of computerized record systems. This bill, and indeed, most other legislation, can trace its antecedents to this original work. NCIC also established a policy advisory committee for its CCH file soon after it took over operation of the SEARCH/CCH file. That group has drafted informal privacy and security guidelines which are revised periodically and do deal with some of the more difficult issues. However, the regulations are largely hortatory. They place most of the security responsibilities on the local data banks which plug into NCIC and do not provide effective enforcement mechanisms. In all fairness, the Bureau cannot be blamed for these inadequacies. It no doubt feels that without special Federal legislation, it lacks the authority to require State and local users to comply with Federal standards on use and collection of criminal justice information. In any case, the most effective remedies, both civil and criminal, must be firmly based in Federal statutory law. Director Kelley recognizes that and has called for Federal legislation which would replace and supplement the informal guidelines pursuant to which NCIC is presently operated. Both Attorney General Saxbe and his predecessor Attorney General Richardson have recognized the need for legislative action, and have taken the lead in developing administration policy in this area.

III. PRIVACY LEGISLATION ON CRIMINAL JUSTICE DATA BANKS

In preparing legislation on this topic I have been influenced greatly by the writings of Prof. Alan Westin of Columbia Law School and Arthur Miller of Harvard Law School, two of the Nation's experts on data banks and privacy. Also, much credit must be given to the HEW Advisory Committee on automated Personal Data Systems. I have attempted to draft legislation which comports with the recent report of the National Advisory Committee on Criminal Justice Standards and Goals. This Justice Department Commission sets out four basic "potential hazards to the right of privacy" which any privacy legislation relating to criminal justice data banks must address:

"Certainly, privacy can become seriously damaged when the information contained in the national system is (a) inaccurate, (b) incomplete, (c) unjustified, or (d) improperly disseminated."

All of the privacy standards proposed by the Commission, and all of the provisions of the legislation which I am introducing today are addressed to these potential hazards.

The Advisory Commission placed a high priority in reducing, if not eliminating, the amount of inaccurate information in criminal justice information systems. In the Commission's words:

"Joseph A. Burns, 28, of Magnolia Street could have his entire life seriously harmed because of an unwitting confusion between him and Joseph A. Burns of Cass Avenue or Joseph A Burns, 19, of no known address."

It proposes several standards to govern the quality of information allowed into criminal justice information systems, and access by data subjects for the purpose of review and challenge of their own records. The Commission also takes a strong position against the distribution of incomplete data, such as a record of an arrest with no indication of the disposition of the charges arising out of that arrest. The recommendations oppose the inclusion of any intelligence information in such systems. According to the Commission:

"The criminal justice information system should not supply any information such as the fact that Mr. A was refused entry across the Canadian border in 1970 for lack of sufficient funds, that Mr. A was identified twice in 1969 by police photo-intelligence personnel in the company of leaders of a peace demonstration, or that Mr. A was a passenger in a car that was stopped and searched—and was permitted to proceed—by New Jersey authorities in 1969. Even though such information might exist in police intelligence files—and the Commission takes no position here on whether it should—it has no place in the criminal justice information system."

In my judgment, this is one of the most important issues, and my legislation fully endorses this position.

The report proposes a number of enforcement mechanisms to insure that its standards are obeyed. It recommends civil and criminal sanctions, the creation of state regulatory commissions and mandatory system audits to insure compliance. My legislation contains similar provisions.

The most difficult question with which the Commission deals and which is also addressed in my legislation, is the question of who shall have access to information contained in criminal justice data banks. In particular, should criminal justice information be made available to noncriminal justice agencies. The Commission answers that question as follows:

"Easy availability of criminal justice information files for credit checks, pre-employment investigations, and other noncriminal justice activities is highly prejudicial to the operation of a secure information system designed only for law enforcement agencies."

I heartily agree and my legislation reflects that position.

IV. THE CRIMINAL JUSTICE INFORMATION CONTROL AND PROTECTION OF PRIVACY ACT OF 1974

The Criminal Justice Information Control and Protection of Privacy Act of 1974 is intended to provide a basis for discussion and hearings. It does not pretend to be a final statement on the subject. However, the bill is quite detailed and attempts a resolution of all the major privacy and security issues which have arisen in the development of law enforcement data banks. It endeavors to balance the legitimate needs of law enforcement with the requirements of individual liberty and privacy. It would for the first time give firm statutory authority for criminal justice data banks, a major obstacle in the development of such systems. It would impose upon the data banks strict but manageable privacy limitations. Not the least important, the bill also attempts to solve fundamentally important questions of Federal-State relationships in these comprehensive national information systems.

The bill is divided into three titles. The first title sets out the definitions of 19 terms used in the act. The second title sets out general statutory rules for the collection and dissemination of routine information as well as the more sensitive intelligence information. In the most controversial areas this title sets out specific legislative solutions. For example, there is a complete ban on non-criminal justice use of incomplete information such as raw arrest records. In certain areas, such as right of access, this title sets out general rules but leaves discretion to the

States and localities. The third title of the act establishes a joint Federal-State administrative structure for enforcement of the act and for actual operation of interstate criminal justice data banks such as NCIC. This title also requires the States to establish a similar administrative structure for intrastate computer systems.

The highlights of the bill are as follows:

Scope.—The bill would reach criminal justice data banks operated by Federal, State, or local governments. Comprehensive legislation must reach every possible component of the complex interstate data bank network which has grown up in the past decade. Congress cannot depend solely upon internal State legislative action because no one State can effectively regulate what happens to arrest records, and other criminal justice information or intelligence information which finds its way into a data bank in another State. The fact that these systems use interstate communications facilities, are connected with other State systems, or joined with interstate and Federal networks provides, together with the widespread Federal financial support, the necessary constitutional nexus for the legislation.

Focus.—The bill is directed primarily and in the greatest detail at those types of records which have been abused the most—arrest records and so-called "criminal history" records. With regard to records where there are few reported cases of abuse, such as identification records, wanted records or outstanding warrant records, the legislation is much more flexible. In the case of intelligence records, where the potential for abuse is great, the legislation bars computerized information systems. I expect that in the course of hearings on this legislation technical problems will be raised with the specific language used for arrest and criminal history records; that abuses of identification records will be identified; and that law enforcement agencies may make a case for specific exceptions to the ban on computerization of intelligence information or propose concrete suggestions for the regulation of these systems in lieu of an outright prohibition on computerization. One purpose of this bill is to serve as a basis for hearings and discussion on the privacy and data banks controversy.

General dissemination rules: The bill adopts the position of the Senate in its twice unanimously adopted Bible-Ervin rider to recent Justice Department appropriation bills and permits only complete conviction records to be distributed to private employers and other non-law-enforcement users. Here again the bill opts in favor of limited dissemination in the case of records which have an established history of abuse—incomplete arrest and criminal history records. On the question of exchange between law enforcement agencies, the bill adopts a position similar to that of the National Advisory Commission. Generally, only conviction records could be exchanged between police departments. A criminal history record or even a raw arrest record could be given to another department only after the requesting agency had rearrested the subject. It may be the hearings will suggest other limited instances in which raw arrest records can be used.

Updating.—Operators of criminal justice data banks would have to keep all of their records as up to date as is technically feasible and records would have to be accurate. Each data bank must also keep logs reflecting those to whom raw arrest records and certain other sensitive information is sent so that incomplete, inaccurate, or challenged records can be tracked down and corrected or destroyed. The purpose of these provisions is to create an accounting system for information which is permitted to enter and circulate in the data bank network. Strict rules on collection and dissemination are unenforceable if there is no method for keeping track of information flow and meaningless without a requirement that information be as accurate and up to date as possible.

Right of access.—The bill provides every citizen with a right to access any data bank, whether computerized or not, for the purpose of challenge and correction. The challenge procedure includes a hearing before the supervisory personnel of the data bank and if necessary, an appeal to a U.S. District Court. Every significant piece of privacy legislation, including the two administration arrest records bills introduced in the last Congress, contain a citizen access provision similar to the one proposed in this bill.

Civil and criminal penalties.—Operators of data banks will be held criminally and civilly liable for violations of the act. Liability will arise where there is negligence as well as willfullness. Liquidated damages of $100 for each violation would be available, plus complete recovery for all actual and general damages, and where appropriate, exemplary damages, litigation costs and attorneys' fees. This legislation will only command respect if operating personnel and their agencies are held civilly liable for their negligent failure to comply with the letter of each provision.

Administrative provisions.—The bill would create a new independent Federal-State cooperative agency to oversee enforcement of the act. The agency will issue regulations, go to court to enjoin violations and actually take over policy control of the Federal interstate criminal history data bank (NCIC). The purpose of these provisions is to create an agency which is outside the present law enforcement community and without vested interests in present law enforcement data banks, to administer the act. These provisions of the bill also would give the States their proper role in the development of policy. Representives of each State will share in the formulation of regulations issued pursuant to the act.

These administrative provisions reflect the concern expressed by many representatives of State and local law enforcement agencies that legislation not delegate great powers to the Federal Government and thereby subordinate the States in the operation of a law-enforcement responsibility that is properly theirs. While none of us in Congress or in the Federal Government desire to see a Federal police force, we must recognize that Federal involvement inevitably leads to Federal control. We must be alert to this trend in law enforcement even if we have been a little lax in other areas over the years. Total Federal control over the information systems of State and local police forces is one sure path to a federalized police system in fact if not in name. It might be best to return to the original LEAA plan for project SEARCH. That was a State-controlled, State-operated interstate system, with the Federal Government playing a limited role in providing financing and research. If that is not possible, then the next best approach is a true Federal-State arrangement such as I have proposed in this bill. This is one area where the President's ideal of a New Federalism ought to take concrete form. Since I expect that the States will welcome a return to greater State responsibility and the idea does conform to the New Federalism idea, I have great hopes of a general agreement on this important aspect of the bill.

System audits.—The bill provides for audits of practices and procedures of criminal justice data banks on a random basis by the new independent Federal-State agency and by the States themselves. Most privacy experts agree that systematic audits by outside agencies is a necessary adjunct to civil remedies and citizen rights of access and challenge for enforcement of effective legislation. As long as data bank operators realize that they are subject to random audit by independent computer experts, they are unlikely to ignore the restrictions set out in the act.

V. CONCLUSION

In conclusion, I would like to reaffirm my earlier statement that this legislation is introduced to provoke discussion and to serve as the basis of hearings. Neither I, nor any of the cosponsors feel wedded to all of the provisions of the bill. The Justice Department has been working on similar legislation for the past several months. The President described this legislation in his state of the Union address. I understand that the administration's bill is quite similar in approach to my own, though there are significant technical differences of the two bills. I welcome the administration's effort in this regard and I firmly believe that this issue is both of sufficient national importance and is of such technical complexity that a bipartisan approach is absolutely necessary. In this spirit, I am announcing today hearings before the Subcommittee on Constitutional Rights, which has jurisdiction over this subject, for the purpose of a complete and objective review of both proposals. I consider both my proposal and the Justice Department's forthcoming proposal of equal interest to the subcommittee. I hope that through the hearings which will begin in the near future, we can work out a consensus both within the subcommittee and with the administration so that privacy legislation relating to criminal justice data banks can be enacted before the end of the Congress.

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93D CONGRESS
2D SESSION

S. 2963

IN THE SENATE OF THE UNITED STATES

FEBRUARY 5, 1974

Mr. ERVIN (for himself, Mr. HRUSKA, Mr. MATHIAS, Mr. KENNEDY, Mr. BAYH, Mr. TUNNEY, Mr. YOUNG, Mr. BROOKE, Mr. MANSFIELD, Mr. ROBERT C. BYRD, Mr. BURDICK, Mr. ROTH, Mr. HUGH SCOTT, Mr. THURMOND, and Mr. FONG) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To protect the constitutional rights and privacy of individuals upon whom criminal justice information and criminal justice intelligence information have been collected and to control the collection and dissemination of criminal justice information and criminal justice intelligence information, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Criminal Justice Infor-
4 mation Control and Protection of Privacy Act of 1974".

II—O

1 TITLE I—FINDINGS AND DECLARATION OF
2 POLICY; DEFINITIONS

3 CONGRESSIONAL FINDINGS AND DECLARATION POLICY

4 SEC. 101. The Congress finds and declares that the
5 several States and the United States have established crimi-
6 nal justice information systems which have the capability of
7 transmitting and exchanging criminal justice information
8 between or among each of the several States and the United
9 States; that the exchange of this information by Federal
10 agencies is not clearly authorized by existing law; that the
11 exchange of this information has great potential for increas-
12 ing the capability of criminal justice agencies to prevent and
13 control crime; that the exchange of inaccurate or incomplete
14 records of such information can do irreparable injury to
15 the American citizens who are the subjects of the records;
16 that the increasing use of computers and sophisticated in-
17 formation technology has greatly magnified the harm that
18 can occur from misuse of these systems; that citizens' oppor-
19 tunities to secure employment and credit and their right
20 to due process, privacy, and other legal protections are
21 endangered by misuse of these systems; that in order to
22 secure the constitutional rights guaranteed by the first
23 amendment, fourth amendment, fifth amendment, sixth
24 amendment, ninth amendment, and fourteenth amendment,
25 uniform Federal legislation is necessary to govern these

1 systems; that these systems are federally funded, that they
2 contain information obtained from Federal sources or by
3 means of Federal funds, or are otherwise supported by the
4 Federal Government; that they utilize interstate facilities
5 of communication and otherwise affect commerce between
6 the States; that the great diversity of statutes, rules, and
7 regulations among the State and Federal systems require
8 uniform Federal legislation; and that in order to insure the
9 security of criminal justice information systems, and to
10 protect the privacy of individuals named in such systems,
11 it is necessary and proper for the Congress to regulate the
12 exchange of such information.

13 DEFINITIONS

14 SEC. 102. For the purposes of this Act—
15 (1) "Information system" means a system, whether
16 automated or manual, operated or leased by Federal, re-
17 gional, State, or local government or governments, including
18 the equipment, facilities, procedures, agreements, and organi-
19 zations thereof, for the collection, processing, preservation, or
20 dissemination of information.
21 (2) "Criminal justice information system" means an
22 information system for the collection, processing, preserva-
23 tion, or dissemination of criminal justice information.
24 (3) "Criminal justice intelligence information system"
25 means an information system for the collection, processing,

1 preservation, or dissemination of criminal justice intelligence
2 information.
3 (4) "Automated system" means an information system
4 that utilizes electronic computers, central information stor-
5 age facilities, telecommunications lines, or other automatic
6 data processing equipment used wholly or in part for data
7 collection, analysis, or display as distinguished from a sys-
8 tem in which such activities are performed manually.
9 (5) "Disposition" means information disclosing that
10 criminal proceedings have been concluded, including infor-
11 mation disclosing that the police have elected not to refer a
12 matter to a prosecutor or that a prosecutor has elected not to
13 commence criminal proceedings and also disclosing the na-
14 ture of the termination in the proceedings; or information
15 disclosing that proceedings have been indefinitely postponed
16 and also disclosing the reason for such postponement. Dis-
17 positions shall include, but not be limited to, acquittal, ac-
18 quittal by reason of insanity, acquittal by reason of mental
19 incompetence, case continued without finding, charge dis-
20 missed, charge dismissed due to insanity, charge dismissed
21 due to mental incompetency, charge still pending due to in-
22 sanity, charge still pending due to mental incompetence,
23 guilty plea, nolle prosequi, no paper, nolo contendere plea,
24 convicted, deceased, deferred disposition, dismissed-civil ac-
25 tion, extradited, found insane, found mentally incompetent,

1 pardoned, probation before conviction, sentence commuted,
2 adjudication withheld, mistrial-defendant discharged, or ex-
3 ecutive clemency.
4 (6) "Dissemination" means the transmission of informa-
5 tion, whether orally or in writing.
6 (7) "Criminal justice information" means information
7 on individuals collected or disseminated, as a result of arrest,
8 detention, or the initiation of criminal proceeding, by criminal
9 justice agencies, including arrest record information, correc-
10 tional and release information, criminal history record in-
11 formation, conviction record information, identification record
12 information, and wanted persons record information. The
13 term shall not include statistical or analytical records or
14 reports, in which individuals are not identified and from
15 which their identities are not ascertainable. The term shall
16 not include criminal justice intelligence information.
17 (8) "Arrest record information" means information
18 concerning the arrest, detention, or commencement of crim-
19 inal proceedings on an individual which does not include the
20 disposition of the charge arising out of that arrest, detention,
21 or proceeding.
22 (9) "Correctional and release information" means in-
23 formation on an individual compiled by a criminal justice or
24 noncriminal justice agency in connection with bail, pretrial
25 or posttrial release proceedings, reports on the mental condi-

1 tion of an alleged offender, reports on presentence investiga-
2 tions, reports on inmates in correctional institutions or partici-
3 pants in rehabilitation programs, and probation and parole
4 reports.
5 (10) "Criminal history record information" means in-
6 formation disclosing both that an individual has been arrested
7 or detained or that criminal proceedings have been com-
8 menced against an individual and that there has been a dis-
9 position of the criminal charge arising from that arrest, de-
10 tention, or commencement of proceedings. Criminal history
11 record information shall disclose whether such disposition has
12 been disturbed, amended, supplemented, reduced, or repealed
13 by further proceedings, appeal, collateral attack, or other-
14 wise.
15 (11) "Conviction record information" means informa-
16 tion disclosing that a person has pleaded guilty or nolo con-
17 tendere to or was convicted on any criminal offense in a
18 court of justice, sentencing information, and whether such
19 plea or judgment has been modified.
20 (12) "Identification record information" means finger-
21 print classifications, voice prints, photographs, and other
22 physical descriptive data concerning an individual which does
23 not include any indication or suggestion that the individual
24 has at any time been suspected of or charged with criminal
25 activity.

(13) "Wanted persons record information" means identification record information on an individual against whom there is an outstanding arrest warrant including the charge for which the warrant was issued and information relevant to the individual's danger to the community and such other information that would facilitate the regaining of the custody of the individual.

(14) "Criminal justice intelligence information" means information on an individual on matters pertaining to the administration of criminal justice, other than criminal justice information, which is indexed under an individual's name or which is retrievable by reference to identifiable individuals by name or otherwise. This term shall not include information on criminal justice agency personnel, or information on lawyers, victims, witnesses or jurors collected in connection with a case in which they were involved.

(15) "The administration of criminal justice" means any activity by a governmental agency directly involving the apprehension, detention, pretrial release, posttrial release, prosecution, defense adjudication, or rehabilitation of accused persons or criminal offenders or the collection, storage, dissemination, or usage of criminal justice information.

(16) "Criminal justice agency" means a court sitting in criminal session or a governmental agency created by statute or any subunit thereof created by statute, which performs

as its principal function, as expressly authorized by statute, the administration of criminal justice. Any provision of this Act which relates to the activities of a criminal justice agency also relates to any information system under its management control or any such system which disseminates information to or collects information from that agency.

(17) "Purge" means to remove information from the records of a criminal justice agency or a criminal justice information system so that there is no trace of information removed and no indication that such information was removed.

(18) "Seal" means to close a record possessed by a criminal justice agency or a criminal justice information system so that the information contained in the record is available only (a) in connection with research pursuant to section 201 (d), (b) in connection with review pursuant to section 207 by the individual or his attorney, (c) in connection with an audit pursuant to section 206, or (d) on the basis of a court order pursuant to section 205.

(19) "Judge of competent jurisdiction" means (a) a judge of a United States district court or a United States court of appeals; (b) a Justice of the Supreme Court of the United States; and (c) a judge of any court of general criminal jurisdiction of a State who is authorized by a statute of that State to enter orders authorizing access to criminal justice information.

1 (20) "Attorney General" means the Attorney General
2 of the United States.
3 (21) "State" means any State of the United States, the
4 District of Columbia, the Commonwealth of Puerto Rico, and
5 any territory or possession of the United States.

6 TITLE II—COLLECTION AND DISSEMINATION OF
7 CRIMINAL JUSTICE INFORMATION AND
8 CRIMINAL JUSTICE INTELLIGENCE INFOR-
9 MATION

10 DISSEMINATION, ACCESS AND USE—GENERALLY

11 SEC. 201. (a) Criminal justice information may be
12 maintained or disseminated, by compulsory process or other-
13 wise, outside the criminal justice agency which collected
14 such information, only as provided in this Act.
15 (b) Criminal justice information may be collected only
16 by or disseminated only to officers and employees of criminal
17 justice agencies: *Provided, however,* That beginning two
18 years after enactment of this Act such information may be
19 collected only by or disseminated only to officers and em-
20 ployees of criminal justice agencies which are expressly
21 authorized to receive such information by Federal or State
22 statute. Criminal justice information shall be used only for
23 the purpose of the administration of criminal justice.
24 (c) Except as otherwise provided by this Act, convic-
25 tion record information may be made available for purposes

1 other than the administration of criminal justice only if ex-
2 pressly authorized by applicable State or Federal statute.
3 (d) Criminal justice information may be made available
4 to qualified persons for research related to the administra-
5 tion of criminal justice under regulations issued by the Fed-
6 eral Information Systems Board, created pursuant to title
7 III. Such regulations shall require preservation of the ano-
8 nymity of the individuals to whom such information relates,
9 shall require the completion of nondisclosure agreements
10 by all participants in such programs and shall impose such
11 additional requirements and conditions as the Federal In-
12 formation Systems Board finds to be necessary to assure the
13 protection of privacy and security interests. In formulating
14 regulations pursuant to this section the Board shall develop
15 procedures designed to prevent this section from being used
16 by criminal justice agencies to arbitrarily deny access to
17 criminal justice information to qualified persons for research
18 purposes where they have otherwise expressed a willingness
19 to comply with regulations issued pursuant to this section.

20 DISSEMINATION OF CERTAIN CRIMINAL JUSTICE INFOR-
21 MATION TO CRIMINAL JUSTICE AGENCIES

22 SEC. 202. (a) Except as otherwise provided in this
23 section and in section 203, a criminal justice agency may
24 disseminate to another criminal justice agency only con-
25 viction record information.

(b) A criminal justice agency may disseminate arrest record information on an individual to another criminal justice agency—

(1) if that individual has applied for employment at the latter agency and such information is to be used for the sole purpose of screening that application,

(2) if the matter about which the arrest record information pertains has been referred to the latter agency for the purpose of commencing or adjudicating criminal proceedings and that agency may use the information only for a purpose related to that proceeding, or

(3) if the latter agency has arrested, detained, or commenced criminal proceedings against that individual for a subsequent offense, and the arrest record information in the possession of the former agency indicates (A) that there was a prior arrest, detention, or criminal proceeding commenced occurring less than one year prior to the date of the request, and (B) that active prosecution is still pending on the prior charge. In computing the one-year period, time during which the individual was a fugitive shall not be counted. The indication of all relevant facts concerning the status of the prosecution on the prior arrest, detention, or proceeding must be sent to the latter agency and that agency may

use the information only for a purpose related to the subsequent arrest, detention, or proceeding.

(c) A criminal justice agency may disseminate criminal history record information on an individual to another criminal justice agency—

(1) if that individual has applied for employment at the latter agency and such information is to be used for the sole purpose of screening that application,

(2) if the matter about which the criminal history information pertains has been referred to the latter agency for the purpose of commencing or adjudicating criminal proceedings or for the purpose of preparing a pretrial release, posttrial release, or presentence report and that agency may use the information only for a purpose related to that proceeding or report, or

(3) if the requesting agency has arrested, detained, or commenced criminal proceedings against that individual for a subsequent offense or if the agency is preparing a pretrial release, posttrial release, or presentence report on a subsequent offense and such information is to be used only for a purpose related to that arrest, detention, or proceeding.

(d) A criminal justice agency may disseminate correctional and release information to another criminal justice agency or to the individual to whom the information per-

tains, or his attorney, where authorized by Federal or State statute.

(e) This section shall not bar any criminal justice agency which lawfully possesses arrest record information from obtaining or disseminating dispositions in order to convert that arrest record information to criminal history information. Nor shall this section bar any criminal justice information system to act as a central repository of such information so long as a State statute expressly so authorizes and so long as that statute would in no way permit that system to violate or to facilitate violation of any provision of this Act. Nor shall this section bar any criminal justice agency from supplying criminal history information to any criminal justice information system established in the Federal Government pursuant to section 307 of this Act.

DISSEMINATION OF IDENTIFICATION RECORD INFORMATION AND WANTED PERSONS RECORD INFORMATION

SEC. 203. Identification record information may be disseminated to criminal justice and to noncriminal justice agencies for any purpose related to the administration of criminal justice. Wanted persons information may be disseminated to criminal justice and noncriminal justice agencies only for the purpose of apprehending the subject of the information.

SECONDARY USE OF CRIMINAL JUSTICE INFORMATION

SEC. 204. Agencies and individuals having access to criminal justice information shall not, directly or through any intermediary, disseminate, orally or in writing, such information to any individual or agency not authorized to have such information nor use such information for a purpose not authorized by this Act: *Provided, however,* That rehabilitation officials of criminal justice agencies with the consent of the person under their supervision to whom it refers may orally represent the substance of such individuals criminal history record information to prospective employers if such representation is in the judgment of such officials and the individual's attorney, if represented by counsel, helpful to obtaining employment for such individual. In no event shall such correctional officials disseminate records or copies of records of criminal history record information to any unauthorized individual or agency. A court may disclose criminal justice information on an individual in a published opinion or in a public criminal proceeding.

METHOD OF ACCESS AND ACCESS WARRANTS

SEC. 205. (a) Except as provided in subsection 201 (d) or in subsection (b) of this section, an automated criminal justice information system may disseminate arrest record information, criminal history record information, or conviction record information on an individual only if the inquiry is

1 based upon positive identification of the individual by means
2 of identification record information. The Federal Information
3 Systems Board shall issue regulations to prevent dissemina-
4 tion of such information, except in the above situations; where
5 inquiries are based upon categories of offense or data ele-
6 ments other than identification record information. For the
7 purpose of this section "positive identification" means iden-
8 tification by means of fingerprints or other reliable identifica-
9 tion record information.
10 (b) Notwithstanding the provisions of subsection (a),
11 access to arrest record information, criminal history record
12 information, or conviction record information contained in
13 automated criminal justice information systems on the basis
14 of data elements other than identification record information
15 shall be permissible if the criminal justice agency seeking
16 such access has first obtained a class access warrant from a
17 State judge of competent jurisdiction, if the information
18 sought is in the possession of a State or local agency or in-
19 formation system, or from a Federal judge of competent juris-
20 diction, if the information sought is in the possession of a
21 Federal agency or information system. Such warrants may
22 be issued as a matter of discretion by the judge in cases in
23 which probable cause has been shown that (1) such access
24 is imperative for purposes of the criminal justice agency's
25 responsibilities in the administration of criminal justice and

1 (2) the information sought to be obtained is not reasonably
2 available from any other source or through any other meth-
3 od. A summary of each request for such a warrant, together
4 with a statement of its disposition, shall within ninety days
5 of disposition be furnished the Federal Information Systems
6 Board by the judge.
7 (c) Access to criminal justice information which has
8 been sealed pursuant to section 206 shall be permissible if
9 the criminal justice agency seeking such access has obtained
10 an access warrant from a State judge of competent jurisdic-
11 tion if the information sought is in the possession of a State
12 or local agency or information system, or from a Federal
13 judge of competent jurisdiction, if the information sought
14 is in the possession of a Federal agency or information
15 system. Such warrants may be issued as a matter of
16 discretion by the judge in cases in which probable
17 cause has been shown that (1) such access is impera-
18 tive for purposes of the criminal justice agency's respon-
19 sibilities in the administration of criminal justice, and (2)
20 the information sought to be obtained is not reasonably avail-
21 able from any other source or through any other method.
22 SECURITY, ACCURACY, UPDATING, AND PURGING
23 SEC. 206. Each criminal justice information system shall
24 adopt procedures reasonably designed—
25 (a) To insure the physical security of the system, to

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1 prevent the unauthorized disclosure of the information con-
2 tained in the system, and to insure that the criminal justice
3 information in the system is currently and accurately revised
4 to include subsequently received information. The procedures
5 shall also insure that all agencies to which such records are
6 disseminated or from which they are collected are cur-
7 rently and accurately informed of any correction, deletion, or
8 revision of the records. Such regulations shall require that
9 automated systems shall as soon as technically feasible inform
10 any other information system or agency which has direct
11 access to criminal justice information contained in the auto-
12 mated system of any disposition relating to arrest record
13 information on an individual or any other change in criminal
14 justice information in the automated system's possession.
15 (b) To insure that criminal justice information is purged
16 or sealed when required by State or Federal statute, State or
17 Federal regulations, or court order, or when, based on con-
18 siderations of age, nature of the record, or the interval fol-
19 lowing the last entry of information indicating that the in-
20 dividual is under the jurisdiction of a criminal justice agency,
21 the information is unlikely to provide a reliable guide to the
22 behavior of the individual. Such procedures shall, as a mini-
23 mum, provide—
24 (1) for the prompt sealing or purging of criminal
25 justice information relating to an individual who has been

1 free from the jurisdiction or supervision of any law en-
2 forcement agency for (A) a period of seven years if such
3 individual has previously been convicted of an offense
4 classified as a felony under the laws of the jurisdiction
5 where such conviction occurred, or (B) a period of
6 five years, if such individual has previously been con-
7 victed of a nonfelonious offense as classified under the
8 laws of the jurisdiction where such conviction occurred,
9 or (C) a period of five years if no conviction of the
10 individual occurred during that period, no prosecution is
11 pending at the end of the period, and the individual is not
12 a fugitive; and
13 (2) for the prompt sealing or purging of criminal
14 history record information in any case in which the po-
15 lice have elected not to refer the case to the prosecutor
16 or in which the prosecutor has elected not to commence
17 criminal proceedings.
18 (c) To insure that criminal justice agency personnel
19 may use or disseminate criminal justice information only
20 after determining it to be the most accurate and complete
21 information available to the criminal justice agency. Such
22 regulations shall require that, if technically feasible, prior to
23 the dissemination of arrest record information by automated
24 criminal justice information systems, an inquiry is automati-
25 cally made of and a response received from the agency which

1 contributed that information to the system to determine
2 whether a disposition is available.
3 (d) To insure that information may not be submitted,
4 modified, updated, disseminated, or removed from any crim-
5 inal justice information system without verification of the
6 identity of the individual to whom the information refers
7 and an indication of the person or agency submitting, modi-
8 fying, updating, or removing the information.

9 ACCESS BY INDIVIDUALS FOR PURPOSES OF CHALLENGE

10 SEC. 207. (a) Any individual who believes that a crim-
11 inal justice information system or criminal justice agency
12 maintains criminal justice information concerning him, shall
13 upon satisfactory verification of his identity, be entitled to
14 review such information in person or through counsel and
15 to obtain a certified copy of it for the purpose of challenge,
16 correction, or the addition of explanatory material, and in
17 accordance with rules adopted pursuant to this section, to
18 challenge, purge, seal, delete. correct, and append explana-
19 tory material.
20 (b) Each criminal justice agency and criminal justice
21 information system shall adopt and publish regulations to
22 implement this section which shall, as a minimum, pro-
23 vide—
24 (1) the time, place, fees to the extent authorized
25 by statute, and procedure to be followed by an individ-

1 ual or his attorney in gaining access to criminal justice
2 information;
3 (2) that any individual whose record is not
4 purged, sealed, modified, or supplemented after he has
5 so requested in writing shall be entitled to a hearing
6 within thirty days of such request before an official of
7 the agency or information system authorized to purge,
8 seal, modify, or supplement the criminal justice in-
9 formation at which time the individual may appear
10 with counsel, present evidence, and examine and cross-
11 examine witnesses;
12 (3) any record found after such a hearing to be
13 inaccurate, incomplete, or improperly maintained shall,
14 within thirty days of the date of such finding, be ap-
15 propriately modified, supplemented, purged, or sealed;
16 (4) each criminal justice information system shall
17 keep and, upon request, disclose to such person the
18 name of all persons, organizations, criminal justice agen-
19 cies, noncriminal justice agencies, or criminal justice in-
20 formation systems to which the date upon which such
21 criminal justice information was disseminated;
22 (5) (A) beginning on the date that a challenge
23 has been made to criminal justice information pursuant

1 to this section, and until such time as that challenge is
2 finally resolved, any criminal justice agency or infor-
3 mation system which possesses the information shall dis-
4 seminate the fact of such challenge each time it dis-
5 seminates the challenged criminal justice information.
6 In the case of a challenge to criminal justice information
7 maintained by an automated criminal justice informa-
8 tion system, such system shall automatically inform any
9 other information system or criminal justice agency to
10 which such automated system has disseminated the
11 challenged information in the past, of the fact of the
12 challenge and its status;
13 (B) if any corrective action is taken as a result of
14 a review or challenge filed pursuant to this section, any
15 agency or system which maintains or has ever received
16 the uncorrected criminal justice information shall be
17 notified as soon as practicable of such correction and
18 immediately correct its records of such information. In
19 the case of the correction of criminal justice information
20 maintained by an automated criminal justice information
21 system, any agency or system which maintains or has
22 ever received the uncorrected criminal justice informa-
23 tion shall if technically feasible be notified immediately

1 of such correction and shall immediately correct its
2 records of such information; and
3 (6) the action or inaction of a criminal justice
4 information system or criminal justice agency on a
5 request to review and challenge criminal justice infor-
6 mation in its possession as provided by this section shall
7 be reviewable by the appropriate United States district
8 court pursuant to a civil action under section 308.
9 (c) No individual who, in accord with this section,
10 obtains criminal justice information regarding himself may be
11 required or requested to show or transfer records of that in-
12 formation to any other person or any other public or private
13 agency or organization: *Provided, however*, That if a Federal
14 or State statute expressly so authorizes, conviction record
15 information may be disseminated to noncriminal justice
16 agencies and an individual might be requested or required
17 to show or transfer copies of records of such conviction record
18 information to such noncriminal justice agencies.
19 INTELLIGENCE SYSTEMS
20 SEC. 208. (a) Criminal justice intelligence information
21 shall not be maintained in criminal justice information
22 systems.
23 (b) Criminal justice intelligence information shall not
24 be maintained in automated systems.

1 TITLE III—ADMINISTRATIVE PROVISIONS;
2 REGULATIONS; CIVIL REMEDIES; CRIMINAL
3 PENALTIES

4 FEDERAL INFORMATION SYSTEMS BOARD

5 SEC. 301. (a) CREATION AND MEMBERSHIP.—There
6 is hereby created a Federal Information Systems Board
7 (hereinafter the "Board") which shall have overall respon-
8 sibility for the administration and enforcement of this Act.
9 The Board shall be composed of nine members. One of the
10 members shall be the Attorney General and two of the mem-
11 bers shall be designated by the President as representatives
12 of other agencies outside of the Department of Justice.
13 The six remaining members shall be appointed by the Presi-
14 dent with the advice and consent of the Senate. Of the six
15 members appointed by the President, three shall be either
16 directors of statewide criminal justice information systems or
17 members of the Federal Information Systems Advisory
18 Committee at the time of their appointment. The three
19 remaining Presidential appointees shall be private citizens
20 well versed in the law of privacy, constitutional law, and
21 information systems technology. The President shall desig-
22 nate one of the six Presidential appointees as Chairman and
23 such designation shall also be confirmed by the advice and
24 consent of the Senate.

1 (b) COMPENSATION OF MEMBERS AND QUORUM.—
2 Members of the Board appointed by the President shall be
3 compensated at the rate of $100 per day for each day spent
4 in the work of the Board, and shall be paid actual travel
5 expenses and per diem in lieu of subsistence expenses when
6 away from their usual places of residence, as authorized by
7 section 5703 of title 5, United States Code. Five members
8 shall constitute a quorum for the transaction of business.
9 (c) AUTHORITY.—For the purpose of carrying out its
10 responsibilities under the Act the Board shall have authority
11 to—
12 (1) issue regulations as required by section 303;
13 (2) review and disapprove of regulations issued by
14 a State agency pursuant to section 304 or by any crim-
15 inal justice agency which the Board finds to be incon-
16 sistent with this Act;
17 (3) exercise the powers set out in subsection 307
18 (d);
19 (4) bring actions under section 308 for declaratory
20 and injunctive relief;
21 (5) operate an information system for the exchange
22 of criminal justice information among the States and with
23 the Federal Government pursuant to section 307;
24 (6) supervise the installation and operation of any
25 criminal justice information system or criminal justice

intelligence information system operated by the Federal Government;

(7) conduct an ongoing study of the policies of various agencies of the Federal Government in the operation of information systems;

(8) require any department or agency of the Federal Government or any criminal justice agency to submit to the Board such information and reports with respect to its policy and operation of information systems or with respect to its collection and dissemination of criminal justice information or criminal justice intelligence information and such department or agency shall submit to the Board such information and reports as the Board may reasonably require; and

(9) conduct audits as required by section 306.

(d) OFFICERS AND EMPLOYEES.—The Board may appoint and fix the compensation of a staff director, legal counsel, and such other staff personnel as it deems appropriate.

(e) REPORT TO CONGRESS AND TO THE PRESIDENT.—The Board shall issue an annual report to the Congress and to the President. Such report shall at a minimum contain—

(1) the results of audits conducted pursuant to section 306;

(2) a summary of public notices filed by criminal

justice information systems, criminal justice intelligence information systems, and criminal justice agencies pursuant to section 305; and

(3) any recommendations the Board might have for new legislation on the operation or control of information systems or on the collection and control of criminal justice information or criminal justice intelligence information.

FEDERAL INFORMATION SYSTEMS ADVISORY COMMITTEE

SEC. 302. (a) CREATION AND MEMBERSHIP.— There is hereby created a Federal Information Systems Advisory Committee (hereinafter called the Committee) which shall advise the Board on its activities. The Committee shall be composed of one representative from each State appointed by the Governor, who shall serve at the pleasure of the Governor. However, once the State has created an agency pursuant to subsection 304(b), the State's representative on the Committee shall be designated by that agency and shall serve at the pleasure of that agency.

(b) CHAIRMAN AND SUBCOMMITTEE.—The Committee shall be convened by the Board and at its first meeting shall elect a chairman from its membership. The Committee may create an executive committee and such other subcommittees as it deems necessary.

(c) AUTHORITY.—The Committee shall make any rec-

1 ommendations it deems appropriate to the Board concerning
2 the Board's responsibilities under this Act, including its rec-
3 ommendations concerning regulations to be issued by the
4 Board pursuant to section 303, concerning the Board's op-
5 eration of interstate information systems pursuant to section
6 307, and concerning any recommendations which the Board
7 might make in its annual report to Congress and the
8 President.
9 (d) OFFICERS AND EMPLOYEES.—The Committee
10 shall have access to the services and facilities of the Board
11 and if the Board deems necessary the Committee shall have
12 its own staff.
13 FEDERAL REGULATIONS
14 SEC. 303. The Board shall, after appropriate consulta-
15 tion with the Committee and other representatives of State
16 and local criminal justice agencies participating in informa-
17 tion systems covered by this Act and other interested parties,
18 promulgate such rules, regulations, and procedures as it
19 may deem necessary to effectuate the provisions of this Act.
20 The Board shall follow the provisions of the Administrative
21 Procedures Act with respect to the issuance of such rules. All
22 regulations issued by the Board or any criminal justice agen-
23 cy pursuant to this Act shall be published and easily acces-
24 sible to the public.

1 STATE REGULATIONS AND CREATION OF STATE INFOR-
2 MATION SYSTEMS BOARD
3 SEC. 304. Beginning two years after enactment of this
4 Act, no criminal justice agency shall collect criminal justice
5 information from, nor disseminate criminal justice informa-
6 tion to, a criminal justice agency—
7 (a) which has not adopted all of the operating pro-
8 cedures required by sections 206 and 207 and neces-
9 sitated by other provisions of the Act; or
10 (b) which is located in a State which has failed to
11 create a State information systems board. The State in-
12 formation systems board shall be an administrative body
13 which is separate and apart from existing criminal justice
14 agencies and which will have statewide authority and
15 responsibility for:
16 (1) the enforcement of the provisions of this
17 Act and any State statute which serves the same
18 goals;
19 (2) the issuance of regulations, not inconsist-
20 ent with this Act, regulating the exchange of crimi-
21 nal justice information and criminal justice intelli-
22 gence information systems and the operation of
23 criminal justice information systems and the opera-
24 tion of criminal justice intelligence information
25 systems; and

(3) the supervision of the installation of criminal justice information systems, and criminal justice intelligence information systems, the exchange of information by such systems within that State and with similar systems and criminal justice agencies in other States and in the Federal Government.

PUBLIC NOTICE REQUIREMENT

SEC. 305. (a) Any criminal justice agency maintaining an automated criminal justice information system or a criminal justice intelligence information system shall give public notice of the existence and character of its system once each year. Any agency maintaining more than one system shall publish such annual notices for all its systems simultaneously. Any agency proposing to establish a new system, or to enlarge an existing system, shall give public notice long enough in advance of the initiation or enlargement of the system to assure individuals who may be affected by its operation a reasonable opportunity to comment. The public notice shall be transmitted to the Board and shall specify—

(1) the name of the system;

(2) the nature and purposes of the system;

(3) the categories and number of persons on whom data are maintained;

(4) the categories of data maintained, indicating which categories are stored in computer-accessible files;

(5) the agency's operating rules and regulations issued pursuant to sections 206 and 207, the agency's policies and practices regarding data information storage, duration of retention of information, and disposal thereof;

(6) the categories of information sources;

(7) a description of all types of use made of information, indicating those involving computer-accessible files, and including all classes of users and the organizational relationships among them; and

(8) the title, name, and address of the person immediately responsible for the system.

(b) Any criminal justice agency, criminal justice information system, or criminal justice intelligence information system operated by the Federal Government shall satisfy the public notice requirement set out in subsection (a) of this section by publishing the information required by that subsection in the Federal Register.

ANNUAL AUDIT

SEC. 306. (a) At least once annually the Board shall conduct a random audit of the practices and procedures of the Federal agencies which collect and disseminate information pursuant to this Act to insure compliance with its require-

ments and restrictions. The Board shall also conduct such an audit of at least ten statewide criminal justice information systems each year and of every statewide and multistate system at least once every five years.

(b) Each criminal justice information system shall conduct a similar audit of its own practices and procedures once annually. Each State agency created pursuant to subsection 304(b) shall conduct an audit on each criminal justice information system and each criminal justice intelligence information system operating in that State on a random basis, at least once every five years.

(c) The results of such audits shall be made available to the Board which shall report the results of such audits once annually to the Congress by May 1 of each year beginning on May 1 following the first full calendar year after the effective date of the Act.

PARTICIPATION BY THE BOARD

SEC. 307. (a) Subject to the limitations of subsections (b) and (c) of this section, the Board may participate in interstate criminal justice information systems, including the provision of central information storage facilities and telecommunications lines for interstate transmission of information.

(b) Facilities operated by the Board may include criminal history record information on an individual relating to

a violation of the criminal laws of the United States, violations of the criminal laws of two or more States, or a violation of the laws of another nation. As to all other individuals, criminal justice information included in Board facilities shall consist only of information sufficient to establish the identity of the individuals, and the identities and locations of criminal justice agencies possessing other types of criminal justice information concerning such individuals.

(c) Notwithstanding the provisions of subsection (b), the Board may maintain criminal history record information submitted by a State which otherwise would be unable to participate fully in a criminal history record information system because of the lack of facilities or procedures but only until such time as such State is able to provide the facilities and procedures to maintain the records in the State, and in no case for more than five years. Criminal history record information maintained in Federal facilities pursuant to this subsection shall be limited to information on offenses classified as felonies under the jurisdiction where such offense occurred.

(d) If the Board finds that any criminal justice information system or criminal justice agency has violated any provision of this Act, it may (1) interrupt or terminate the exchange of information as authorized by this section, or (2) interrupt or terminate the use of Federal funds for the

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1 operation of such a system or agency, or (3) require the
2 system or agency to return Federal funds distributed in the
3 past, or it may take any combination of such actions or (4)
4 require the system or agency to discipline any employee
5 responsible for such violation.

6 CIVIL REMEDIES

7 SEC. 308. (a) Any person aggrieved by a violation of
8 this Act shall have a civil action for damages or any other
9 appropriate remedy against any person, system, or agency
10 responsible for such violation after he has exhausted the
11 administrative remedies provided by section 207.

12 (b) The Board or any State agency created pursuant
13 to subsection 304 (b) shall have a civil action for declaratory
14 judgments, cease and desist orders, and such other injunctive
15 relief against any criminal justice agency, criminal justice
16 information system, or criminal justice intelligence informa-
17 tion system within its regulatory jurisdiction.

18 (c) Such person, agency, or the Board may bring a
19 civil action under this Act in any district court of the United
20 States for the district in which the violation occurs, or in any
21 district court of the United States in which such person
22 resides or conducts business, or has his principal place of
23 business, or in the District Court of the United States for the
24 District of Columbia.

25 (d) The United States district court in which an action

1 is brought under this Act shall have exclusive jurisdiction
2 without regard to the amount in controversy. In any action
3 brought pursuant to this Act, the court may in its discre-
4 tion issue an order enjoining maintenance or dissemination
5 of information in violation of this Act, or correcting records
6 of such information or any other appropriate remedy ex-
7 cept that in an action brought pursuant to subsection (b)
8 the court may order only declaratory or injunctive relief. In
9 any action brought pursuant to this Act the court may also
10 order the Board to conduct an audit of the practices and pro-
11 cedures of the agency in question to determine whether in-
12 formation is being collected and disseminated in a manner
13 inconsistent with the provisions of this Act.

14 (e) In an action brought pursuant to subsection (a),
15 any person aggrieved by a violation of this Act shall be
16 entitled to a $100 recovery for each violation plus actual
17 and general damages and reasonable attorneys' fees and
18 other litigation costs reasonably incurred. Exemplary and
19 punitive damages may be granted by the court in appropriate
20 cases brought pursuant to subsection (a). Any person, sys-
21 tem, or agency responsible for violations of this Act shall
22 be jointly and severally liable to the person aggrieved for
23 damages granted pursuant to this subsection. Any criminal
24 justice information system or any criminal justice intelligence
25 information system which facilitates the transfer of informa-

tion in violation of this Act shall be jointly and severally liable along with any criminal justice agency or person responsible for a violation of this Act.

(g) For the purposes of this Act the United States shall be deemed to have consented to suit and any agency or system operated by the United States, found responsible for a violation shall be liable for damages, reasonable attorneys' fees, and litigation cost as provided in subsection (f) notwithstanding any provisions of the Federal Tort Claims Act.

CRIMINAL PENALTIES

SEC. 309. Whoever willfully disseminates, maintains, or uses information knowing such dissemination, maintenance, or use to be in violation of this Act shall be fined not more than $5,000 or imprisoned for not more than five years, or both.

PRECEDENCE OF STATE LAWS

SEC. 310. (a) Any State law or regulation which places greater restrictions upon the dissemination of criminal justice information or criminal justice intelligence information or the operation of criminal justice information systems or criminal justice intelligence information systems or which affords to any individuals, whether juveniles or adults, rights of privacy or protections greater than those set forth in this Act shall

take precedence over this Act or regulations issued pursuant to this Act.

(b) Any State law or regulation which places greater restrictions upon the dissemination of criminal justice information or criminal justice intelligence information or the operation of criminal justice information systems or criminal justice intelligence information systems or which affords to any individuals, whether juveniles or adults, rights of privacy or protections greater than those set forth in the State law or regulations of another State shall take precedence over the law or regulations of the latter State where such information is disseminated from an agency or information system in the former State to an agency, information system, or individual in the latter State. Subject to court review pursuant to section 308, the Board shall be the final authority to determine whether a State statute or regulation shall take precedence under this section and shall as a general matter have final authority to determine whether any regulations issued by a State agency, a criminal justice agency, or information system violate this Act and are therefore null and void.

APPROPRIATIONS AUTHORIZED

SEC. 311. For the purpose of carrying out the provisions of this Act there are authorized to be appropriated such sums as the Congress deems necessary.

37

1 SEVERABILITY

2 SEC. 312. If any provision of this Act or the application
3 thereof to any person or circumstance is held invalid, the
4 remainder of the Act and the application of the provision
5 to other persons not similarly situated or to other circum-
6 stances shall not be affected thereby.

7 REPEALERS

8 SEC. 313. The second paragraph under the headings en-
9 titled "Federal Bureau of Investigation; Salaries and Ex-
10 penses" contained in the "Department of Justice Appropria-
11 tions Act, 1973" is hereby repealed.

12 EFFECTIVE DATE

13 SEC. 314. The provisions of this Act shall take effect
14 upon the date of expiration of the one-hundred-and-eighty-
15 day period following the date of the enactment of this Act:
16 *Provided, however*, That section 311 of this Act shall take
17 effect upon the date of enactment of this Act.

CRIMINAL JUSTICE INFORMATION CONTROL AND PROTECTION OF PRIVACY ACT OF 1974

SECTION-BY-SECTION DISCUSSION

Title I—Findings and declaration of policy definitions

Section 101 summarizes the constitutional, legal and practical reasons Congress is taking action to regulate the exchange of criminal justice information. It also states the constitutional authority to legislate: the Commerce clause and the Federal participation in state and interstate information systems.

Section 102 lists definitions of terms used in the proposed legislation. The definitions are important because they establish the scope of coverage of the legislation. For example "criminal justice agency" is defined so that the restrictions on data collection and dissemination contained in the bill cover any state, local or Federal governmental agency maintaining such data.

"Criminal justice information" is defined so that limited exchange of routine information reflecting the status of a criminal case and its history, or reports compiled for bail or probation can be exchanged between governmental agencies. All other information referenced under an individual's name and related to criminal activity is called "criminal justice intelligence" and is placed under stricter limitations.

Title II—Collection and dissemination of criminal justice information and criminal justice intelligence information

Section 201 sets the general policy on the collection and dissemination of criminal justice information. Criminal justice information can only be used for criminal justice purposes unless a state or Federal statute specifically authorizes dissemination of conviction records to non-criminal justice agencies. The section permits researchers access to the information only if the privacy of the subjects of the information is protected.

Sections 202 and 203 deal with the exchange of criminal justice information among criminal justice agencies. The general rule is that only conviction records may be exchanged. However, there are limited exceptions to that general rule. For example, corrections and release information can be disseminated outside of the agency which collected it only where expressly authorized by state or Federal statute. Fingerprint information may be freely disseminated as long as no stigma is attached. Wanted persons information, that is identifying information on a fugitive, may be disseminated liberally for the purpose of apprehending the fugitive. Raw arrest records and records of criminal proceedings which did not result in conviction could be exchanged in certain carefully defined situations.

Section 204 prohibits agencies or persons who lawfully gain access to information from using the information for a purpose or from disseminating the information in a manner not permitted by the legislation.

Section 205 is based on a provision contained in Project SEARCH's model state statute and the Massachusetts arrest records statute. It places limitations on access to criminal justice information via categories other than name. For example, it would require investigators to get a court order before accessing a criminal justice data bank by offense—i.e., a printout on all persons charged with Burglary I with certain physical descriptions and from a certain geographical area. According to the commentary on the SEARCH model statute: "(the provision) is modeled on the provisions which now govern wiretapping and electronic eavesdropping. It is intended to interpose the judgment of an impartial magistrate to control the usage of an investigative method that may, if misused, create important hazards for individual privacy". Section 205 creates a similar procedure for the opening of sealed records.

Section 206 requires every agency or information system covered by the act to promulgate regulations on security, accuracy, updating and purging and sets out in general terms what those regulations must provide. The regulations must provide a method for informing users of changes in disseminated information and for the purging of old, outdated and irrelevant information.

Section 207 requires every agency or information system covered by the act to establish a process for access and challenge of incorrect or inaccurate information. The section sets out in considerable detail what those regulations must provide. This section should be read along with section 308 which provides court review procedures where the agency fails to comply with section 207 or any other provision of the Act.

Section 208 places simple but very strict limitations on the collection and dissemination of intelligence information. Such information may not be maintained in automated systems and must be kept separate and apart from all other criminal justice files.

Title III—Administrative provisions; regulations; civil remedies; criminal penalties

Title III creates a novel Federal-state administrative structure for enforcement of the Act. Section 301 establishes a Federal Information Systems Board, an independent agency with general responsibility for administration and enforcement of the Act. The Board would be composed of representatives of the Department of Justice and two other Federal agencies, plus six other members nominated by the President, with the advice and consent of the Senate. Of the latter six members, three must be representatives of state governments and three private citizens well versed in civil liberties and computer technology. The President would also designate a chairman from the latter six members.

The Board would have the authority to issue general regulations applying the Act's policies. It could operate the interstate information system authorized by section 307. It would conduct audits pursuant to section 306, and would have other necessary enumerated powers as well as authority to conduct general studies of information systems and make recommendations to the Congress for additional legislation.

Section 302 creates an Information Systems Advisory Committee composed of one representative from each state. The Committee shall advise the Board on all of the Board's responsibilities under the Act and in particular provide advice on the Board's operation of the interstate information system established pursuant to Section 307 and the Board's promulgation of regulations pursuant to Section 303.

Section 303 requires the Federal Information Systems Board to issue regulations which implement this Act.

Section 304 requires each state to establish a central administrative agency, separate and apart from existing criminal justice agencies, with broad authority to oversee and regulate the operation of criminal justice information systems in that state. This section is based upon the concept embodied in the Project SEARCH model statute and the Massachusetts statute. Beginning two years after enactment no information system or agency could exchange information with a system or agency in a state which has not created such an agency or with a system or agency which has not adopted all of the regulations required by sections 206 and 207 or elsewhere in the Act.

Section 305 is based upon a suggestion contained in the Report of the Secretary's Advisory Committee on Automated Personal Data Systems of the Department of Health, Education, and Welfare. It requires every information system or agency to give public notice, once annually, of the type of information it collects and disseminates, its sources, purpose, function, administrative director or other pertinent information. It also requires every system or agency to give public notice of an expansion and any new system to give public notice before it becomes operational so that interested parties will have an opportunity to comment.

Section 306 requires audits of systems and agencies which collect and disseminate information. The audits are to be conducted by the Federal Information Systems Board, by an independent state agency created pursuant to Section 304 and by each criminal justice agency.

Section 307 is a general grant of authority permitting, the Federal Government to operate an interstate criminal justice information system under the policy control of the Federal-State board. However, the Federal role is carefully circumscribed. Information contained in such a Federal system is limited to a simple index containing the subject's name and the name of the state or local agency which possesses a more complete file. The Federal Information Systems Board could maintain more complete files on violations of a criminal law of the United States, violations of the criminal law of two or more states, or violations of the laws of another nation. Only persons charged with felonies could be listed in the data banks. If a given state lacks the facilities to operate an automated information system the Information Systems Board could provide the facilities for a period of five years.

The section also lists certain administrative actions that may be taken by the Federal Information Systems Board in the event that a criminal justice information system is found to have violated any provision of the Act.

Section 308 provides the judicial machinery for the exercise of the right granted in Section 207 and elsewhere in the Act. The aggrieved individual may obtain both injunctive relief and damages, $100 recovery for each violation, actual and general damages, attorney's fees, and other litigation costs whether violations were willful or negligent.

Section 309 provides criminal penalties for violations of the Act.

Section 310 provides that any state statute, state regulation or Federal regulation which imposes stricter privacy requirements on the operation of criminal justice information systems or upon the exchange of criminal justice information takes precedence over this Act or any regulations issued pursuant to this Act or any other state law when a conflict arises. Subject to court review pursuant to section 308, the Federal Information Systems Board would make the administrative decision as to which statute or regulation governs, and whether a regulation comports with this Act.

Section 311 authorizes the appropriation of such funds as the Congress deems necessary for the purposes of the Act.

Section 312 is a standard severability provision.

Section 313 repeals a temporary authority for the Federal Bureau of Investigation to disseminate Rap sheets to non-criminal justice agencies.

Section 314 makes this Act effective six months after its enactment.

INTRODUCTION OF S. 2964—CRIMINAL SYSTEMS ACT OF 1974

Mr. HRUSKA. Mr. President, I am pleased to introduce on behalf of the Department of Justice a bill entitled "Criminal Justice Information Systems Act of 1974," S. 2964. I send it to the desk and ask that it be appropriately referred.

The PRESIDING OFFICER (Mr. HELMS). The bill will be received and appropriately referred.

Mr. HRUSKA. Mr. President, this bill will provide for and facilitate the collection, classification, maintenance, and use of criminal justice information; and also make provision for and regulate access thereto, as well as uses and dissemination thereof. It is intended to provide strong safeguards against unwarranted violation of privacy of the individuals to whom such information pertains, and to insure physical security and integrity of criminal justice information systems, and for other related purposes.

At the same time, I am further pleased to cosponsor with my valued friend, the distinguished senior Senator from North Carolina (Mr. ERVIN), the Criminal Justice Information Control and Protection of Privacy Act of 1974, S. 2963, which he introduced earlier this afternoon, and of which he is the author. Senator ERVIN's bill takes a somewhat different approach to several aspects of the subject than are contained in the bill which I have introduced, but generally their respective fundamental objectives, thrust, and other provisions parallel each other.

Mr. President, in introducing the one bill and in cosponsoring the other, it should be made clear that I am not indorsing or approving either in its entirety. The thrust, the fundamental objectives, and in many provisions, yes, there is indorsement and approval. Some of the cosponsors to the bill I am introducing have also expressed this thought. But in each there are a number of provisions which must be subjected to close scrutiny, searching analysis, and full study before they are accepted, modified, or rejected. Certain of the provisions in each bill will be controversial and even mutually exclusive so that a choice will be mandatory. Indeed there is much room for debate and sincere difference of opinion.

As to some of such instances as they are now drafted I find that I myself have not reached a firm judgment.

But, Mr. President, both of these bills have much merit. Both will be excellent vehicles to serve as bases for processing legislation on the pertinent subject matter. It is with this thought in mind that I have expressed favor for each, namely, that we will hear from various witnesses the opposing views and elicit more complete information and implications. Also there will be later discussions among our colleagues on the Judiciary Committee and in the Senate, so that a composite judgment may be formulated.

It may be unrealistic to assume that both bills will be viewed with equal favor by all, but it should not be too much to hope that the task of seeking a common, acceptable ground upon which to enact a law will be performed with good faith and fairness. It is in that spirit that I join with the Senator from North Carolina, and in that spirit also that I accept his joining with me in my offering of the bill of the Department of Justice.

Mr. President, I have long been concerned with the need to protect the rights of privacy of the citizens of this country and to guarantee that such rights are provided for in the operation of criminal justice information systems. I have been particularly concerned with insuring that criminal justice records are complete and accurate and that the exchange of such records is accomplished in a manner which safeguards the rights of citizens while, at the same time, providing for the legitimate needs of the criminal justice system and of the society which it serves.

In 1970 I supported an amendment offered by Senator MATHIAS to the Omnibus Crime Control and Safe Streets Act of 1968 to require the Law Enforcement Assistance Administration to submit recommendations for legislative action which would assist in promoting the integrity and accuracy of criminal justice data and would insure that the collection, dissemination, and processing of such information in criminal justice systems would be designed to provide maximum protection for the constitutional rights of all persons covered by such systems. In the 92d Congress I introduced the Criminal Justice Information System Security and Privacy Act of 1971, S. 2546, which was the LEAA response to Senator MATHIAS' amendment.

In the first session of this Congress, Senator McCLELLAN and I supported and supplemented the amendment by the distinguished Senator from Massachusetts (Mr. KENNEDY) to the Crime Control Act of 1973 which required LEAA to issue regulations to insure as far as practicable the completeness and accuracy of information contained in LEAA-funded criminal justice systems. The amendment, section 524(b) of the Crime Control Act, limited the dissemination of criminal justice information in LEAA-funded systems to legally authorized needs and required that individuals have access to their records in order to insure that information contained about them in the system is accurate and complete. I stated at that time that additional legislation would be forthcoming which would supplement and complement that amendment to the Safe Streets Act.

The Criminal Justice Information Systems Act of 1974 is that legislation. It applies to all criminal justice information systems funded in whole or in part by the Federal Government. It also applies to all interstate criminal justice information systems, and to the extent that a State or local system exchanges information with a federally funded or interstate system such system would also be subject to the provisions of this legislation.

The Criminal Justice Act applies to both manual and automated information systems. It deals comprehensively with the dissemination of arrest records and the access and use of all criminal justice information. Strong provisions are provided for an individual to review information contained in the system for the purpose of challenge or correction. Criminal justice agencies contributing criminal offender record information to a criminal justice information system are required to supply accurate and complete data and must regularly and accurately revise such data to include dispositional information.

The bill provides that criminal intelligence data must be kept separately from criminal offender record information and may only be used for a criminal justice purpose.

Provision is also made in this act for the sealing of criminal offender record information under specified circumstances. Dissemination and use of criminal justice information for noncriminal justice purposes is severely limited. The bill sets forth administrative sanctions and civil and criminal penalties for the violation of the provisions.

There are many similarities between the Criminal Justice Information Systems Act of 1974 and Senator ERVIN's bill, the Criminal Justice Information Control and Protection of Privacy Act of 1974 which I am cosponsoring today.

Both bills reflect much of the work of the LEAA-funded programs, Project SEARCH—System for Electronic Access and Retrieval of Criminal Histories—which in 1970 developed strong regulations for protecting the security and privacy of criminal justice systems. They also reflect many of the recommendations of the National Advisory Commission on Criminal Justice Standards and Goals as set forth in its commendable task force report on criminal justice systems. The security and privacy controls of the Federal Bureau of Investigation and its National Crime Information Center are also reflected in the bills.

Both bills recognize the harm which can occur through the exchange of inaccurate or incomplete records and provide methods to insure that data collected will be both accurate and complete. Each allows an individual to review a criminal offender record concerning himself for the purpose of correction.

Both bills contain requirements for sealing of records where an individual has been free from the jurisdiction of a criminal justice agency for a set period of time and the information is unlikely to provide a reliable guide to the behavior of the individual. Each requires annual public notice by a criminal justice agency of the existence and character of its automated systems.

Both bills set forth dissemination limitations and provide for administrative sanctions, civil and criminal remedies for violation of the acts.

It is because of these similarities and because of our traditional interest in achieving bipartisan support for legislation that I am cosponsoring Senator ERVIN's bill and Senator ERVIN is cosponsoring my bill.

Senator ERVIN has done a great service in providing us with this bill, as has the Department of Justice, through its Attorney General and his very dedicated staff, in compiling and formulating the bill which I have introduced. This is a complicated area, and the more ideas we have to consider the better able we will be to provide the best possible legislation. In keeping with this spirit of cooperation and bipartisanship, I look forward to the development and progress which the hearings which have been announced will produce, and which later developments will also follow.

The steadily increasing capability of the criminal justice system for gathering, processing and transmitting information requires prompt attention to the issues of system security and individual privacy. Criminal justice has a valid need for more and better information but there is an equally valid need to insure that this information is kept in a secure manner where it cannot be destroyed and to guarantee that the constitutional rights of citizens who have their records entered in this system are fully protected. There must be a balancing between all of these interests. The legislation introduced today seeks to strike that balance.

Hearings on these bills and on any other pertinent bills will be forthcoming soon, and I hope that as a result thereof we can put together a mutually acceptable bill in a reasonable time.

It is my further hope that in setting these hearings for a specific day and specific hour, some accommodation will be made for other committees, subcommittees, of the Committee on the Judiciary as well as others, because, while all of us must sacrifice the opportunity, in some instances, to follow through on some hearings on this particular subject. I am sure that we would all like to be present at as many of those hearings as possible.

Mr. President, I ask unanimous consent that the text of my bill, along with the letter of transmittal from the Attorney General and his section-by-section analysis, be printed in the RECORD immediately following my remarks.

There being no objection, the bill, the section-by-section analysis, and letter of transmittal were ordered to be printed in the RECORD, as follows:

93D CONGRESS
2D SESSION

S. 2964

IN THE SENATE OF THE UNITED STATES

FEBRUARY 5, 1974

Mr. HRUSKA (for himself, Mr. ERVIN, Mr. BROOKE, Mr. ROBERT C. BYRD, Mr. BURDICK, Mr. FONG, Mr. GURNEY, Mr. MATHIAS, Mr. ROTH, Mr. HUGH SCOTT, Mr. THURMOND, and Mr. YOUNG) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To facilitate and regulate the exchange of criminal justice information.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Criminal Justice In-
4 formation Systems Act of 1974".

5 FINDINGS AND PURPOSE

6 SEC. 2. (a) The exchange of criminal justice informa-
7 tion, including criminal offender record information or sum-
8 maries of the criminal records of individuals, between Federal
9 and State criminal justice agencies or between criminal
10 justice agencies located in different States is a useful and

1 proper aid to law enforcement. However, such exchange and
2 the handling of the information must be accomplished in
3 a manner which safeguards the interests of the individuals
4 to whom the information refers.

5 (b) Particular risks, from the standpoint of the indi-
6 vidual, may be presented when criminal justice information
7 is used for a purpose not related to criminal justice. No such
8 use should be permitted unless it is clearly necessary and is
9 justified on the basis of weighing the interests of the indi-
10 vidual (including the right of privacy, procedural rights,
11 and access to employment) against the needs of government
12 or of society.

13 (c) Enforcement of criminal laws is primarily the re-
14 sponsibility of State and local governments. However, Fed-
15 eral regulation of the criminal justice information systems
16 which are covered by this Act is appropriate because of the
17 federally connected or interstate nature of those systems. This
18 Act is based upon the powers of Congress—

19 (1) to place reasonable conditions upon the receipt
20 of Federal grants or other Federal services or benefits,

21 (2) to regulate use of the means of interstate com-
22 munication, and

23 (3) to enforce the due process and equal protection
24 clauses of the fourteenth amendment.

DEFINITIONS

SEC. 3. For the purpose of this Act—

(a) "Criminal justice information system" means a system, including the equipment, facilities, procedures, agreements, and organizations, utilized for the collection, processing, preservation, or dissemination of criminal justice information.

(b) "Automated system" means a criminal justice information system that utilizes electronic computers or other automatic data processing equipment, as distinguished from a system in which all operations are performed manually.

(c) "Criminal offender record information" means information contained in a criminal justice information system, compiled by a criminal justice agency for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status.

(d) "Criminal intelligence information" means information compiled by a criminal justice agency for the purpose of criminal investigation, including reports of informants and investigators, contained in a criminal justice information system and associated with an identifiable individual. The term does not include criminal offender record information.

(e) "Criminal offender processing information" includes all reports identifiable to an individual compiled at any stage of the criminal justice process from arrest or indictment through release from supervision. This term does not include criminal intelligence information.

(f) "Criminal justice information" means criminal offender record information, criminal intelligence information, and criminal offender processing information.

(g) "Criminal justice" means any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities.

(h) "Criminal justice agency" means a public agency or component thereof which performs as its principal function a criminal justice activity.

(i) "Interstate system" means a criminal justice information system which is used for the transfer of criminal justice information between criminal justice agencies located in two or more States.

(j) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(k) "Attorney General" means the Attorney General of the United States or his designee.

1 (l) "Sealing" means the closing of a record so that the
2 information contained in the record is available only (1)
3 in connection with review pursuant to section 6 by the in-
4 dividual or (2) on the basis of a court order or a specific
5 determination of the Attorney General.

6 COVERAGE

7 SEC. 4. (a) This Act applies to any criminal justice
8 information system which is—
9 (1) operated by the Federal Government,
10 (2) operated by a State or local government and
11 funded in whole or in part by the Federal Government,
12 (3) an interstate system, or
13 (4) operated by a State or local government and
14 engaged in the exchange of criminal justice information
15 with a system covered by paragraphs (1), (2), or
16 (3): *Provided*, That a system described only by para-
17 graph (4) shall be subject to this Act only to the extent
18 of its participation with a system described by para-
19 graph (1), (2), or (3).
20 (b) This Act applies to criminal justice information
21 obtained from a foreign government or an international
22 agency to the extent that such information is contained in
23 a criminal justice information system subject to this Act.
24 Whenever any criminal justice information contained in a
25 criminal justice information system subject to this Act is

1 provided to a foreign government or an international agency,
2 appropriate steps should be taken to assure that such informa-
3 tion is used in a manner consistent with the provisions of
4 this Act.
5 (c) The provisions of this Act do not apply to lists or
6 systems utilized by criminal justice agencies for the sole pur-
7 pose of identifying or apprehending fugitives or wanted
8 persons.

9 ACCESS AND USE

10 SEC. 5. (a) The provisions of this section apply to any
11 criminal justice information system subject to this Act and
12 to any agency or person who, directly or indirectly, obtains
13 criminal justice information from such a system.
14 (b) Direct access to information contained in a criminal
15 justice information system subject to this Act shall be avail-
16 able only to authorized officers or employees of a criminal
17 justice agency.
18 (c) (1) Except as provided in paragraphs (2) and
19 (3), criminal intelligence information may be used only
20 for a criminal justice purpose, and only where need for the
21 use has been established in accord with regulations issued
22 by the Attorney General.
23 (2) Criminal intelligence information may be used for
24 a purpose not related to criminal justice if the Attorney
25 General determines, with regard to the particular case or

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1 class of cases, that such use is necessary because of reasons
2 of national defense or foreign policy.

3 (3) Criminal intelligence information compiled by a
4 criminal justice agency which is a component of a Federal,
5 State, or local agency may be made available to a non-
6 criminal-justice component of the same agency if the infor-
7 mation is necessary for performance of a statutory function
8 of the non-criminal-justice component. Such information may
9 be used by the non-criminal-justice component only in
10 connection with performance of a statutory function.

11 (d) (1) Except as provided in paragraphs (2) through
12 (4), criminal offender processing information may be used
13 only for a criminal justice purpose, and only where need
14 for the use has been established in accord with regulations
15 issued by the Attorney General.

16 (2) Particular criminal offender processing information
17 may be made available to the individual to whom the
18 information refers, pursuant to a court order or a Federal
19 or State statute or regulation.

20 (3) Criminal offender processing information may be
21 made available to qualified persons for research related
22 to criminal justice under procedures designed to assure the
23 security of the information released and the privacy of indi-
24 viduals to whom the information refers.

25 (4) Criminal offender processing information may be

1 used for a purpose not related to criminal justice if such
2 use is expressly authorized by a court order or Federal or
3 State statute. The Attorney General shall determine, with
4 regard to the particular case or class of cases, whether
5 such use is expressly authorized by statute, and his deter-
6 mination shall be conclusive.

7 (e) (1) Criminal offender record information may be
8 used for criminal justice purposes or for other purposes which
9 are expressly provided for by Federal statute or Executive
10 order or State statute. The Attorney General shall deter-
11 mine, with regard to the particular case or class of cases,
12 whether such use is expressly provided for by statute or by
13 Executive order, and his determination shall be conclusive.

14 (2) Criminal offender record information may be made
15 available, pursuant to section 6, to the individual.

16 (3) Criminal offender record information may be made
17 available to qualified persons for research related to criminal
18 justice under procedures designed to assure the security of
19 the information released and the privacy of individuals to
20 whom the information refers.

21 (f) Any agency operating a criminal justice informa-
22 tion system subject to this Act shall maintain records with
23 regard to—

24 (1) requests from any other agency or person for
25 criminal justice information. Such records shall include:

1 (A) regarding any request for use for a
2 criminal justice purpose, the identity of the re-
3 quester, the nature of the information provided and
4 pertinent dates; and
5 (B) regarding any request for use for a non-
6 criminal-justice purpose, the identity of the re-
7 quester, the nature, purpose, and disposition of the
8 request, and pertinent dates.
9 (2) the source of criminal offender record informa-
10 tion: *Provided*, That regulations of the Attorney Gen-
11 eral may provide for exceptions with regard to the
12 source of identifying data.

13 REVIEW OF CRIMINAL OFFENDER RECORD INFORMATION
14 BY THE INDIVIDUAL

15 SEC. 6. (a) Any individual who complies with appli-
16 cable regulations shall be entitled to review criminal offender
17 record information regarding himself contained in any crimi-
18 nal justice information system subject to this Act, and to
19 obtain a copy of the information for the purpose of challenge
20 or correction.
21 (b) Each Federal agency which operates a criminal
22 justice information system and each State shall adopt regula-
23 tions to implement this section. Such regulations shall (1)
24 require that an individual making such a request vertify his
25 identity by fingerprints or other specified means, (2) ex-

1 plain the procedures for making such requests and perform-
2 ing such review, including such matters as time, place, and
3 fees, and (3) provide for the waiver, in appropriate cases,
4 of any applicable fees.
5 (c) Except with regard to national defense or foreign
6 policy cases, or with regard to the appointment of a judge
7 or a civil officer, which appointment is subject to the advice
8 and consent of the Senate, when criminal offender record
9 information is requested, in accord with paragraph (5) (c)
10 (1), for a purpose not related to criminal justice, the crimi-
11 nal justice agency to which the request is made shall require
12 the requester to notify the individual that criminal offender
13 record information concerning him is being requested, and
14 that he has a right to review his record for the purpose of
15 challenge or correction.
16 (d) No individual who, in accord with subsection (a)
17 or (c), obtains a copy of criminal offender record informa-
18 tion regarding himself may be required or requested to show
19 or transfer that copy to any person or agency.
20 (e) If, after review of information obtained pursuant to
21 subsection (a) or (c), the individual disputes its accuracy
22 or completeness, he may apply for correction or revision to
23 the agency responsible for original entry of the allegedly in-
24 complete or inaccurate information. When correction or revi-
25 sion is warranted, the responsible agency shall immediately

1 make the necessary correction or revision and take appro-
2 priate steps to have the correction or revision made with
3 respect to all criminal justice information systems containing
4 the information.
5 (f) In the event that an individual is dissatisfied with
6 the decision of a criminal justice agency with respect to his
7 request for correction or revision of information, the individ-
8 ual shall be afforded administrative review in accord with
9 applicable regulations.
10 (g) If an individual is dissatisfied with the final adminis-
11 trative decision, he may obtain judicial review of that deci-
12 sion by bringing an action pursuant to subsection 14 (a).
13 ACCURACY AND COMPLETENESS OF CRIMINAL OFFENDER
14 RECORD INFORMATION
15 SEC. 7. (a) Any criminal justice agency which con-
16 tributes criminal offender record information to a criminal
17 justice information system subject to this Act shall assure
18 that the information it contributes is accurate and complete
19 and that it is regularly and accurately revised to include dis-
20 positional and other subsequent information.
21 (b) All Federal, State, or local criminal justice agen-
22 cies, including courts and correctional authorities, shall take
23 the steps necessary to achieve compliance with subsection
24 (a).

1 DISSEMINATION OF ARREST RECORDS
2 SEC. 8. (a) This section applies to any criminal justice
3 information system subject to this Act and to any agency
4 or person who, directly or indirectly, obtains criminal of-
5 fender record information from any such system.
6 (b) No information relating to an arrest may be dis-
7 seminated without the inclusion of the final disposition of the
8 charges if a disposition has been reported. Any agency or
9 person requesting or receiving information relating to an ar-
10 rest from a system subject to this Act shall use such informa-
11 tion only for the purpose of the request. Subsequent use of
12 the same information shall require a new inquiry of the
13 system to assure that it is up to date.
14 (c) Except as provided in subsection (d), criminal
15 offender record information concerning the arrest of an indi-
16 vidual may not be disseminated or used for a non-criminal-
17 justice purpose if—
18 (1) the individual is acquitted of the charge for
19 which he was arrested,
20 (2) the charge is dismissed,
21 (3) a determination to abandon prosecution of the
22 charge is made by the prosecuting attorney, or
23 (4) an interval of one year has elapsed from the
24 date of the arrest and no final disposition of the charge
25 has resulted and no active prosecution of the charge is

pending: *Provided*, That the one-year period does not include any period during which the individual is a fugitive.

(d) The prohibition set forth in subsection (c) shall not apply—

(1) when the Attorney General determines, with regard to the particular case or class of cases, for reasons of national defense or foreign policy it should not apply,

(2) with regard to the appointment by the President of a judge or a civil officer whose appointment is subject to the advice and consent of the Senate,

(3) with regard to use, pursuant to paragraph (5) (e) (3), for research purposes,

(4) with regard to use, pursuant to subsection (6) (a) or (c), by the individual for adjudication of a claim that the information is inaccurate or incomplete,

(5) where a court order specifically provides otherwise, or

(6) where a Federal statute expressly provides that the prohibition shall not apply.

SEALING OF CRIMINAL OFFENDER RECORD INFORMATION

SEC. 9. (a) Criminal offender record information shall be sealed in accord with the requirements of a court order, a Federal or State statute, or regulations issued by the Attorney General, when appropriate notification is provided

by the agency directly responsible for compliance with the order, statute, or regulation.

(b) The regulations shall, as a minimum, provide for the sealing of criminal offender record information regarding an individual who has been free from the jurisdiction or supervision of any criminal justice agency for—

(1) a period of seven years if the individual has previously been convicted of an offense for which imprisonment in excess of one year is permitted under the laws of the jurisdiction where the conviction occurred,

(2) for a period of five years if the individual has previously been convicted of an offense for which the maximum penalty is not greater than imprisonment for one year under the laws of the jurisdiction where the conviction occurred, or

(3) for a period of five years following an arrest if no conviction of the individual occurred during that period, no prosecution is pending at the end of that period, and the individual is not a fugitive.

(c) (1) The regulations may exempt from full compliance with the requirements of this section criminal justice information systems for which full compliance is not feasible because of the manual nature of the systems.

(2) The regulations shall set forth procedures regarding access to a sealed record (A) in connection with review pur-

suant to section 6 by the individual or (B) on the basis of a court order or (C) a specific determination of the Attorney General.

PRECEDENCE OF STATE LAWS

SEC. 10. Nothing in this Act is to be construed to diminish greater rights of privacy or protection provided by a State law or regulation governing use, updating, or sealing of records in that State's criminal justice information system. Use of information in interstate systems or the use of information obtained through interstate transfer shall be governed solely by this Act and implementing regulations.

SECURITY OF CRIMINAL JUSTICE INFORMATION SYSTEMS

SEC. 11. (a) The security of information in a criminal justice information system subject to this Act shall be assured by management control by a criminal justice agency.

(b) All criminal justice information systems subject to this Act shall meet security standards promulgated by the Attorney General to guard against unauthorized access to data contained in the systems. These standards will include, but not be limited to:

(1) Implementation, operation, and management control of criminal justice information systems.

(2) System design standards which take maximum advantage of security provided by existing technology.

(3) Physical security standards for the system facility and associated telecommunications networks.

(4) Administrative procedures for gaining access to data, safeguarding data, and removing of data.

(c) The Attorney General shall provide for a continuous review and periodic audits of the operations of criminal justice information systems to assure that there is full compliance with the standards issued pursuant to this section and that appropriate corrective actions and sanctions are promptly invoked when required.

OPERATING PROCEDURES

SEC. 12. (a) All criminal justice information systems subject to this Act shall include operating procedures which are consistent with the regulations established and promulgated by the Attorney General and at a minimum shall:

(1) include a program of verification and audit to insure that criminal offender record information is regularly and accurately updated,

(2) limit access and dissemination of criminal justice information in accordance with the provisions of this Act,

(3) provide an administrative review mechanism for challenges by individuals to the accuracy or completeness of their records,

1 (4) undertake an affirmative action program for
2 the training of system personnel,
3 (5) require a complete and accurate record of ac-
4 cess and use made of any information in the system in-
5 cluding the identity of all persons and agencies to which
6 access has been given, consistent with section 5(f).
7 (b) Each agency which operates an automated crim-
8 inal justice information system subject to this Act shall pub-
9 lish notice at least once a year of—
10 (1) its existence,
11 (2) the nature of the system,
12 (3) policies regarding storage, duration of reten-
13 tion, and dissemination,
14 (4) procedures whereby an individual can review
15 criminal offender record information regarding himself,
16 (5) the title, name, and business address of the per-
17 son immediately responsible for the system.
18 With regard to a system operated by the Federal Govern-
19 ment, such notice shall be published in the Federal Register.
20 (c) Any agency operating or participating in a criminal
21 justice information system subject to this Act may be re-
22 quired to provide periodic reports to the Attorney General.
23 ADMINISTRATIVE SANCTIONS
24 SEC. 13. (a) In the event that a criminal justice agency
25 (1) obtains information from a criminal justice information

1 system subject to this Act and uses or disseminates that
2 information in a manner which violates this Act or regula-
3 tions issued by the Attorney General, or (2) fails to provide
4 dispositional information required by subsection 7(a), the
5 agency may be denied access to criminal justice information
6 systems subject to this Act.
7 (b) An agency or person, other than a criminal justice
8 agency, who obtains criminal offender record information and
9 uses that information in violation of this Act or regulations
10 issued by the Attorney General may be denied the use of
11 criminal offender record information subject to this Act.
12 (c) Procedures for implementing this section shall be
13 set forth in regulations issued by the Attorney General. The
14 regulations shall provide that no sanction may be imposed
15 pursuant to subsection (a) until the Attorney General or,
16 where appropriate, a State official has (1) provided notice
17 of the alleged violation to the criminal justice agency in
18 question, (2) determined that compliance cannot be secured
19 by voluntary means, and (3) determined, after opportunity
20 for hearing, that substantial or repeated violation of this
21 Act or regulations issued by the Attorney General has
22 occurred.
23 CIVIL AND CRIMINAL REMEDIES
24 SEC. 14. (a) (1) To obtain judicial review, pursuant to
25 subsection 6(g), of a final administrative decision, an in-

dividual may bring a civil action against the responsible agency.

(2) An individual with respect to whom criminal justice information has been maintained, disseminated, or used in violation of this Act or implementing regulations may bring a civil action against the individual or agency responsible for the alleged violation. If relief is sought against both the individual and the agency responsible for the alleged violation, such relief shall be sought in a single action.

(b) (1) If a defendant in an action brought under subsection (a) is an officer or employee or agency of the United States, the action shall be brought in an appropriate United States district court.

(2) If the defendant or defendants in an action brought under subsection (a) are private persons or officers or employees or agencies of a State or local government, the action may be brought in an appropriate United States district court or in any other court of competent jurisdiction.

(c) The district courts of the United States shall have jurisdiction over actions described in subsection (b), without regard to the amount in controversy.

(d) A prevailing plaintiff in an action brought under subsection (a) may be granted equitable relief, including injunctive relief, and actual damages, and may be awarded costs

and reasonable attorney fees. In appropriate cases, a prevailing plaintiff may also be awarded exemplary damages.

(e) Any person who disseminates or uses criminal justice information knowing such dissemination or use to be in violation of this Act or any applicable regulations shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(f) Good faith reliance upon the provisions of this Act or of applicable law governing maintenance, dissemination, or use of criminal justice information, or upon rules, regulations, or procedures prescribed or approved by the Attorney General shall constitute a complete defense to a criminal action brought under this Act. With respect to damages, such reliance shall constitute a complete defense for an individual or an agency in a civil action brought under this Act. Such reliance shall not constitute a defense with respect to equitable relief.

COMPLIANCE WITH ACT

SEC. 15. Any State or local agency which operates or participates in a criminal justice information system subject to this Act shall comply with this Act and with regulations issued by the Attorney General and shall be deemed to have consented to the bringing of actions pursuant to subsection 14 (a).

1 REGULATIONS OF THE ATTORNEY GENERAL

2 SEC. 16. After appropriate consultation with Federal
3 and State agencies which operate or use criminal justice
4 information systems, the Attorney General shall issue regula-
5 tions implementing this Act.

6 AUTHORIZATION

7 SEC. 17. There are hereby authorized to be appropriated
8 such funds as may be necessary for the Attorney General to
9 implement this Act.

10 EFFECTIVE DATE

11 SEC. 18. This Act shall become effective one year after
12 the date of enactment, except that section 17 shall become
13 effective upon the date of enactment.

CRIMINAL JUSTICE INFORMATION SYSTEMS ACT OF 1974—SECTION-BY-SECTION ANALYSIS

Sec. 1 is the enactment and title clause.

Sec. 2. Findings and Purpose—

Subsection (a) refers to the usefulness of exchanging criminal justice information between Federal and State criminal justice agencies and between States, but points out the need to safeguard the rights of affected individuals.

Subsection (b) states that criminal justice information is to be used for a non-criminal-justice purpose only when such use is justified on the basis of weighing the interests of the individual against the needs of government or society.

Subsection (c) sets forth the constitutional basis for the Act.

Sec. 3. Definitions—

Subsection (a). "Criminal justice information system". This definition sets forth the basis for the coverage of the Act. The term refers to systems, automated or manual, for the collection, processing, preservation or dissemination of criminal justice information.

Subsection (b). "Automated system" is defined as a criminal justice information system which utilizes electronic computers or other automatic data processing equipment. This term applies where part of the system is automated and part manual, for example, a system which stores criminal offender record information in a computer file.

Subsection (c). "Criminal offender record information" includes (1) the factual summary of events of each formal stage of the criminal justice process: notations of arrest, the nature and disposition of criminal charges, sentencing, confinement, parole and probation status, formal termination of the criminal justice process as to a charge or conviction and (2) physical and other identifying data.

Subsection (d). "Criminal intelligence information" is defined as information which is compiled by criminal justice agencies for purposes of criminal investigation and which is indexed under an individual's name or otherwise associated with an individual. Such information may include reports of informants or investigators. This term does not include criminal offender record information, and any agency which maintains both criminal intelligence information and criminal offender record information must keep the two types of information separate. However, accounts of arrests or convictions may be expected in investigative reports, and there is no intention to exclude such non-systematic references to offender record information from criminal intelligence files.

Subsection (e), "Criminal offender processing information" is defined as detailed reports (as opposed to notations), identifiable to an individual, and compiled by any criminal justice agency for the purpose of processing the individual from the time of arrest to the time of release from supervision. This would include background reports on individual offenders such as arrest reports, presentence reports, etc.

Subsection (f). "Criminal justice information" is defined to include criminal offender record information, criminal intelligence information, and criminal offender processing information. Files that are not maintained in an individually identifiable manner, such as chronologically ordered police blotters and court dockets, are not considered within the scope of the Act.

Subsection (g). "Criminal justice" is defined to mean any activity pertaining to the enforcement of criminal laws. This term includes police efforts to prevent, control or reduce crime or to apprehend criminals. Also included are activities of prosecutors, courts and corrections, probation, pardon or parole authorities.

Subsection (h). "Criminal justice agency" means a public agency, Federal, state or local, whose principal function is the performance of activities pertaining to criminal justice. The definition includes a "component" of a public agency if the principal function of the component is performing activities relating to criminal justice. For example, a unit of the Internal Revenue Service which has as its principal function investigation of criminal violations of the tax laws would be a "criminal justice agency" even though the Internal Revenue Service as a whole would not come within that definition.

Subsection (i). "Interstate system" is defined as a system for the transfer of criminal justice information between criminal justice agencies located in two or more states.

Subsection (j) "State" is defined to include the District of Columbia, Puerto Rico and the territories or possessions of the United States.

Subsection (k). "Attorney General" is defined as the Attorney General of the United States or his designee.

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Subsection (l). "Sealing" is defined as the closing of a record so that information will no longer be available except for review by an individual to whom the record pertains or by court order, or a specific determination of the Attorney General.

Sec. 4. Coverage—

Subsection (a) specifies the type of systems which are covered by this Act. Such systems include those operated by the Federal Government, funded in whole or in part by the Federal Government, an interstate system and any system which is engaged in the exchange of criminal justice information with the above systems to the extent of such participation.

Subsection (b) provides that the Act applies to criminal justice information obtained from a foreign government or an international agency to the extent that such information is contained in a system subject to this Act. When such information is provided to a foreign government or an international agency, use of the information by the foreign government or international agency should be consistent with this Act.

Subsection (c) exempts lists or systems used by criminal justice agencies for the purpose of identifying or apprehending fugitives or wanted persons.

Sec. 5. Access and Use—

Subsection (a) sets forth that the provisions of this section apply to any criminal justice information system subject to this Act and to any agency or person who obtains information from such a system either directly or indirectly.

Nothing in the Act is intended to prevent the public release of general information concerning an offense, a specific arrest, indictment, or disposition, within a reasonable time after the event has occurred.

Subsection (b) limits direct access to criminal justice information systems to authorized officers and employees of criminal justice agencies. Standards and procedures for determining what officers and employees are "authorized" are to be prescribed by regulations. All information permitted for non-criminal justice purposes must be obtained through a criminal justice agency.

Subsection (c) provides that criminal intelligence information may only be used for a criminal justice purpose (except as stated below) and that need for such use must have been established in accord with regulations issued under the Act. Thus, an agency seeking such information has the burden of establishing its entitlement and systems are to be designed so that such information is not routinely obtainable by the requesting agency. The provision allows criminal intelligence information to be used for non-criminal justice purposes if the Attorney General determines in a particular case or class of cases that use is necessary for reasons of national defense or foreign policy.

Subsection (d) provides that criminal offender processing information may be used only for a criminal justice purpose (except as stated below) and only where need has been established in accord with regulations to be issued under this Act. Pursuant to a court order, Federal or state statute or regulation particular criminal offender processing information concerning an individual may be made available to him. Under procedures which shall assure security and privacy of such information, information may also be made available to qualified persons for research related to criminal justice. Criminal offender processing information may be made available for a non-criminal justice purpose if such use is expressly provided for in a Federal or State statute.

Subsection (e) relates to use of criminal offender record information and provides that such information may be used for criminal justice purposes. That is, one criminal justice agency may obtain criminal offender record information from another agency for use with regard to the former's criminal justice responsibilities.

Criminal offender record information may be used for a purpose not related to criminal justice if such use is expressly provided for in a Federal statute or executive order or in a state statute. A municipal ordinance is not a sufficient basis unless the ordinance implements or is a type expressly authorized by a state statute dealing with use of criminal offender record information.

The determination whether a statute or executive order "expressly provides for" such use shall be made by the Attorney General. His determinations shall be conclusive.

The provisions of Subsection (e) allowing for non-criminal-justice uses of offender record information are subject to the further limits on arrest records contained in Section 8.

One reason for the delayed effective date of this statute is the hope that it will provide an opportunity for states and the Federal Government to carefully review the statutory authorizations that now exist.

Criminal offender record information may also be made available to qualified persons for research pertaining to criminal justice. Such use is to be governed by regulations which shall establish procedures to assure the security of the information which is released and to protect the privacy of the individuals to whom the information relates.

Subsection (f) requires that records must be maintained for each criminal justice information system with regard to (1) requests for use of criminal justice information and (2) the source of criminal offender record information.

Sec. 6. Review of Criminal Offender Record Information by the Individual—

Subsection (a) requires that an individual, after complying with applicable regulations, be entitled to review criminal offender record information regarding himself and obtain a copy for the purpose of challenge or correction. This requirement does not apply to either criminal intelligence information or criminal offender processing information. It is intended that the regulations will contain procedures to allow an attorney to act on behalf of an individual, and to facilitate individual review of records maintained at geographically distant points.

Subsection (b) provides that each Federal and State agency adopt regulations to implement this section.

Subsection (c) requires that whenever criminal offender record information is requested for a non-criminal-justice purpose, the requester must notify the individual to whom the information refers that information is being requested concerning him, and that he has a right to review the record for purposes of challenge or correction. The regulations will contain procedures designed to assure that such notice is given prior to release of the information in order to minimize the chances for release of inaccurate information.

Subsection (d) prohibits any agency or person from requiring or requesting an individual to show or transfer a copy of this information regarding himself.

Subsection (e) states that an individual who exercises his right of review and who disputes the accuracy or completeness of the information may apply to have the information corrected or supplemented. The application is to be made to the agency (or agencies) responsible for the allegedly inaccurate or incomplete information. Normally the individual applying for corrective action must apply to the arresting agency or to the prosecutive agency, court or correctional institution, where appropriate. The responsible agency will normally not be the agency maintaining a statewide or national file.

Any necessary corrections or revisions are to be made by the responsible agency as soon as possible and are to be disseminated to all past recipients of the erroneous or incomplete information.

Subsection (f) requires that any individual who is not satisfied with the disposition of his request for correction or revision be afforded administrative review.

Subsection (g) gives a right of judical review to any individual who is not satisfied with the decision resulting from final administrative review.

Sec. 7. Accuracy and Completeness of Criminal Offender Record Information—

Subsection (a) requires a criminal justice agency contributing criminal offender record information to a system subject to this Act to assure that the information which it contributes is accurate, complete and regularly revised to include dispositional and other subsequent information.

Subsection (b) states that all criminal justice agencies, covered by the Act, must take steps necessary to achieve compliance with subsection (a). Criminal justice agencies include courts and correctional authorities.

Sec. 8. Dissemination of Arrest Records—

Subsection (a) states the coverage of this section. The section applies to any criminal justice information system subject to this Act and to any agency or person who directly or indirectly obtains criminal offender record information from such a system.

Subsection (b) restricts dissemination of an arrest record that does not include final disposition if a final disposition has been reported by the contributing criminal justice agency. Each use of a record shall require an inquiry of the system to assure that the information is up-to-date and accurate.

Subsection (c) prohibits dissemination of an arrest record for non-criminal justice purposes if there is an acquittal, dismissal, abandonment of prosecution or an interval of one year has elapsed from date of arrest and no active prosecution is pending. However, if within this one-year period the individual is a fugitive, the time period during which he is a fugitive is excluded. Or, if a person is tried on only one of several charges, and when sentenced, the other charges are held open until the completion of the sentence given, this would be interpreted as "active prosecution still pending".

Subsection (d) exempts from the above prohibition (1) cases where the Attorney General determines that for national defense or foreign policy reasons it should not apply, (2) with regard to the appointment of certain officers by the President, (3) use for research purposes under section 5(e)(3), (4) use pursuant to review of a record by an individual, or adjudication of a claim that the information is inaccurate or incomplete, (5) where a court order specifically provides otherwise, or (6) where a Federal statute expressly provides otherwise.

Sec. 9. Sealing of Criminal Offender Record Information—

Subsection (a) requires that criminal offender record information be sealed under specified circumstances.

Subsection (b) requires that regulations provide at a minimum the sealing of criminal offender record information when specified periods of time have elapsed and an individual has been free from the jurisdiction or supervision of any criminal justice agency. The regulations will establish standard procedures whereby the State will provide information as to the maximum penalty for the particular offense when notation of the sentence is entered into the system.

Subsection (c) allows the regulations to exempt particular systems from full compliance with the sealing requirements where because of the manual nature of such systems, such full compliance would not be feasible. In particular, it is anticipated that records predating the effective date of this Act will be considered for sealing on a one-by-one basis as they are requested for use or as they are coded for conversion to automated systems.

The regulations must also set forth procedures for access. Where access to a sealed record is allowed in connection with review by the individual, on the basis of a court order, or a specific determination of the Attorney General, regulations must set forth procedures to be followed.

Sec. 10. Precedence of State Laws—

This section specifies that where a particular State has a law or regulation which affords an individual rights of privacy which are designed to protect the interests of individuals who are the subject of information in the State's criminal justice information system, that such a law or regulation would not be in conflict with this Act. A State may provide rights of privacy or protection for information in its system greater than those set forth in this Act, and such provisions would govern in that State's criminal justice information systems.

Sec. 11. Security of Criminal Justice Information Systems—

This section is designed to minimize the possibility of unauthorized disclosure by setting forth the means by which such systems shall be operated. The security of information in a system subject to this Act must be assured by management control by a criminal justice agency. Also, such systems must meet security standards promulgated by the Attorney General to guard against unauthorized access to data within them.

In addition, the Attorney General is directed to provide for a continuous review and periodic audits of the operations of these systems to assure full compliance with the standards issued pursuant to this section.

Sec. 12. Operating Procedures—

Subsection (a) requires that all criminal justice information systems subject to this legislation must include specified minimum operating procedures which are consistent with the regulations established and promulgated by the Attorney General.

Subsection (b) requires an agency which operates an automated criminal justice information system subject to this Act to publish once a year notice of the existence, nature, and procedures, governing the system. If such a system is operated by the Federal Government this notice shall be published in the Federal Register.

Subsection (c) allows the Attorney General to require any agency participating in a criminal justice information system subject to this legislation to provide periodic reports.

Sec. 13. Administrative Sanctions—

Subsection (a) provides that a criminal justice agency may be denied access to criminal justice information systems which are subject to this Act if such an agency (1) obtains information from such a system, and uses or disseminates that information in violation of this Act or the regulations issued pursuant to it, or (2) such agency fails to provide dispositional information required by the Act.

Subsection (b) provides that any person or agency, other than a criminal justice agency, may be denied the use of criminal offender record information if such person or agency uses such information in violation of this Act or regulations issued pursuant to it by the Attorney General.

Subsection (c) states that procedures regarding use of administrative sanctions are to be set forth in regulations of the Attorney General.

Sec. 14. Civil and Criminal Remedies—

Subsection (a)(1) permits an individual who is dissatisfied with the final administrative decision regarding his request for correction and revision of criminal offender record information which pertains to him, to bring a civil action against the responsible agency.

Subsection (a)(2) permits an individual with respect to whom criminal justice information has been maintained disseminated or used in violation of the Act or regulations issued pursuant to it, to bring a civil action against the responsible person or agency.

Subsection (b)(1) requires that such civil actions must be brought in the appropriate United States District Court if a defendant is an officer, employee, or agency of the United States.

Subsection (b)(2) provides that if the defendants in such civil actions are private persons, or officers, employees or agencies of a state or local government, such actions may be brought in an appropriate United States District Court or any other court of competent jurisdiction.

Subsection (c) provides that the district courts of the United States have jurisdiction over such civil suits without regard to the amount in controversy.

Subsection (d) provides that a prevailing plaintiff in such civil actions may be granted equitable relief, damages, costs, and reasonable attorney fees. Exemplary damages may also be awarded when appropriate.

Subsection (e) provides criminal penalties for dissemination and use of criminal justice information which is in violation of the Act and any applicable regulations issued pursuant to it. It is assumed that forgeries or other unauthorized alterations of records subject to this Act are punishable under 18 U.S.C. § 1001 et. seq., and similar provisions of law.

Subsection (f) provides an individual or agency with a complete defense against any civil or criminal action (except an action for equitable relief) when such an individual or agency acts in good faith relying upon the provisions of the Act or on applicable law governing the maintenance, dissemination, or use of criminal justice information, or upon rules, regulations, or procedures prescribed or approved by the Attorney General.

The defense of "good faith" is intended to apply only where one innocently followed the rules without notice that there was a claim of error or invalidity. The test is an objective one and not the actual state of mind of the individual. Good faith requires the exercise of reasonable diligence to learn the truth when one is put on inquiry.

It is anticipated that the remedies contained in this section will be applied consistent with the provisions of the First Amendment to the Constitution.

Sec. 15. Compliance with Act—

This section would require any state or local agency which operates or participates in a criminal justice information system which is subject to the Act to comply with the Act and with the regulations issued pursuant to it by the Attorney General. Also, any such agency would be deemed to have consented to the bringing of such civil actions as authorized by the Act.

Sec. 16. Regulations of the Attorney General—

The Attorney General is required to issue regulations implementing this Act after appropriate consultation with Federal and state agencies operating or using criminal justice information systems.

Sec. 17. Authorization—

Authorizes funds for the Attorney General to implement the Act.

Sec. 18. Effective Date—

Sets the effective date of the Act to be one year after the date of enactment, except for the authorization of funds section, which would become effective the date of enactment.

Office of the Attorney General,
Washington, D.C., February 5, 1974.

The Vice President,
U.S. Senate, Washington, D.C.

Dear Mr. Vice President: Enclosed for your consideration and appropriate reference is a legislative proposal entitled the "Criminal Justice Information Systems Act of 1974."

This is a legislative proposal to facilitate and regulate the exchange of criminal justice information.

The proposal, I believe, has achieved an appropriate balance between the information needs of governments and the constitutional rights of persons affected by the collection and dissemination of criminal justice information. This bill is more comprehensive than the proposal originally submitted during the 92nd Congress, 1st Session, and introduced as S. 2546. This bill is applicable to any criminal justice information system which is operated by the Federal Government or is funded in whole or in part by the Federal Government. Also covered is any interstate system and any system which is engaged in the exchange of information with a Federally operated, Federally funded, or interstate system. Both automated and manual systems are covered.

Direct access to criminal justice information systems is limited to criminal justice agencies. Criminal offender record information in a system may only be used for criminal justice purposes unless there is a Federal statute, Executive order or State statute which expressly provides for a non-criminal justice use. This would mean that criminal offender record information could be unavailable for employment or credit checks unless a statute specifically required such use.

The draft bill provides the individual with the right of review of his record for the purposes of correction. Stringent restrictions on dissemination are provided. Criminal offender record information is required to be accurate and complete and provision is made for the sealing of criminal offender record information after the passage of a stated period of years during which the individual is free from the supervision of a criminal justice system. Provision is made for administrative, civil and criminal sanctions against those who use or disseminate information in violation of the Act.

Several provisions of the bill would require changes in the current practices of some government agencies, particularly non-criminal justice agencies that have traditionally made use of criminal justice data for various purposes. The debate and action taken on this proposal should serve to clarify national policy in this area and to provide a framework for subsequent efforts which will, hopefully, bring some order and consistency to the array of statutes and regulations that are relied on for access and use to criminal justice information.

The proposed legislation reflects a strong concern for the security and privacy of data in criminal justice information systems and deals effectively with the fundamental issues involved. Its early and favorable consideration is urged.

The Office of Management and Budget has advised that there is no objection to the submission of this proposal from the standpoint of the Administration's program.

Sincerely,

——— ———,
Attorney General.

[Letter of Inquiry to the Federal Bureau of Investigation]

CRIMINAL JUSTICE DATA BANK HEARINGS

FEBRUARY 19, 1974.

DAVID W. BOWERS,
Federal Bureau of Investigation,
Washington, D.C.

DEAR DAVE: Mark Gitenstein and I have identified four major areas in which the hearings would benefit from help from the Bureau, and which might be the subject of questions to Mr. Kelley. I am writing to you to set out these four areas, and to give you some idea of what specific types of information the Subcommittee might expect to get from the Bureau at the hearings. I hope this might help us and the Bureau staff in preparing for the hearings.

The four areas are as follows:

(1) We anticipate that the Subcommittee will be interested in a rather complete history of the development of the Identification Division and of the National Crime Information Center's Computerized Criminal History file (NCIC/CCH). Subcommittee members might also question the Bureau's representatives on the legal and statutory authority for the dissemination of Rap sheets and computerized criminal histories (CCH). This would include a discussion of the history of 28 U.S.C. 534, the case of *Menard* v. *Mitchell* and the so-called "Bible" rider to the FBI's appropriation bill. The Bureau might also expect questions about NCIC's implementation of the Project SEARCH prototype CCH and the decision-making process that led to that development.

(2) The Subcommittee will be interested in the present operations of the Identification Division and the NCIC/CCH. We would like any update that the Bureau might have to the detailed questions which Senator Mathias presented to L. Patrick Gray last summer and which appear in the published hearings on his nomination at page 233 and following. The Bureau might also want to supplement any answers which it has submitted to the Subcommittee in response to its general data bank survey. The last of the Bureau's responses is dated November 3, 1972.

It would be very useful if we had these updates as well as the most current list of authorized nonlaw enforcement users of the Rap sheet file and of the NCIC/CCH file in advance of the hearings.

I anticipate that Subcommittee members might want to question the Bureau in some detail about how Rap sheets and CCH's are used by noncriminal justice agencies and about the nature of the information needs of noncriminal justice agencies. For example, the Subcommittee would be interested in any surveys of noncriminal justice agencies such as federally chartered banks or state civil service agencies to determine exactly what type of information they need, e.g., do they need raw arrest records or would conviction records suffice; how often do they query CCH and Rap sheets, etc.?

I think that the Bureau should also expect questions on how Rap sheets and CCH are used by local police departments. For example, has the Bureau ever conducted any studies indicating at what point in the criminal process there is the greatest demand for Rap sheets and CCH, e.g., are they used primarily prior to arrest for investigative purposes or post arrests for informing judges of prior records in setting pretrial release. The Subcommittee would also be interested in any data the Identification Division or NCIC has on the completeness of its information, e.g., what percent of Rap sheets and CCH's are incomplete. I think the representatives of the Identification Bureaus can also expect some fairly detailed questions on its privacy and security regulations. For example, what rules apply to expungement and updating of Rap sheets, random audits for accuracy, etc.?

(3) I should think that the Bureau would want to be quite specific in describing the administrative problems (as distinct from policy questions) it will have in both the Identification Division and the NCIC in complying with either S. 2963 or 2964.

(4) Since both bills would set standards for the exchange of intelligence information, I would imagine that members of the Subcommittee might ask questions on the Bureau's exchange of such information with other criminal justice agencies, if any. Although both bills are rather general in regard to intelligence information I am sure that we will be hearing testimony calling for much more specific standards for the control of such information.

Any of the above information, in particular that set out in (2) above, which the Bureau can get to us in advance of the hearings would certainly improve the quality of the dialogue and perhaps shorten the amount of time we will have to cover in oral testimony. We would be especially interested in copies of any surveys or studies the Bureau has made on CCH and Rap sheet use—who uses, when, frequency, purpose, cost-benefit, etc. If you have any questions or want any clarifications please do not hesitate to call me or Mark Gitenstein.

Sincerely,

LAWRENCE M. BASKIR,
Chief Counsel and Staff Director.

RESPONSES OF CLARENCE M. KELLEY, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION—MARCH 7, 1974

A. HISTORY OF THE FBI IDENTIFICATION DIVISION AND NATIONAL CRIME INFORMATION CENTER (NCIC) COMPUTERIZED CRIMINAL HISTORY (CCH) PROGRAM

I. FBI IDENTIFICATION DIVISION

Background

By the year 1923, two separate and distinct central clearinghouses charged with the collection, preservation and dissemination of criminal identification information had been established in the United States. The Federal Government at Leavenworth, Kansas, under the auspices of the United States Department of Justice, had established a Central Bureau of Identification and was receiving appropriations from Congress for this purpose. This fingerprint bureau was origi-

nally established in 1904 for Federal prisons. The Department of Justice Appropriations Act for the fiscal year 1924 carried language authorizing the Leavenworth Identification Service. With respect to dissemination of data from the Leavenworth files, this Act specifically provided that certain funds were to be "for the collection, classification and preservation of criminal identification records and their exchange with the officials of State and other institutions * * *."

The second clearinghouse was being maintained by the International Association of Chiefs of Police (IACP) at Washington, D.C. This was known as the "National Bureau of Criminal Identification" established in 1896. At a conference in Washington, D.C., on September 21, 1923, representatives of IACP, in offering their fingerprint files to the Department of Justice, stipulated, "The Attorney General of the United States shall make and establish with said Bureau as a foundation therefore, a central criminal bureau, in the Department of Justice wherefore every effort and encouragement shall be made to secure from the United States Government agencies, the police superintendents and chiefs of states, cities and towns of the United States similar records of fingerprints and metric measurements and photographs of criminals, and any and all kinds of criminal information for record and classification and filing, as formerly done by the superintendent of the National Bureau of Criminal Identification, copies of such records, prints, measurements, photographs and information to be afforded without delay, by the Attorney General, to any duly qualified United States Department head engaged in the prevention and detection of crime, to any duly qualified superintendent, chief, or marshal of police of any state, city, or town of the United States or any active member of the IACP."

By way of further historical background, it is apparent that numerous conferences were held by the officials of the Department of Justice, the Bureau of the Budget, and the House Appropriations Committee to determine what would be needed in the way of authority and funds to create the Identification Division of the FBI. It was resolved that by virtue of the authorizing language in the previous operations, the Federal Government already had the authority to establish a central bureau of criminal identification with sanction to receive and dispense identification data. This conclusion was based on the provision in the FBI appropriation that the "operating portion" (of the appropriation) was earmarked "for the detection and prosecution of crimes." Authority to disseminate identification information is renewed annually in appropriations legislation.

Early advisory policy board

An advisory board composed of local law enforcement officials was created for the FBI Identification Division in 1927. The members of this board at that time were Joseph M. Quigley, Chairman, New York; James T. Drew, California; and Richard Sylvester, Delaware. An official report submitted to the IACP in 1927 suggested that fingerprint records and inquiries should include all criminals placed in custody, except those of a purely local and minor character and those who commit more or less insignificant and unimportant offenses.

Departmental Order No. 2961 and Missing Persons Data

In order to establish a clear policy on dissemination, Attorney General Homer Cummings issued Departmental Order No. 2961 on May 1, 1973. The entire provisions of Departmental Order No. 2961, quoted below, are still in effect.

"Criminal identification information from the fingerprint files of the Federal Bureau of Investigation will be made available only to the following persons or agencies:

"1. Regularly constituted law enforcement officials or agencies.

"2. All service branches of the Federal Government, that is the Army, Navy, Marine Corps, and Coast Guard.

"3. The U.S. Civil Service Commission and any state or local civil service commissions.

"4. Any member bank of the Federal Reserve System and any bank, banking association, trust company, or other banking institution organized and operated under the laws of the United States including any organization, state or Federal, insured under the provisions of the Federal Deposit Insurance Act.

"5. Coroners, undertakers, and insurance companies submitting fingerprints of unidentified dead persons for identification only.

"6. Any national, state, or local government or agency thereof."

Soon after the issuance of Departmental Order No. 2961, it became apparent that our current policy dealing with missing persons had been omitted from the order. Subsequently, an opinion was obtained from the former Assistant Solicitor General Golden W. Bell to the effect that information as to the identity or where-

abouts of certain persons could be furnished as a service by the Director to agencies or persons "when in the exercise of his discretion he deems it proper to do so."

Thus, our present practice of listing missing person data in our identification files and disseminating information as to identity or whereabouts is a practice which is within the province of the Director, FBI. Note that "identity or whereabouts" of an individual is a not a criminal offender record.

Under Departmental Order No. 2961, therefore, we are authorized to give to law enforcement not only identity and whereabouts, but we may also give to law enforcement specific criminal arrest data on a missing person. As a matter of policy we have confined dissemination of information as to identity and whereabouts to interested relatives of missing persons. Coroners, undertakers, and insurance companies can receive information from our files under Department Order No. 2961. Obviously coroners and undertakers are interested only in identity since whereabouts is not an issue. Insurance companies on the other hand are interested in both identity and whereabouts, and in the great majority of cases will not have fingerprints to submit for search through our files. Because of the language in Departmental Order No. 2961 pertaining to insurance companies, and under the discretionary powers of the Director, it has been our policy to furnish insurance companies information as to identity and whereabouts whenever we are asked even though no fingerprints are submitted by them.

Activities 1940 to Date

In 1941, the FBI Identification Division began receiving huge volumes of noncriminal fingerprints for check against the criminal file and for retention. These included the fingerprints of aliens, Government employees, military personnel, individuals seeking clearances, and those desiring to have their prints placed in the civil file for identification purposes. The number of fingerprints in possession increased at a terrific rate. By 1957, fingerprints in possession reached nearly 146 million, of which 115 million were in the noncriminal category. In order to retard the growth of the civil file, we adopted, on July 1, 1957, the policy of returning all non-Federal applicant prints submitted in connection with national defense, local licensing and employment. This policy is still in effect. Since 1937, the FBI Identification Division has, in accordance with statutory authority, executive orders and instructions of the Attorney General, processed fingerprints of applicants for employment in federally chartered or insured banking institutions, and for licensing and local employment purposes if fingerprinting was required by local ordinance or official regulation. The demands for this service have grown steadily since 1937, as more and more local regulatory agencies deemed identification on record checks vital to the protection of the public.

2. NCIC/CCH

The concept behind NCIC was approved by the IACP in October, 1966. General policy and operational principles of the system are based on recommendation of the NCIC Advisory Policy Board, comprised of top administrators from criminal justice agencies throughout the United States.

Initial file standards for NCIC were developed by the IACP Uniform Crime Reporting Committee and members appointed by the committee. Development of the communications system was accomplished in coordination with the Office of the Director of Telecommunications Management, and the Institute for Telecommunications Sciences and Aeronomy.

In 1966, as part of its overall planning of NCIC, the FBI determined that one of NCIC's future projects would be the implementation of a computerized history of each felon arrested in the United States. This history would eventually take the place of the "rap sheet," and would be based only on fingerprints. This computerized criminal history (CCH) would be available to law enforcement on an instantaneous basis.

NCIC began operation in January 1967 with five files (wanted persons, stolen property, stolen vehicles, stolen license plates, and lost, stolen, and recovered guns).

In September 1968, NCIC staff (and Working Committee members) met to discuss standards, procedures and policies for a CCH file. At this meeting a prototype criminal history summary and a complete criminal history record were examined for the first time. By February 1969, the basic offense classification standards were established. To facilitate the development of CCH, the FBI contacted the Law Enforcement Assistance Administration (LEAA) in the spring of 1969, with the idea of forming a group of advanced computer states

with mandatory reporting laws to demonstrate an interstate exchange of criminal history. Five states were recommended, and LEAA committed $600,000 in funds. Late in 1969 and during 1970, LEAA sponsored Project SEARCH (System for Electronic Analysis and Retrieval of Criminal Histories). The purpose of this project was to demonstrate the feasibility of exchanging criminal history data interstate by means of a computerized system.

On September 3, 1970, the Office of Management and Budget (OMB) recommended that the FBI operate the computerized criminal history program instead of the LEAA for the following reasons:

1. to avoid division of program responsibility between the FBI and LEAA;
2. to avoid development of overlapping information systems;
3. there was a questionable need for the development of a new computer and communications network within LEAA;
4. the cost of absorbing systems requirements within the FBI would be less than establishing a new capability in LEAA. Total SEARCH implementation costs through fiscal year 1973, were estimated to be approximately $3 million for the FBI and approximately $11 million for LEAA.

OMB also recommended that:

1. There be established a strong policy control board. The board should represent all elements of the criminal justice system (police, prosecutors, courts, corrections, and parole.)
2. Planning start to develop an integrated criminal justice system. This would bring together SEARCH, NCIC and the fingerprint identification activities. The policy control board should be the center of this planning activity.

On December 10, 1970, the Attorney General authorized the FBI to develop and implement a program for the interstate exchange of criminal history records through the NCIC, which operates a telecommunications network over dedicated lines to criminal justice agencies in each of the 50 states, 28 metropolitan areas, and some Federal agencies. The ultimate concept of NCIC/CCH is that there will be a national index to criminal history records of individuals arrested for serious offenses. FBI studies have shown that about 70 percent of rearrests will be within the same state; therefore, an offender criminal history file, in scope and use, is essentially a state file, for state use. However, substantial interstate criminal mobility necessitates sharing of information from state to state. A national index is required to coordinate the exchange of criminal history data among state and Federal jurisdictions. These considerations give rise to the "multi-state, single-state" concept. NCIC/CCH will maintain an abbreviated or summary record (index) on single-state offenders and a complete detailed record on multi-state offenders.

Entries into the CCH file will be supported by a fingerprint card. Should the state agency not be able to identify a fingerprint card in its state identification bureau it would forward the card to the FBI which would conduct a fingerprint search in an effort to identify the individual with an existing CCH record from another state. If no identification is made, the submitting state would establish a "single state" CCH record. If an identification is made, the submitting state would update that offender's record into a "multi-state" CCH record with this arrest. The CCH program will be continually evaluated, looking toward implementation of the single-state/multi-state concept.

(Currently, the national file contains the complete record and will continue to do so until such time as all states develop essential services such as identification, information flow, and computer systems capabilities.)

B. Legal and Statutory Authority for the Operations of the FBI Identification Division and the NCIC/CCH, and for Their Dissemination of Criminal Justice Information

1. FBI Identification Division.

The authority for the operations of the FBI Identification Division is as follows:

(1) Title 28, United States Code, Section 534.

(a) The Attorney General shall—

(1) acquire, collect, classify, and preserve identification, criminal identification, crime, and other records; and

(2) exchange these records with, and for the official use of, authorized officials of the Federal Government, the states, cities, and penal and other institutions.

(b) The exchange of records authorized by subsection (a)(2) of this section is subject to cancellation if dissemination is made outside the receiving departments or related agencies.

(c) The Attorney General may appoint officials to perform the functions authorized by this section.

The above authority was created by Public Law 89–554, Section 4(c), September 6, 1966, 80 Stat. 616. Similar provisions were contained in each Department of Justice appropriation act since 1921. These acts are identified in a note under former Section 300 of Title 5, U.S.C. 1964 ed.

(2) United States Code of Federal Regulations, Title 28, Section 0.85, Subpart p. (b).

(The FBI shall) Conduct the acquisition, collection, exchange, classification, and preservation of identification records, including personal fingerprints voluntarily submitted, on a mutually beneficial basis from law enforcement and other government agencies, railroad police, national banks, member banks of the Federal Reserve System, FDIC-Reserve-Insured Banks, and banking institutions insured by the Federal Savings and Loan Insurance Corporation; provide expert testimony in Federal or local courts as to fingerprint examinations; and provide identification assistance in disasters and in missing persons-type cases, including those from insurance companies.

(3) Public Law 92–544.

The funds provided for Salaries and Expenses, Federal Bureau of Investigation, may be used hereafter, in addition to those uses authorized thereunder, for the exchange of identification records with officials of federally chartered or insured banking institutions to promote or maintain the security of those institutions, and, if authorized by State statute and approved by the Attorney General, to officials of State and local governments for purposes of employment and licensing, any such official and subject to the same restriction with respect to dissemination as that provided for under the aforementioned appropriation.

(4) In addition, Executive Order 10450 authorizes the handling of fingerprints of applicants and employees of the Federal Government. Title 8 of the United States Code authorizes the handling of fingerprints of aliens.

In 1971, the Government's authority to disseminate arrest information in response to non-Federal applicant requests was challenged in the courts for the first time. In the case of *Stuart* v. *Mitchell, et al.*, Civil Action 71–3009, U.S. District Court, Los Angeles, California, the court ruled that 28 U.S.C. 534 provides authority for the FBI to disseminate arrest information in response to non-Federal applicant requests. However, in *Menard* v. *Mitchell*, 328 F. Supp. 718 (D.C.D.C. 1971), (see following) the court found "that the Bureau (FBI) is without authority to disseminate arrest records outside the Federal Government for employment, licensing and related purposes." The Court indicated that the FBI needs legislative guidance, and that there must be a national policy developed in this area which will have built into it adequate sanctions and administrative safeguards.

As a result of this decision, the FBI discontinued disseminating identification records for local employment and licensing, except for law enforcement positions, until December 26, 1971, when the President approved Public Law 92–184. This was an appropriations measure which authorized dissemination of identification records to federally chartered or insured banking institutions and, if authorized by state statute and approved by the United States Attorney General, to officials of state and local governments for the purpose of employment and licensing.

Public Law 92–544, dated October 25, 1972, extended Public Law 92–184 (the so-called Bible rider to an FBI supplemental appropriation, which had been extended once before by Public Law 92–334). Public Law 92–544 serves as current authority for dissemination to noncriminal justice agencies.

Details of Menard v. Mitchell

Menard brought suit in the United States District Court, Washington, D.C., to compel the Bureau to expunge from Identification Division files the record of his arrest by the Los Angeles, California, Police Department. Judge Gerhard A. Gesell received the case from the Circuit Court of Appeals, District of Columbia, for full development of the issues involved. Menard argued (1) that he was arrested without probable cause and the Bureau has no authority to maintain his record and (2) that future dissemination of his record may impede his employment opportunities and subject him to an increased risk of being suspected and arrested for crimes on other occasions. The Government argued that there was substantial evidence to indicate existence of probable cause for his arrest; the Bureau has statutory authority to disseminate his record to local government agencies in connection with employment and licensing.

On June 15, 1971, Judge Gesell handed down his decision in the form of a "Memorandum Opinion" and an accompanying order effective same date. He

ruled Menard's arrest was with probable cause, he denied Menard's prayer for expunction, but enjoined the FBI from disclosing information about the arrest to other than officials of law enforcement agencies provided those agencies will certify that the information is to be used by that agency internally and solely for law enforcement purposes and to agencies of the U.S. Government to which he applies for employment.

The Judge commented that the Bureau needs legislative guidance and there must be a national policy developed in this area which will have built into it adequate sanctions and administrative safeguards. It is not the function of the courts to make these judgments, but the courts must call a halt until the legislature acts. Thus the court finds that the Bureau is without authority to disseminate arrest records outside the Federal Government for employment, licensing or related purposes.

2. NCIC/CCH

In January 1966, the Office of Legal Counsel of the Department of Justice advised that 5 U.S.C. 340 (Public Law 337 of June 11, 1930) provided authority for the collection and exchange of records with local police organizations by the FBI through a national crime information center. Section 340 is now referenced to 28 U.S.C. 534 (see preceding). At the present, there is no separate Federal statutory authority for the NCIC operation of its program.

C. Current Operations

1. FBI IDENTIFICATION DIVISION

The operations of the FBI Identification Division were detailed in materia provided to the Senate Subcommittee on Constitutional Rights in November 1972, and by Mr. L. Patrick Gray III, during his nomination hearings in February and March 1973, in response to questions by Senator Charles Mathias.

The part of the 1972 material captioned "FBI Fingerprint and Criminal Identification Record Files," which requires updating, is reproduced here and updated by footnotes. In summary, the updated material notes that (1) current statutory authority for the FBI Identification Division's operations is Public Law 92-554; (2) the number of fingerprint cards have been reduced because of a purging program, although the number of individuals represented by the remaining cards has increased slightly; (3) Department of Justice Order 556-73 provides for an individual to obtain a copy of his offender record; (4) the number of agencies contributing fingerprints has been cut; (5) some automation of fingerprint procedures has begun.

Attachment A.—FBI Fingerprint and Criminal Identification Record Files

Since 1924, the FBI's Identification Division has served as the national repository for fingerprint records.

Authority for the FBI to perform identification functions is provided by:

(1) Section 534, Title 28, U.S. Code, which provides that, "(a) The Attorney General shall—(1) acquire, collect, classify, and preserve identification, criminal identification, crime and other records; and (2) exchange these records with, and for the official use of, authorized officials of the Federal Government, the States, cities, and penal and other institutions." The statute further provides, "(c) The Attorney General may appoint officials to perform the functions authorized by this section." The Attorney General of the United States has designated the Director of the FBI to perform identification functions.

(2) Section 902, Public Law 92-184, as continued by Public Law (92-334)[1] provides that the FBI may use appropriated funds "for the exchange of identification records with officials of federally chartered or insured banking institutions to promote or maintain the security of those institutions, and, if authorized by State statute and approved by the Attorney General, to officials of State and local governments for purposes of employment and licensing * * *."

The "heart" of the FBI's identification functions is the fact of individuality of fingerprints. The acceptance of this fact in our criminal justice system has resulted in the use of fingerprints as a major tool in law enforcement for criminal detection and identification. Latent fingerprint impressions left at the scene of a crime, or fingerprint impressions taken from a criminal attempting to disguise his

[1] Public Law 92-554 is the latest authority.

true identity can be compared and identified with previously taken fingerprints. The identifications are accomplished through the use of fingerprint files maintained at the FBI's Identification Division located at Washington, D.C. These files are presently neither computerized nor mechanized; however, plans call for their computerization over the next several years.

The following information is furnished in response to the 19 specific queries set forth in the survey questionnaire:

(1) The major categories of data maintained at the FBI Identification Division are in the form of fingerprint cards. There are approximately (199)[2] million cards on file with (20)[3] million individuals represented in the Criminal File section and (67)[4] million individuals represented in the Civil File section.

Criminal fingerprint cards are submitted through the mails to the FBI by local, state and Federal law enforcement agencies, including penal institutions. When more than one criminal fingerprint card is received concerning the same person, information from the cards—the identity of the contributing agencies; name and aliases of the person arrested; agency arrest numbers; dates of arrests and/or incarcerations; charges; and dispositions—is typed onto an "identification record" (see Exhibit I). The resulting document reflects the criminal history of an individual based upon the information contained in previously submitted fingerprint cards. Copies of this document, the identification record (sometimes referred to as a "criminal history" or "rap sheet"), are mailed to authorized agencies upon request.

The Civil File is comprised of fingerprint cards submitted on Federal Government employees and applicants, Armed Forces personnel, civilian employees in national defense industries, aliens, and persons desiring to have their fingerprints placed on file for personal identification purposes.

(2) Statutory authority has been granted to the Attorney General by Section 534, Title 28, U.S. Code (see Exhibit II), to acquire, collect, classify, and preserve identification, criminal identification, crime and other records; and exchange such records with, and for the official use of, authorized officials of the Federal Government, the states, cities, and penal and other institutions. Section 902, Public Law 92-184, as continued by Public Law (92-334)[5] provides the statutory authority for the FBI to exchange identification records with officials of federally chartered and insured banking institutions, and officials of state and local governments for purposes of employment and licensing (see Exhibit III).

(3) Guidelines, instructions, and advice are disseminated in the form of letters sent periodically by the FBI to all Federal, state and local agencies participating in the program. For example, the following admonition is periodically sent to all fingerprint contributors:

"By Act of Congress, FBI identification records are furnished to duly authorized officials 'for official purposes only.' It is the responsibility of each agency or department receiving FBI identification records to insure that these records are afforded proper security. Dissemination of such a record to an unauthorized source or to a private individual, will, under the Act, result in the cancellation of identification services to that agency or department. Your full cooperation in this matter will indeed be appreciated."

(4) All FBI fingerprint identification and related recordkeeping procedures presently in use are manual in nature; however, plans are in an advanced stage for automating them over the next several years. (Computerization of identification records for use in the Computerized Criminal History file of the National Crime Information Center are discussed in Tab C, captioned "FBI National Crime Information Center (NCIC).")

(5) through (7) Inasmuch as these inquiries relate to planned automated systems that are to be established in the future, they are dealt with, for purposes of clarity of presentation, after the responses to inquiries (8) through (19).

(8) Fingerprint cards contain the name, signature, and physical description of the person fingerprinted; information concerning the reason for fingerprinting—identity of contributing agency, date printed; and, where applicable, the charge and disposition or sentence. Some of the fingerprint cards contain the residential address, occupation and employment of the person fingerprinted. The identifica-

[2] 158.
[3] 21.
[4] 68.
[5] Public Law 92-554.

The figures in 2, 3, and 4 are as of January 1, 1974. The number of fingerprint cards on file has been reduced due to an active purge project designed to eliminate duplicative prints contained in our civil files and to remove prints in both our criminal and civil files based on age criteria. This project is still underway and its purpose is to reduce filing requirements and improve operating efficiency.

tion record, which is compiled from fingerprint cards, contains the identity of the contributor of the associated fingerprint cards; names and aliases of the subject of the record; agency identifying numbers; and, where applicable, the date of arrest or incarceration, charge, and disposition of the charge. No other information concerning the individual's background, personal life, personality, or habits is recorded in these records.

(9) As indicated in (3) above, guidelines governing maintenance, access, review, and disclosure of FBI identification information are promulgated by periodic letters to participating agencies.

(10) A. The individual is aware at the time he is fingerprinted that his encounter with a law enforcement agency is being recorded. If the fingerprint card is submitted to the FBI, it is retained in the FBI's manual fingerprint file. The criminal fingerprint cards indicate that the data contained on them may later become computerized in local, state and national files.

B. (The FBI acts merely as the custodian of identification information submitted by the various law enforcement and governmental agencies; therefore, the individual who is the subject of an FBI identification record is not allowed to directly review the record, which is based on fingerprint cards he has previously signed at the time his fingerprints were taken. Requests for changes in the record must be made through the agency which submitted his fingerprints to the FBI. Allegations received by the FBI concerning inaccuracies in a specific record are resolved with the contributing agency.) [6]

(11) FBI identification records are made available only to law enforcement and governmental agencies and federally chartered or insured banking institutions for official purposes. Authority is given in Section 534, Title 28, U.S. Code (see Exhibition II), and Section 902, Public Law 92–184 (see Exhibit III), as continued by Public Law (92–334.) [7]

(12) A written record is maintained of each dissemination of an identification record, including the date disseminated and the identity of the receiving agency.

(13) (Fingerprint cards are submitted by over 14,000 contributors representing law enforcement agencies, the Federal Government, and organizations authorized by state laws to contribute fingerprints for official purposes. Identification record information is gathered and taken from pre-existing fingerprint cards that are received from these agencies.) [8]

(14) The FBI, in its capacity as a clearinghouse for identification information, acts merely as a custodian of the information it receives. Therefore, responsibility for the accuracy of such data remains in the agency which demands, or legal action to delete inaccurate or inappropriate information must be brought against the submitting agency. Upon request of the submitting agency, the FBI will change or delete the information.

(15) Only Federal, state, and local law enforcement and governmental agencies and federally chartered or insured banking institutions are allowed access or use of information from FBI fingerprint files.

(16) None. (The Computerized Criminal History file of the National Crimes Information Center is discussed in Tab C, captioned "FBI National Crime Information Center (NCIC).")

(17) A. Security devices and procedures utilized to prevent unauthorized access to FBI identification files include physical security of the records themselves at the storage site and access only by FBI employees who have undergone background security investigations.

B. Responsibility for proper use of the information furnished from FBI identification files rests primarily with the receiving agencies. Section 534, Title 28, U.S. Code, provides that the exchange of records is subject to cancellation if dissemination is made outside the receiving departments or related agencies.

(18) The Director of the FBI appears before the House and Senate Subcommittees on Appropriations at which times he furnishes testimony on existing and planned data storage systems. The continuance of existing systems and the insti-

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[6] An individual may obtain a copy of his FBI identification record by following the procedures as set forth in Department of Justice Order 556–73. Applications for changes desired in the contents of a record must be submitted to the agency which furnished the individual's fingerprints to the FBI. Upon the receipt of an official communication from such agency, the FBI Identification Division will make any changes necessary in accordance with the information supplied by the contributing agency.

[7] Public Law 92–554.

[8] Fingerprint cards are currently being submitted by approximately 8,000 contributors representing law enforcement agencies, the Federal Government, state agencies authorized by state laws to contribute fingerprints for official purposes, and federally chartered or insured banking institutions. The reduction in the number of contributors from 14,000 to 8,000 is due to a change in the law regarding the submission of prints to the FBI, and the institution of the practice of eliminating those contributors who have not submitted fingerprints during the prior year. Identification record information is obtained from arrest fingerprint cards that are submitted to the FBI.

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tution of new systems depend, of course, upon approval by the Congress of funds requested by the FBI.

(19) A. See (18) above. B. See (18) above. C. See (18) above.

The following information is furnished regarding inquiries (5) through (7) of the questionnaire, which pertain to plans for future computerization or mechanization of data files.

Although all present FBI Identification Division files and work procedures are manual in nature, the FBI is actively researching ways to automate its identification functions. Each day the Division receives between 20,000 and 30,000 fingerprint inquiries which must be searched against the criminal fingerprint file representing approximately 20 million individuals. This enormous task is now accomplished manually by a staff of fingerprint technicians and clerks numbering approximately 3,000. In order to increase the efficiency of this important work, as well as save taxpayer money, the FBI has over the past several years conducted research into ways of automating its fingerprint processing operations.

One of the research projects involves the development of automatic fingerprint-reading scanning equipment which will read and record identifying characteristics from inked fingerprint cards and store this information in a computer's memory for later matching with other computerized fingerprint data. Significant progress has been made in this project as evidenced by the fact that a prototype of such equipment is presently under construction and is expected to be delivered to the FBI during 1972. Once delivered, the prototype equipment will undergo extensive testing and evaluation looking toward its future adaptation to operational day-to day use in the FBI Identification Division.

However, the FBI is not waiting for the perfection of operational automatic fingerprint scanning equipment before automating its other manual fingerprint processing procedures. In 1971 the FBI employed an outside consulting firm to conduct a study to determine the feasibility of automating the many manual processes that are ancillary to the technical fingerprint searching operation as well as to plan for the eventual incorporation of automatic fingerprint scanners. The results of the study proved that automation of most of these auxiliary procedures is both technically and economically feasible. Consequently, work has begun on the formulation of detailed systems design specifications necessary for the initiation of automation in the Identification Division. Because of the enormity of the task, automation will be implemented on a time-phased basis over the next several years.

The FBI automated fingerprint processing system is being designed so that it will be completely compatible with the Computerized Criminal History (CCH) system, the joint Federal and state program for the exchange of computerized criminal records. Information concerning CCH is contained in Tab C, captioned "FBI National Crime Information Center."

Advantages of achieving automation in the Identification Division are: (1) faster classification and searching of fingerprints at the FBI Identification Division, resulting in faster identification of criminals and speedier establishment of innocence of suspects; (2) faster handling of fingerprint records which will in general help speed up the overall criminal justice process; and (3) savings in manpower and filing space at the FBI Identification Division.[9]

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[9] Although most FBI Identification Division files and work procedures are manual in nature, the FBI is actively researching ways to automate its identification functions. Each day the Division receives between 20,000 and 30,000 fingerprint inquiries which must be searched against the criminal fingerprint file representing approximately 21 million individuals. This task is now performed by a staff of fingerprint technicians and clerks numbering approximately 3,000. In order to increase the efficiency of this work, as well as save taxpayer money, the FBI has over the past several years conducted research into ways of automating its fingerprint processing operations.

One of the research projects involves the development of an automatic fingerprint-reading scanner which will read and record identifying characteristics from inked fingerprint cards and store this information in a computer's memory for later matching with other computerized fingerprint data. A prototype was delivered to the FBI in the Fall of 1972, and has performed satisfactorily. Therefore, the FBI is currently negotiating with private industry for the construction of production models. Total automation of fingerprint reading is still several years away.

The FBI, however, is automating other fingerprint processing procedures. In 1971, it employed an outside consulting firm to conduct a study to determine the feasibility of automating the many manual processes ancillary to the technical fingerprint searching operation, and to plan for the eventual incorporation of automatic fingerprint scanners. The results of the study indicated that automation of most of these ancillary procedures is both technically and economically feasible. Automation of the first function began in August 1973; however, automation of the remaining functions must be approached on a time-phased basis over the next several years.

Advantages and benefits to be derived from instituting automation in the Identification Division are: (1) faster classification and searching of fingerprints, resulting in speedier identifications; (2) faster handling of fingerprint records which will assist in speeding the overall criminal justice process; and (3) manpower and space savings at the FBI Identification Division. Although the automation effort underway is primarily directed at obtaining greater internal processing efficiency, the automated system is also being designed to be compatible with and supportive of the NCIC Computerized Criminal History system, the joint Federal and state program for the exchange of computerized criminal records.

The only updating necessary of Mr. Gray's testimony regarding FBI Identification Division operations is to note Departmental Order 556-73, referred to above. A copy of this Order is attached. See p.668.

[Order 556-73]

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

Subpart C—Production of FBI Identification Records in Response to Written Requests by Subjects Thereof

By order dated September 24, 1973, the Attorney General of the United States directed that the Federal Bureau of Investigation, hereinafter referred to as the FBI, publish rules for the dissemination of arrest and conviction records to the subjects of such records upon request. This order resulted from a determination that 28 U.S.C. 534 does not prohibit the subjects of arrest and conviction records from having access to those records. In accordance with the Attorney General's order, the FBI will release to the subjects of identification records copies of such records upon submission of a written request, satisfactory proof of identity of the person whose identification record is requested and a processing fee of five dollars.

Since the FBI Identification Division is not the source of the data appearing in identification records, and obtains all data thereon from fingerprint cards or related identification forms submitted to the FBI by local, state, and Federal agencies, the responsibility for authentication and correction of such data rests upon the contributing agencies. Therefore, the rules set forth for changing, correcting or updating such data require that the subject of an identification record make application to the original contributing agency in order to correct the deficiency complained of.

The relevant provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rule making, opportunity for public participation and delay in effective date are inapplicable because the material contained herein relates to the interpretation of 28 U.S.C. 534 as allowing the granting of an exemption to subjects of identification records and relief of prior administrative restrictions on dissemination of such records to them. Furthermore, it is deemed in the public interest that there be no delay in effective date of availability of identification records to the subjects thereof.

By virtue of the order of the Attorney General, dated September 24, 1973, and pursuant to the authority delegated to the Director, FBI by 28 CFR 0.85(b): Part 16 of 28 CFR Chapter I, is amended by adding the following new Subpart C,

§ 16.30 Purpose and scope

This subpart contains the regulations of the Federal Bureau of Investigation, hereafter referred to as the FBI, concerning procedures to be followed when the subject of an identification record requests production thereof. It also contains the procedures for obtaining any change, correction or updating of such record.

§ 16.31 Definition of identification record.

An FBI identification record, often referred to as a "rap sheet," is a listing of fingerprints submitted to and retained by the FBI in connection with arrests and, in certain instances, fingerprints submitted in connection with employment, naturalization or military service. The identification record includes the name of the agency or institution which submitted the fingerprints to the FBI. If the fingerprints submitted to the FBI concern a criminal offense, the identification record includes the date arrested or received, arrest charge information and disposition data concerning the arrest if known to the FBI. All such data included in an identification record are obtained from the contributing local, State and Federal agencies. The FBI Identification Division is not the source of such data reflected on an identification record.

§ 16.32 Procedure to obtain an identification record.

The subject of an identification record may obtain a copy thereof by submitting a written request via the United States mails directly to the FBI, Identification Division, Washington, D.C. 20537, or may present his written request in person during regular business hours to the FBI Identification Division, Second and D Streets SW., Washington, D.C. Such request must be accompanied by satisfactory proof of identity, which shall consist of name, date and place of birth and a set of rolled-inked fingerprint impressions taken upon fingerprint cards or forms commonly utilized for applicant or law enforcement purposes by law enforcement agencies.

§ 16.33 Fee for provision of identification record.

Each written request for production of an identification record must be accompanied by a fee of five dollars ($5.00) in the form of a certified check or money order, payable to the Treasurer of the United States. This fee is established pursuant to the provisions of 31 U.S.C. 483a and is based upon the clerical time beyond the first quarter hour to be spent in searching, identifying and reproducing each identification record requested, at the rate of $1.25 per quarter hour, as specified in § 16.9. Any request for waiver of fee shall accompany the original request for the identification record and shall include a claim and proof of indigency. Consideration will be given to waiving the fee in such cases.

§ 16.34 Procedure to obtain change, correction or updating of identification records.

If, after reviewing his identification record, the subject thereof believes that it is incorrect or incomplete in any respect and wishes changes, correction or updating of the alleged deficiency, he must make application directly to the contributor of the questioned information. Upon the receipt of an official communication directly from the agency which contributed the original information the FBI Identification Division will make any changes necessary in accordance with the information supplied by the agency.

CLARENCE M. KELLEY,
Director, Federal Bureau of Investigation.

NOVEMBER 21, 1973.

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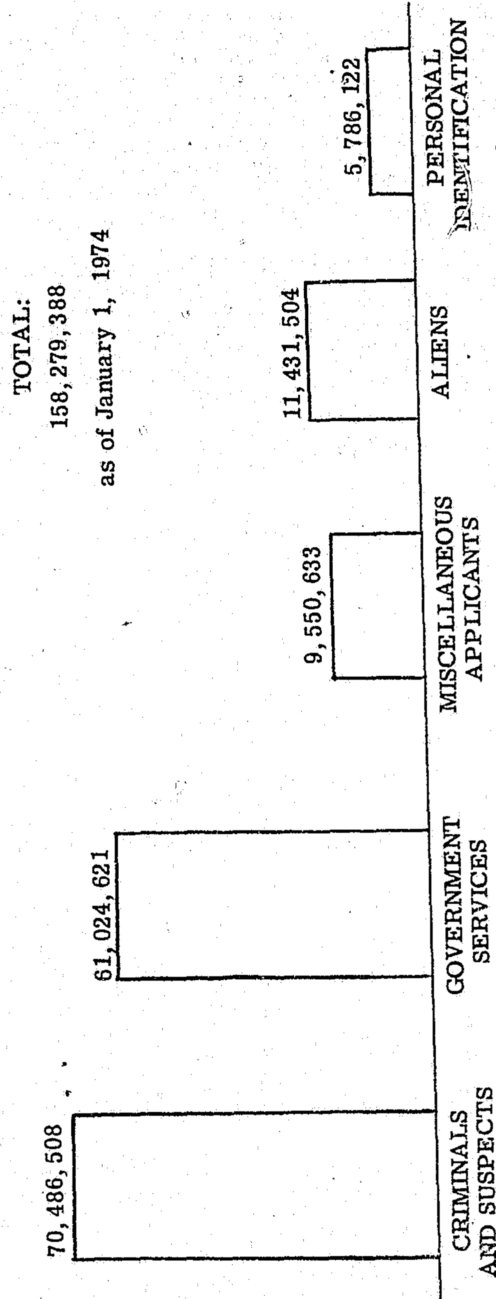


Types of Fingerprints
on File at
FBI Identification Division

2. NCIC

The CCH program was initiated on-line through the NCIC system in November, 1971. Currently the States of Arizona, California, Florida, Illinois, New York, and Pennsylvania have supplied to the FBI computerized records for the national file. In addition, the FBI has been making entries on Federal offenders who have been arrested since January, 1970, including entries for the District of Columbia. As of January 1, 1974, there were 440,426 CCH records. CCH files are now one of eight files in the NCIC. The other seven files relate to wanted persons and stolen property. The purpose of CCH is to speed up the criminal justice process. A more rapid flow of criminal offender information can bring about more realistic decisions with respect to bail, sentencing, probation, and parole. For over 49 years the FBI has been exchanging criminal history information with police, courts, and correctional agencies in the form of the criminal identification record using the United States' mails. The NCIC system offers a more efficient and effective means of handling this essential service.

The CCH record is segmented to include identification information concerning the individual, as well as concerning arrests, court dispositions, and custody/supervision status changes following conviction. (See exhibit on Criminal History File—Record Formats at end of this part.)

Forty-four states and D.C. are now participating in the Computerized Criminal History File and they have all signed contractual agreements to abide by the rules, policies and procedures of NCIC.

As the remaining states develop criminal justice information system capability and/or meet NCIC security criteria including management control by a criminal justice agency or computer systems processing offenders' records, they are expected to be incorporated into the system.

There are 88 control terminals in Federal (other than FBI), state, and local law enforcement agencies which are directly connected to the NCIC computerized files on wanted persons and stolen property. Of these, 63 also have access to the CCH file. The control terminal agencies, in many instances, operate computer systems of their own, servicing terminal devices on intrastate law enforcement networks. Thus, several thousand law enforcement agencies where NCIC security criteria are met at both control terminal and local levels, may have access to the CCH File through control terminal computers.

The Bureau of Customs, Bureau of Prisons, Department of Justice, Marine Corps, Navy, Army, Air Force, Postal Service and Secret Service participate in the CCH program through terminal access at the Headquarters level. Service is provided to other Federal agencies, as requested, by the NCIC Headquarters.

At the present time, the States of Alaska and Hawaii are being afforded electronic message switching capabilities with the contiguous 48 states via their NCIC terminals on the NCIC computer which is interfaced with the National Law Enforcement Teletype System. This service allows free passage of administrative traffic to and from these distant areas which was heretofore cost prohibitive. In the near future the Commonwealth of Puerto Rico will also be afforded this capability in the message switching network.

The following information supplements previous facts submitted to the Subcommittee by letter dated November 3, 1972, in response to its general data bank survey.

Attached is a copy of a document entitled, "National Crime Information Center (NCIC) Computerized Criminal History Program Background, Concept and Policy as Approved by NCIC Advisory Board," dated September 13, 1973; a graphic display entitled, "Breakdown of Records in NCIC Computer," dated February 1, 1974; a graphic display entitled, "NCIC Network," dated February, 1974. These attachments give the current status of the entire NCIC system. Security and confidentiality procedural requirements are set forth in the Background, Concept and Policy document.

Eighty-eight NCIC control terminals serve criminal justice agencies in all 50 states plus the District of Columbia and Canada. Fifty control terminals have computers, and 29 of the computers are operational in state systems. There are 44 state control terminals with access to computerized criminal history information. However, of these, six (New York, Pennsylvania, Arizona, Illinois, California and Florida) are contributing states and have terminals with the capability of entering, modifying, and canceling records in the CCH File.

During the month of January, 1974, a daily average of 137,841 transactions were handled by the NCIC computer. This represents an increase of 38,665 over the 99,176 daily transactions as recorded in the month of January 1973.

NATIONAL CRIME INFORMATION CENTER (NCIC) COMPUTERIZED CRIMINAL HISTORY PROGRAM BACKGROUND, CONCEPT, AND POLICY AS APPROVED BY NCIC ADVISORY POLICY BOARD—SEPTEMBER 13, 1973

BACKGROUND AND CONCEPT

The development in 1971, of the computerized criminal history file as part of the operating NCIC system *was* a major step forward in making this system of optimum value to all agencies involved in the administration of criminal justice. Offender criminal history has always been regarded by NCIC as the basic file in a criminal justice information system. From the beginning of NCIC sensitivity of a criminal history file with its security and confidentiality considerations has always been recognized (Science and Technology Task Force Report, The President's Commission on Law Enforcement and Administration of Justice, 1967).

It is important to keep in mind the need to develop an offender criminal history exchange with the states that will rapidly gain the confidence of all users in terms of system integrity, accuracy, and completeness of file content. This type of discipline is necessary if a nationwide system employing the necessary standards is to succeed. This is an essential consideration during the record conversion stage even though available data is limited, and becomes an essential goal in an operating on-line system.

From its inception, the concept of NCIC has been to serve as a national index and network for 50 state law enforcement information systems. Thus, the NCIC does not, nor is it intended to, eliminate the needs for such systems at appropriate state and metropolitan levels, but complements these systems. The concept was built on varying levels and types of information in metropolitan area, state and national files. In such an overall system many thousands of duplicate indices in local, state and Federal agencies could be eliminated and all agencies share in centralized operational information from a minimum number of computer files. The purpose of centralization beyond economics is to contend with increasing criminal mobility and recidivism (criminal repeating). Computer and communications technology makes this possible and, in fact, demands this system concept.

Our way of life demands that local and state governments retain their traditional responsibility over law enforcement. Computer and communications technology such as NCIC enhances local and state capability to preserve this tradition. The NCIC system places complete responsibility for all record entries on each agency—local, state or Federal. Likewise, clearance, modification and cancellation of these records are also the responsibility of the entering agency. Each record, for all practical purposes, remains the possession of the entering agency. However, each local and state agency in one state can immediately share information contributed by another agency in another state. This continuity of information greatly increases the capability of local and state agencies in working across state lines which have in the past been barriers to mutual state and local law enforcement efforts.

The NCIC system, which is the first use of computer/communications technology to link together local, state and Federal governments, established the control terminal concept. In a national system, although the individual users are responsible for the accuracy, validity, and completeness of their record entries and their action decisions on positive responses to inquiries, more stringent controls with respect to system discipline are required. A control terminal on the NCIC system is a state agency or a large core city servicing statewide or metropolitan area users. These control terminals, rapidly becoming computer based, share the responsibility in the national network in monitoring system use, enforcing discipline and assuring system procedures and policies are met by all users. The NCIC system through its related control terminals and the advent of criminal history, has a potential of over 45,000 local, state and Federal criminal justice user terminals. Tradition, computer/communications technology, and the potential size of the NCIC network and its related state systems demand that its management responsibility be shared with the states. To accomplish this objective an NCIC Working Committee and an Advisory Policy Board were established.

From the beginning, the NCIC system concept has been to encourage and develop strong central state information and communications services. Through mandatory reporting laws at the State level, essential centralized files can be established for both operational and administrative use. The administrative or statistical use of computer based files is a vital consideration. A state cannot make intelligent decisions about crime problems or criminal justice effectiveness unless it can statistically document the extent and nature of crime and the success or failure of the criminal justice system in its treatment of offenders. Thus,

the planning of these systems must incorporate means of obtaining the necessary statistical data as a byproduct of the operational information being processed on a day-to-day basis. This is particularly true with respect to the criminal history application.

Of further significance are the centralized police statistics programs (Uniform Crime Reports) now operating in *16* states whereby comparative crime statistics are furnished to the national level through a central state agency. This statistical data furnished to the FBI for national use is merely a by-product of a more detailed state program which is an integral part of state law enforcement information services.

Offender criminal history, i.e., the physical and numerical descriptors of an arrested person and the basic recorded actions of the criminal justice agencies with respect to the offender and the charge, is vital information in day-to-day criminal justice operations. FBI studies as published in Uniform Crime Reports have documented the extent of criminal repeating by the serious offender, i.e., an average criminal career of 10 years and 6 arrests. With respect to criminal mobility, about 70 percent of the rearrests (criminal repeating) will be within the same state. Therefore, an offender criminal history file in scope and use is essentially a state file and a state need.

There is, however, substantial interstate criminal mobility (25–30 percent) which requires sharing of information from state to state. There is no way to positively identify a first offender who will later commit a crime in another state. The approach then to a national index must be an empirical judgment that all state offenders committing serious and other significant violations must be included in the national index. As in other aspects of the system, the determination of which criminal acts constitute serious or significant violations resides with each individual state. A national index is required to efficiently and effectively coordinate the exchange of criminal history among state and Federal jurisdictions and to contend with interstate criminal mobility.

The development of offender criminal history for interstate exchange required the establishment of standardized offense classifications, definitions, and data elements. Felony and misdemeanor definitions cannot be used in this approach because of the wide variation in state statutes. In fact, the definitions of a specific crime by state penal codes also vary widely. For full utility and intelligent decisionmaking, offender criminal history requires a common understanding of the terminology used to describe the criminal act and the criminal justice action.

Computerized offender criminal history must have the criminal fingerprint card taken at the time of arrest as the basic source document for all record entries and updates. This is necessary in order to preserve the personal identification integrity of the system. While the criminal history file in the NCIC system will be open to all criminal justice terminals for inquiry, only the state agency can enter and update a record. This provides for better control over the national file and its content. It relies on a central state identification function to eliminate duplications of records and provides the best statistical opportunity to link together multijurisdictional criminal history at local and county level.

Using the NCIC concept of centralized state information systems, another requirement is to change the flow of criminal fingerprint cards. Local and county contributors within a state must in an ultimate operational system forward criminal fingerprint cards to the FBI through the central state identification function. Where the state can make the identification with a prior print in file, it can take the necessary action in a computerized file without submission to the FBI. Where the state cannot make the identification, the fingerprint card must be submitted to the national identification file. Again, the system's concept is that a fingerprint card must be the source document for a record entry and update, but now it will be retained at the state or national level. This approach eliminates considerable duplication of effort in identifying fingerprint submissions, particularly criminal repeaters at state and national level. It will be the responsibility of each state to determine its own capability in regard to servicing intrastate criminal fingerprint cards. Whenever a state has determined that it is ready to assume processing all intrastate criminal fingerprint cards, the state agency will inform contributors within the state to forward all criminal fingerprint submissions to the state identification bureau, including those which were previously directed to the FBI, and will also so inform the FBI. Since the success of the system concept depends on this procedure all possible measures will be taken to assure compliance.

As pointed out earlier, the justification for a national index is to efficiently and effectively coordinate 50 state systems for offender criminal history exchange. The need is to identify the interstate mobile offender. FBI statistics indicate that

about 70 percent of the offenders confine their activity to a single state. These may be described as single state offenders. Another 25 to 30 percent of the offenders commit crimes supported by fingerprint cards in two or more states. FBI statistics with respect to more serious violators indicate that on an average, one-third accumulate arrests in three or more states over a 6- to 9-year period. Offenders with arrests in two or more states may be described as multiple state offenders.

In either event sufficient data must be stored in the national index to provide all users, particularly those users who do not have the capability to fully participate in the beginning system, the information necessary to meet basic criminal justice needs.

In order for the system to truly become a national system, each state must create a fully operational computerized state criminal history capability within the state before July 1, 1975.

Although the present need for the criminal history file and the unequal development of state criminal justice systems dictate a simple initial index structure, the ultimate system should differentiate between "multiple state" and "single state" offenders with respect to the level of residency of detailed criminal history. "Single state" offenders are those whose criminal justice interactions have been non-Federal and confined to a single state having a computerized criminal history system.

The interstate exchange of computerized criminal history records requires a standard set of data elements and standard definitions. The system design was built upon user needs for all criminal justice agencies and end with user input. It was designed on what it is possible to achieve in the future, but to operate on the information and hardware available at all levels at the present time. While the formats and standardized offense classifications and definitions seem ambitious, to implement a system of this potential scope and size without a design to substantially improve the identification/criminal history flow would be a serious error.

System concept

As pointed out earlier the concept of NCIC since initial planning in 1966 has been to complement state and metropolitan area systems. Although computer/communications technology is a powerful tool, a single national file of detailed law enforcement data was viewed as being unmanageable and ineffective in serving the broad and specialized needs of local, state and Federal agencies. The potential size and scope of a national system of computerized criminal histories involving 45,000 criminal justice agencies demand joint management by the states and the FBI/NCIC.

Necessity for State files

(1) Seventy percent of the criminal history records will be single state in nature, i.e., all criminal activity limited to one state and, therefore, the responsibility of and of primary interest to that state,

(2) State centralization can tie together the frequent intrastate, multijurisdictional arrests of the same offender and thus eliminate unnecessary duplication of files at municipal and county level. This will obviously result in economies.

(3) A state system with a detailed data base, because of its manageable size, can best satisfy most local and state criminal justice agency information needs both on and off line. The national file then complements rather than duplicates the state file.

(4) A state with a central data base of criminal history has the necessary information for overall planning and evaluation including specialized needs unrelated to the national file,

(5) State control of record entry and updating to national file more clearly fixes responsibility, offers greater accuracy, and more rapid development of the necessary standards,

(6) A central state system provides for shared management responsibility with FBI/NCIC in monitoring intrasate use of the NCIC, including security and confidentiality,

(7) Channeling the criminal identification flow through the state to the national level eliminates substantial duplication of effort at national and state levels.

Compatibility of State and National files

(1) To contend with criminal repeating and mobility, a national index of state and Federal offender criminal history is necessary; i.e., a check of one central index rather than 51 other jurisdictions.

(2) The duplication does provide a backup to recreate either a national or state file in the event of a disaster, a crosscheck for accuracy, validity, and completeness as well as a more efficient use of the network.

(3) The NCIC record format and data elements for computerized criminal history afford a standard for interstate exchange.

(4) In the developed system single state records (70 percent) will become an abbreviated criminal history record in the national index with switching capability for the states to obtain the detailed record. Such an abbreviated record should contain sufficient data to satisfy most inquiry needs, i.e., identification segment, originating agency, charge, date, disposition of each criterion offense and current status. This will substantially reduce storage costs and eliminate additional duplication.

Program development

The proper development of the Computerized Criminal History Program, in terms of its impact on criminal justice efficiency and effectiveness and dollar costs, is vital. At the present time there is a wide range of underdevelopment among the states in essential services such as identification, information flow; i.e., court disposition reporting programs, computer systems and computer skills.

(1) NCIC implemented computerized criminal history in November 1971, requiring the full interstate format for both single and multi-state records because:

(a) This enables all states to obtain the benefits of the Computerized Criminal History Program.

(b) This provides all states time to develop and implement the necessary related programs to fully participate.

(c) Familiarity with and adherence to all system standards will speed program development.

(2) It is understood that the NCIC Computerized Criminal History Program will be continually evaluated, looking toward the implementation of single state, multistate concept.

Levels of participation

(1) State maintains central computerized criminal justice information system interfaced with NCIC. The state control terminal has converted an initial load of criminal history and these records are stored at state and national levels. The state control terminal has the online capability of entering new records into state and NCIC storage, as well as the ability to update the computer stored records. Through the state system local agencies can inquire on-line for criminal history at state and national levels. This is a fully participating NCIC state control terminal.

(2) State maintains an electronic switch linking local agencies for the purpose of administrative message traffic and on-line access to NCIC through a high-speed interface. No data storage at state level; however, criminal history records are stored in NCIC and new records entered and updated by the state control terminal from a manual interface to the electronic switch. The switch provides local agencies direct access to NCIC for criminal history summary information and other files.

(3) The state maintains manual terminal on low-speed line to NCIC. State control terminal services local agencies off-line; i.e., radio, teletype and telephone. Since volume of computerized criminal history is relatively small the state control terminal may convert criminal history records, enter and update these records in NCIC. No computer storage at state level.

Levels 2 and 3 are interim measures until such time as the state agency secures the necessary hardware to fully participate. At that time the state records stored in NCIC will be copied in machine form and returned to the originating state to implement the state system.

Security and Confidentiality

I. Information in FBI/NCIC Interstate Criminal History Exchange System

A. Entries of criminal history data into the NCIC computer and updating of the computerized record will be accepted only from an authorized state or Federal criminal justice control terminal. Terminal devices in other criminal justice agencies will be limited to inquiries and responses thereto. An authorized state control terminal is defined as a state criminal justice agency on the NCIC system servicing statewide criminal justice users with respect to criminal history data.

Control terminals in Federal agencies will be limited to those involved in the administration of criminal justice and/or having law enforcement responsibilities.

B. Data stored in the NCIC computer will include personal identification data, as well as public record data concerning each of the individual's major steps through the criminal justice process. A record concerning an individual will be initiated upon the first arrest of that individual for an offense meeting the criteria established for the national file. Each arrest will initiate a cycle in the record, which cycle will be complete upon the offender's discharge from the criminal justice process in disposition of that arrest.

C. Each cycle in an individual's record will be based upon fingerprint identification. Ultimately the criminal fingerprint card documenting this identification will be stored at the state level or in the case of a Federal offense, at the national level. At least one criminal fingerprint card must be in the files of the FBI Identification Division to support the computerized criminal history record in the index.

D. The data with respect to current arrests entered in the national index will be restricted to serious and/or significant violations. Excluded from the national index will be juvenile offenders as defined by state law (unless the juvenile is tried in court as an adult); charges of drunkenness and/or vagrancy; certain public order offenses, i.e., disturbing the peace, curfew violations, loitering, false fire alarm; traffic violations (except data will be stored on arrests for manslaughter, driving under the influence of drugs or liquor, and "hit and run"); and non-specific charges of suspicion or investigation.

E. Data included in the system must be limited to that with the characteristics of public record, i.e.:

1. Recorded by officers of public agencies or divisions thereof directly and principally concerned with crime prevention, apprehension, adjudication or rehabilitation of offenders.

2. Recording must have been made in satisfaction of public duty.

3. The public duty must have been directly relevant to criminal justice responsibilities of the agency.

F. Social history data should not be contained in the interstate criminal history system; e.g., narcotic civil commitment or mental hygiene commitment. If, however, such commitments are part of the criminal justice process, then they should be part of the system.

Criminal history records and other law enforcement operational files should not be centrally stored or controlled in "data bank" systems containing non-criminal justice related information, e.g., welfare, hospital, education, revenue, voter registration, and other such noncriminal files necessary for an orderly process in a democratic society.

G. Each control terminal agency shall follow the law or practice of the state or, in the case of a Federal control terminal, the applicable Federal statute, with respect to purging/expunging data entered by that agency in the nationally stored data. Data may be purged or expunged only by the agency originally entering that data. If the offender's entire record stored at the national level originates with one control terminal and all cycles are purged/expunged by that agency, all information, including personal identification data will be removed from the computerized NCIC file.

II. STEPS TO ASSURE ACCURACY OF STORED INFORMATION

A. The FBI/NCIC and state control terminal agencies will make continuous checks on records being entered in the system to assure system standards and criteria are being met.

B. Control terminal agencies shall adopt a careful and permanent program of data verification including:

1. Systematic audits conducted to insure that files have been regularly and accurately updated.

2. Where errors or points of incompleteness are detected the control terminal shall take immediate action to correct or complete the NCIC record as well as its own state record.

III. WHO MAY ACCESS CRIMINAL HISTORY DATA

A. Direct access, meaning the ability to access the NCIC computerized file by means of a terminal device, will be permitted only for criminal justice agencies in the discharge of their official, mandated responsibilities. Agencies that will be permitted direct access to NCIC criminal history data include:

1. Police forces and departments at all governmental levels that are responsible for enforcement of general criminal laws. This should be understood to include highway patrols and similar agencies.

2. Prosecutive agencies and departments at all governmental levels.

3. Courts at all governmental levels with a criminal or equivalent jurisdiction.

4. Correction departments at all government levels, including corrective institutions and probation departments.

5. Parole commissions and agencies at all governmental levels.

6. Agencies at all governmental levels which have as a principal function the collection and provision of fingerprint identification information.

7. State control terminal agencies which have as a sole function by statute the development and operation of a criminal justice information system.

IV. CONTROL OF CRIMINAL JUSTICE SYSTEMS

All computers, electronic switches and manual terminals interfaced directly with the NCIC computer for the interstate exchange of criminal history information must be under the management control of criminal justice agencies authorized as control terminal agencies. Similarly, satellite computers and manual terminals accessing NCIC through a control terminal agency computer must be under the management control of a criminal justice agency. Management control is defined as that applied by a criminal justice agency with the authority to employ and discharge personnel, as well as to set and enforce policy concerning computer operations. Management control includes, but is not limited to, the direct supervision of equipment, systems design, programming and operating procedures necessary for the development and implementation of the computerized criminal history program. Management control must remain fully independent of non-criminal justice data systems and criminal justice systems shall be primarily dedicated to the service of the criminal justice community.

In those instances where criminal justice agencies are utilizing equipment and personnel of a noncriminal justice agency for NCIC/CCH purposes, the following criteria will apply in meeting the above management control provisions:

1. The hardware, including processor, communications control, and storage devices, to be utilized for the handling of criminal history data must be dedicated to the criminal justice function.

2. The criminal justice agency must exercise management control with regard to the operating of the aforementioned equipment by—

(a) having a written agreement with the noncriminal justice agency operating the data center providing the criminal justice agency authority to select and supervise personnel,

(b) having the authority to set and enforce policy concerning computer operations, and

(c) having budgetary control with regard to personnel and equipment, in the criminal justice agency.

The Board endorses the following statement by the Director of the FBI before the Subcommittee on Constitutional Rights on March 17, 1971. "If law enforcement or other criminal justice agencies are to be responsible for the confidentiality of the information in computerized systems, then they must have complete management control of the hardware and the people who use and operate the system. These information systems should be limited to the function of serving the criminal justice community at all levels of government—local, state and Federal."

The following are considerations:

1. Success of law enforcement criminal justice depends first on its manpower, adequacy and quality, and secondly, information properly processed, retrievable when needed and used for decision making. Law Enforcement can no more give up control of its information than it can its manpower.

2. Computerized information systems are made up of a number of integral parts, namely, the users, the operating staff, computers and related hardware, communications and terminal devices. For effectiveness, management control of the entire system cannot be divided between functional and nonfunctional agencies. Likewise, the long-standing law enforcement fingerprint identification process is an essential element in the criminal justice system.

3. Historically, law enforcement criminal justice has been responsible for the confidentiality of its information. This responsibility cannot be assumed if its data base is in a computer system out of law enforcement criminal justice control.

4. The function of public safety and criminal justice demands the highest order of priority, 24 hours a day. Experience has shown that this priority is best achieved and maintained through dedicated systems.

5. A national statewide public safety and criminal justice computer communications system, because of priority, scope including system discipline, and information needs, on and off line, will require full service of hardware and operating personnel.

6. Historically, police and criminal justice information have not been intermingled or centrally stored with noncriminal social files, such as revenue, welfare, and medical, etc. This concept is even more valid with respect to computerized information systems at both national and state levels.

7. These systems, particularly public safety and criminal justice information systems, must be functional and user oriented if they are to develop effectively. Computer skills are a part of the system. Ineffective systems result not only in the greatest dollar loss but also costs in lives.

V. USE OF SYSTEM-DERIVED CRIMINAL HISTORY DATA

A. Criminal history data on an individual from the national computerized file will be made available to Federal agencies authorized under Executive Order or Federal statute and to criminal justice agencies for criminal justice purposes. Precluded is the dissemination of such data for use in connection with licensing or local or sate employment, other than with a criminal justice agency, or for other uses unless such dissemination is pursuant to state and Federal statutes. There are no exceptions.

B. The use of data for research should acknowledge a fundamental commitment to respect individual privacy interests with the identification of subjects divorced as fully as possible from the data. Proposed programs must be reviewed by the NCIC or control terminal agency to assure their propriety and to determine that proper security is being provided. All noncriminal justice agency requests involving the identities of individuals in conjunction with their national criminal history records must be approved by the Advisory Policy Board.

The NCIC or control terminal agency must retain rights to monitor any research project approved and to terminate same if a violation of the above principles is detected. Research data shall be provided off line only.

C. Should any information be verified that any agency has received criminal history information and has disclosed that information to an unauthorized source, immediate action will be taken by NCIC to discontinue criminal history service to that agency, through the control terminal if appropriate, until the situation is corrected.

D. Agencies should be instructed that their rights to direct access encompass only requests reasonably connected with their criminal justice responsibilities.

E. The FBI/NCIC and control terminals will make checks, as necessary, concerning inquiries made of the system to detect possible misuse.

F. The establishing of adequate state and Federal criminal penalties for misuse of criminal history data is endorsed.

G. Detailed computerized criminal history printouts shall contain caveats to the effect, "This response based on numeric identifier only" and "Official use only—arrest data based on fingerprint identification by submitting agency or FBI." These caveats will be generated by the FBI/NCIC or state control terminal's computer or may be preprinted on paper stock.

VI. RIGHT TO CHALLENGE RECORD

The person's right to see and challenge the contents of his record shall form an integral part of the system with reasonable administrative procedures.

VII. PHYSICAL, TECHNICAL, AND PERSONNEL SECURITY MEASURES

The following security measures are the minimum to be adopted by all criminal justice agencies having access to the NCIC Computerized Criminal History File. These measures are designed to prevent unauthorized access to the system data and/or unauthorized use of data obtained from the computerized file.

A. Computer centers

1. The criminal justice agency computer site must have adequate physical security to protect against any unauthorized personnel gaining access to the computer equipment or to any of the stored data.

2. Since personnel at these computer centers can access data stored in the system, they must be screened thoroughly under the authority and supervision of an NCIC control terminal agency. (This authority and supervision may be

delegated to responsible criminal justice agency personnel in the case of a satellite computer center being serviced through a state control terminal agency.) This screening will also apply to non-criminal justice maintenance or technical personnel.

3. All visitors to these computer centers must be accompanied by staff personnel at all times.

4. Computers having access to the NCIC must have the proper computer instructions written and other built-in controls to prevent criminal history data from being accessible to any terminals other than authorized terminals.

5. Computers having access to the NCIC must maintain a record of all transactions against the criminal history file in the same manner the NCIC computer logs all transactions. The NCIC identifies each specific agency entering or receiving information and maintains a record of those transactions. This transaction record must be monitored and reviewed on a regular basis to detect any possible misuse of criminal history data.

6. Each state control terminal shall build its data system around a central computer, through which each inquiry must pass for screening and verification. The configuration and operation of the center shall provide for the integrity of the data base.

B. Communications

1. Lines/channels being used to transmit criminal history information must be dedicated solely to criminal justice use, i.e., there must be no terminals belonging to agencies outside the criminal justice system sharing these lines/channels.

2. Physical security of the lines/channels must be protected to guard against clandestine devices being utilized to intercept or inject system traffic.

C. Terminal devices having access to NCIC

1. All agencies having terminals on the system must be required to physically place these terminals in secure locations within the authorized agency.

2. The agencies having terminals with access to criminal history must have terminal operators screened and restrict access to the terminal to a minimum number of authorized employees.

3. Copies of criminal history obtained from terminal devices must be afforded security to prevent any unauthorized access to or use of that data.

4. All remote terminals on NCIC Computerized Criminal History will maintain a hard copy of computerized criminal history inquiries with notation of individual making request for record (90 days).

VIII. PERMANENT COMMITTEE ON SECURITY AND CONFIDENTIALITY

A permanent committee has been established, composed of criminal justice representatives, which group will address the problems of security and privacy on a continuing basis and provide guidance to the NCIC Advisory Policy Board. Some areas recommended for study are:

A. The consideration of criteria for the purging of records; i.e., deletion of records after a designated period of criminal inactivity or attainment of a specified age, etc.

B. The consideration of criteria for qualification of non-criminal justice agencies for secondary access to criminal history data.

C. A model state for protecting and controlling data in any future system should be drafted and its adoption encouraged.

IX. ORGANIZATION AND ADMINISTRATION

A. Each control terminal agency shall sign a written agreement with the NCIC to conform with system policy before participation in the criminal history program is permitted. This would allow for control over the data and give assurance of system security.

B. In each state the control terminal agency shall prepare and execute a written agreement containing similar provisions to the agreement by the states and NCIC with each criminal justice agency having a terminal device capable of accessing criminal history data within that state.

C. Each state criminal justice control terminal agency is responsible for the security throughout the system being serviced by that agency, including all places where terminal devices are located.

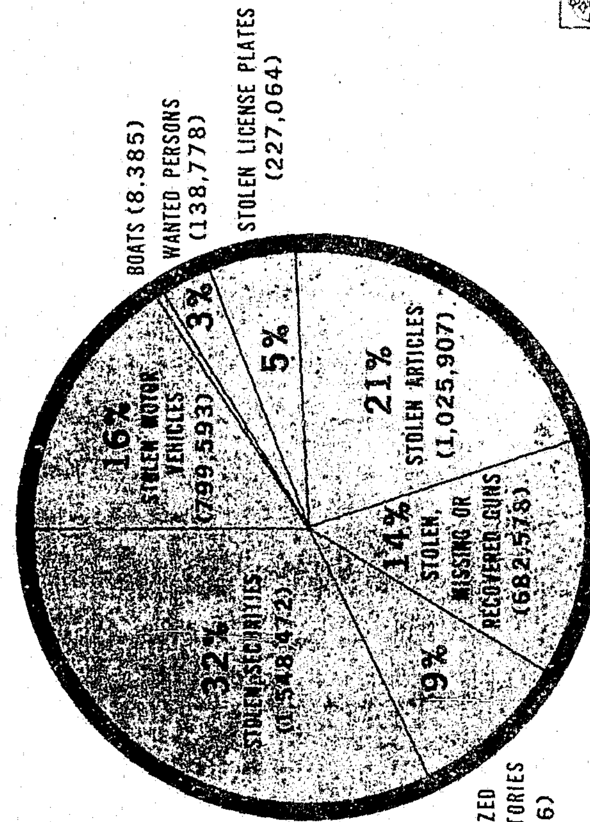
D. A system security officer shall be designated in each control terminal agency to assure all necessary physical, personnel, computer and communications safe-

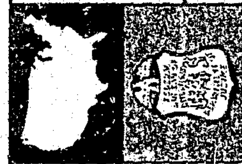
guards prescribed by the Advisory Policy Board are functioning properly in systems operations.

E. The rules and procedures governing direct terminal access to criminal history data shall apply equally to all participants to the system, including the Federal and state control terminal agencies, and criminal justice agencies having access to the data stored in the system.

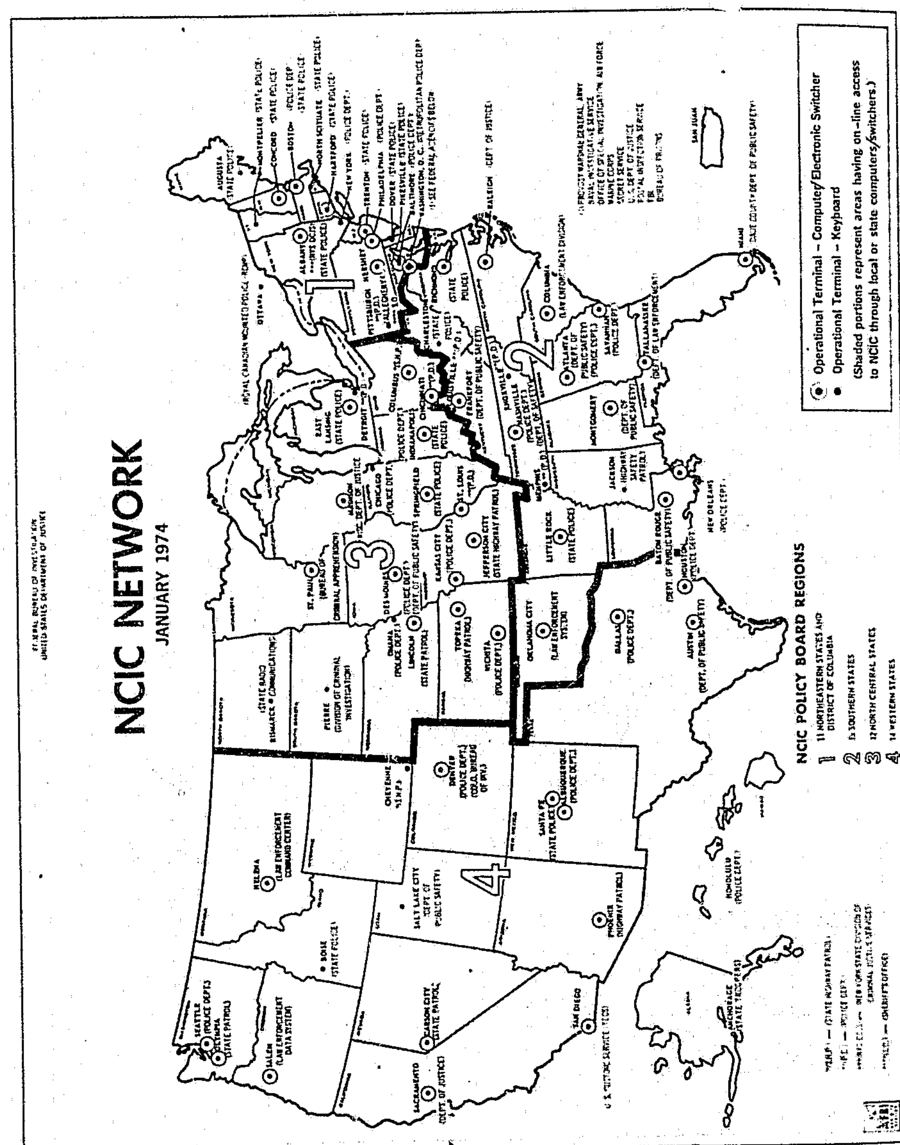
F. All control terminal agencies and other criminal justice agencies having direct access to computerized criminal history data from the system shall permit an inspection team appointed by the Security and Confidentiality Committee to conduct appropriate inquiries with regard to any allegations received by the Committee of security violations. The inspection team shall include at least one representative of the FBI/NCIC. All results of the investigation conducted shall be reported to the Advisory Policy Board with appropriate recommendations.

G. Any noncompliance with these measures shall be brought to the immediate attention of the Committee which shall make appropriate recommendation to the Advisory Policy Board. This Board has the responsibility for recommending action, including the discontinuing of service to enforce compliance with system security regulations.





TOTAL 4,871,203



The following is updated material related to questions addressed to Mr. Gray by Senator Charles Mathias, and answered during Mr. Gray's nomination testimony. Material is current as of February 1, 1974. Material is keyed to alphabetical designations of Senator Mathias. Page numbers refer to printed testimony, regarding NCIC.

(A) (page 236) As of February 1, 1974, there was a total of 4,171,450 records contained in the NCIC computer. It is pointed out that approximately 1,000,000 property records were purged from NCIC files in January, 1974. The current total is broken down, as follows:

Stolen securities	1, 181, 649
Stolen vehicles	809, 316
Stolen articles	689, 305
Stolen guns	687, 024
Stolen license plates	212, 583
Stolen boats	8, 492
Wanted persons	137, 278
Criminal histories	445, 803
Total	4, 171, 450

The estimate of the number of records that will be contained in NCIC one year hence (February 1975) is 5,500,000; five years hence, 9,000,000; and ten years hence, 14,000,000.

(B) (page 236) As of February 1, 1974, there were 445,803 criminal history records entered in the NCIC system.

It is estimated that the NCIC system will contain 1,000,000 computerized criminal history records one year hence; 3,000,000 computerized criminal records five years hence and 8,000,000 computerized criminal history records ten years hence.

(c) (pages 236–239) Any Federal agency can request and receive all information contained in the NCIC for purposes of discharging its official and mandated responsibilities except where precluded by Federal regulations.

(F) (pages 239–240):

FBI costs for National Crime Information Center

Year:	
1966	$94, 329
1967	105, 194
1968	130, 915
1969	325, 598
1970	1, 752, 516
1971	2, 786, 865
1972	3, 978, 508
1973	5, 336, 755
1974 [1]	8, 847, 491
1975 [1]	7, 288, 880
1976 [1]	7, 656, 948
1977 [1]	9, 081, 226
1978 [1]	10, 933, 214

[1] Actual and estimated.

(O) (Page 245–246) The permanent Committee on Security and Confidentiality was established by the NCIC Advisory Policy Board on August 18, 1971. The following list of members is current as of February 1, 1974:

Colonel John R. Plants, Chairman, Director, Department of State Police, East Lansing, Michigan.

Mr. Michael N. Canlis, Sheriff-Coroner, County of San Joaquin, Stockton, California.

Mr. John H. Dreiske, Jr., Illinois Department of Law Enforcement, Springfield, Illinois.

Dr. Howard M. Livingston, Director, Police Information Network, State Department of Justice, Raleigh, North Carolina.

Colonel Carl V. Goodin, Chief of Police, Cincinnati, Ohio.

Mr. George P. Tielsch, Chief of Police, Seattle, Washington.

Hon. Lester Earl Cingcade, Administrative Director of the Courts, Supreme Court, Honolulu, Hawaii.

Commissioner John F. Kehoe, Jr., State Department of Public Safety, Boston, Massachusetts.
Hon. Thomas J. Stovall, Jr., Judge, 129th District of Texas, Houston, Texas.
Mr. Norman F. Stultz, FBI (NCIC representative).

The current membership (Feb. 1, 1974) of the NCIC Advisory Policy Board is as follows:

Chairman, Mr. O. J. Hawkins, Assistant Director, California Department of Justice, Sacramento, California.
Vice Chairman, Colonel D. B. Kelley, Superintendent, Department of Law and Public Safety, Division of State Police, West Trenton, New Jersey.
Inspector James C. Herron, Computer Division, Police Department, Philadelphia, Pennsylvania.
Mr. William E. Kirwan, Superintendent, New York State Police, Albany, New York.
Major Albert F. Kwiatek, Director, Bureau of Technical Services, Harrisburg, Pennsylvania.
Colonel Walter E. Stone, Superintendent, Rhode Island State Police Headquarters, North Scituate, Rhode Island.
Colonel Robert M. Chiaramonte, Superintendent, Ohio State Highway Patrol, Columbus, Ohio.
Mr. Harvey N. Johnson, Director, Illinois Department of Law Enforcement, Springfield, Illinois.
Colonel John R. Plants, Director, Department of State Police, East Lansing, Michigan.
Colonel Sam S. Smith, Superintendent, Missouri Highway Patrol, Jefferson City, Missouri.
Mr. Carl Goodin, Chief of Police, Cincinnati Police Department, Cincinnati, Ohio.
Mr. L. Clark Hand, Superintendent, Idaho State Police, Boise, Idaho.
Colonel James J. Hegarty, Superintendent, Arizona Highway Patrol, Phoenix, Arizona.
Colonel Wilson E. Speir, Director, Texas Department of Public Safety, Austin, Texas.
Mr. George P. Tielsch, Chief of Police, Seattle, Washington.
Mr. William Beardsley, Director, Division of Investigation, Department of Public Safety, Atlanta, Georgia.
Colonel R. L. Bonar, Superintendent, West Virginia State Police, South Charleston, West Virginia.
Captain J. H. Dowling, Communications Bureau, Police Department, Memphis, Tennessee.
Dr. Howard M. Livingston, Director, Police Information Network, Department of Justice, Raleigh, North Carolina.
Mr. William A. Troelstrup, Commissioner, Florida Department of Law Enforcement, Tallahassee, Florida.
Justice Robert Corpening Finley, Washington State Supreme Court, Temple of Justice, Olympia, Washington.
Clarence A. H. Meyer, Attorney General, Lincoln, Nebraska.
Honorable Walter Dunbar, Director, State Division of Probation, Albany, New York.
Honorable William Fauver, Director, Division of Correction and Parole, Departm[illegible] of Institutions and Agencies, Trenton, New Jersey.
Hon[illegible]able Elmo C. Hunter, U.S. District Judge, Western District, Kansas City, Missouri.

CRIMINAL HISTORY FILE - RECORD FORMAT
IDENTIFICATION SEGMENT (SEGMENT 1)

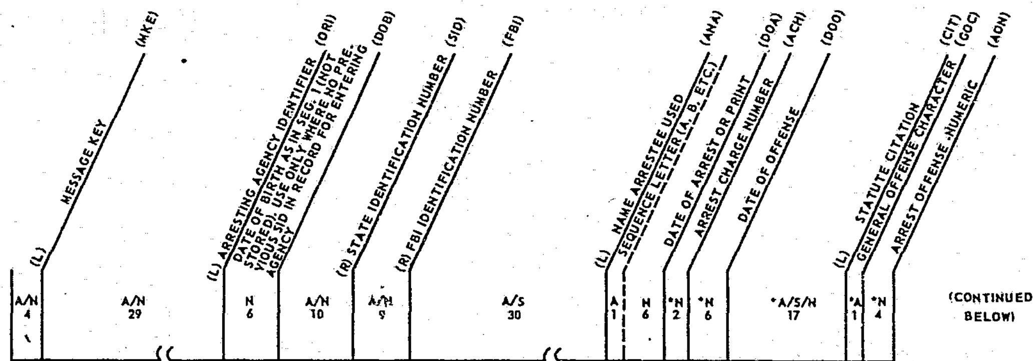
(L) MESSAGE KEY (MKE) A/S 4
ORIGINATING AGENCY (NOT STORED) (ORI) A/N 9
(R) FBI IDENTIFICATION NUMBER (FBI) A/N 9
*A/S 30
(L) NAME (NAM) A 1
SEX (SEX) A 1
RACE (RAC) A 2
PLACE OF BIRTH (POB) *N 6
DATE OF BIRTH (DOB) N 3
HEIGHT (HGT) N 3
WEIGHT (WGT) A 3
COLOR OF EYES (EYE) A 3
COLOR OF HAIR (HAI) A 3
SKIN TONE (COMPLEXION) (SKN) *A 10
(L) SCARS, MARKS, TATTOOS, ETC. (SMT) *N 9
SOCIAL SECURITY NUMBER (SOC) *A/S/N 15
(R) MISCELLANEOUS IDENTIFICATION NUMBER (MNU) A/N 20
FINGERPRINT CLASSIFICATION (FPC)
(CONTINUED BELOW)

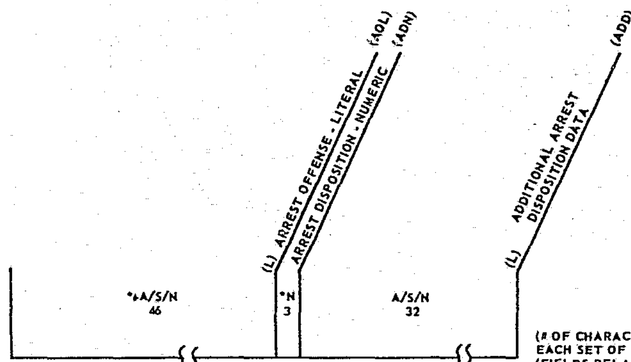
A/S/N 50
(L) IDENTIFICATION COMMENTS (ICO) A 2
STATE ESTABLISHING RECORD (EST) N 6
DATE RECORD ESTABLISHED (DRE) N 6
DATE OF LATEST UPDATE (DLU)
(# OF CHARACTERS)
TOTAL 195 CHARACTERS
AUTOMATIC ENTRY

(L) DATA NOT FILLING FIELD IS LEFT JUSTIFIED.
(R) DATA NOT FILLING FIELD IS RIGHT JUSTIFIED.
IF NO (L) OR (R) INDICATED, DATA MUST FILL FIELD.
* SUPPLEMENTAL IDENTIFIERS MAY BE APPENDED TO THIS FIELD (MAX. OF 9, EXCEPT 99 FOR NAM)

(A) ALPHA CHARACTERS.
(N) NUMERIC CHARACTERS.
(S) SPECIAL CHARACTERS.

CRIMINAL HISTORY FILE - RECORD FORMAT
ARREST SEGMENT (SEGMENT 2)

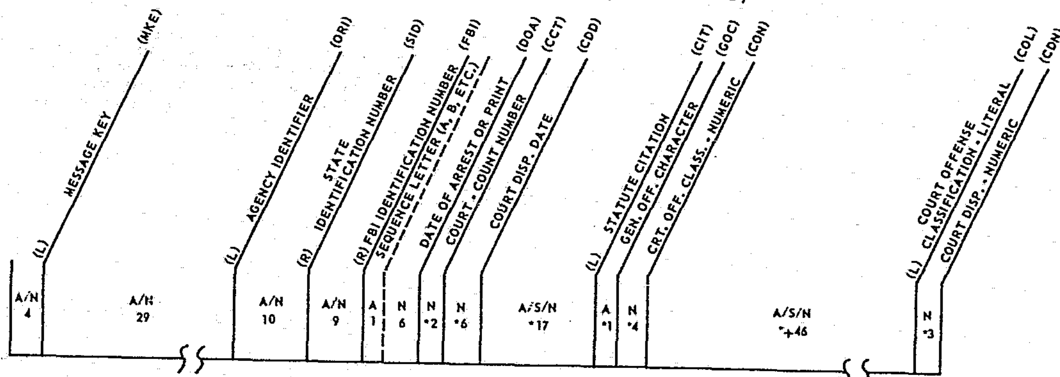


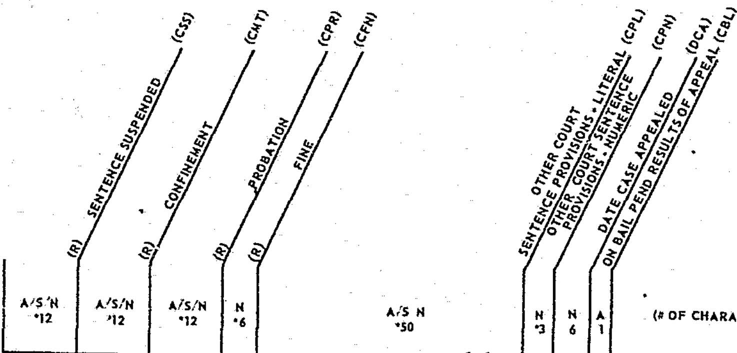


(L) DATA NOT FILLING FIELD IS LEFT JUSTIFIED.
(R) DATA NOT FILLING FIELD IS RIGHT JUSTIFIED.
IF NO (L) OR (R) INDICATED, DATA MUST FILL FIELD.
* DATA IN THIS FIELD IS PART OF A SET OF DATA RELATING TO ONE ARREST CHARGE.
+ PRE-CODED PORTION OF LITERAL OFFENSE IS NOT ENTERED IN AOL (WILL BE IN LOOK-UP TABLE).
ENTER IN AOL ONLY FREE TEXT TO BE ADDED TO PRE-CODED PORTION OF LITERAL OFFENSE.
(A) ALPHA CHARACTERS.
(S) SPECIAL CHARACTERS.
(N) NUMERIC CHARACTERS.

(# OF CHARACTERS) TOTAL 206 CHARACTERS. EACH SET OF FIELDS BEARING ASTERISKS (*) (FIELDS RELATING TO ONE ARREST CHARGE), EXCEPT AOL, TOTAL 33 CHARACTERS.

CRIMINAL HISTORY FILE - RECORD FORMAT
JUDICIAL SEGMENT (SEGMENT 3)





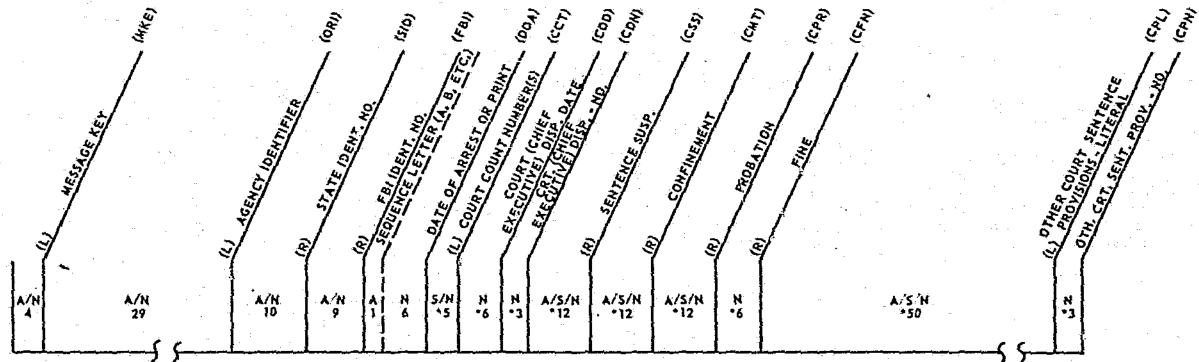
(L) DATA NOT FILLING FIELD IS LEFT JUSTIFIED.
(R) DATA NOT FILLING FIELD IS RIGHT JUSTIFIED.
IF NO (L) OR (R) INDICATED DATA MUST FILL FIELD.
(*) DATA IN THIS FIELD IS PART OF THE SET OF DATA RELATING TO ONE COUNT.
(+) PRE-CODED PORTION OF LITERAL OFFENSE IS NOT ENTERED IN COL (WILL BE IN LOOK-UP TABLE). ENTER IN COL ONLY FREE TEXT TO BE ADDED TO PRE-CODED PORTION OF LITERAL OFFENSE.
(A) ALPHA CHARACTERS
(S) SPECIAL CHARACTERS
(N) NUMERIC CHARACTERS

(# OF CHARACTERS)

TOTAL 240 CHARACTERS. EACH SET OF FIELDS BEARING ASTERISKS (FIELDS RELATING TO ONE COUNT). TOTAL 128 CHARACTERS.

CRIMINAL HISTORY FILE - RECORD FORMAT

SUPPLEMENTAL SEGMENT (SEGMENT 3A)



(# OF CHARACTERS)

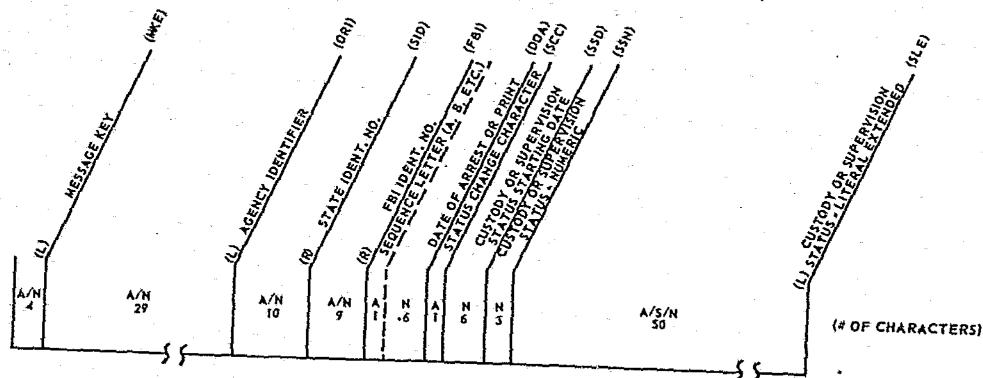
TOTAL OF ALL FIELDS: 168 CHARACTERS.
EACH SET OF FIELDS BEARING ASTERISKS (FIELDS RELATING TO ONE COUNT OR A GROUP OF COUNTS) TOTALS 109 CHARACTERS.

(L) DATA NOT FILLING FIELD IS LEFT JUSTIFIED.
(R) DATA NOT FILLING FIELD IS RIGHT JUSTIFIED.
IF NO (L) OR (R) INDICATED, DATA MUST FILL FIELD.
(*) DATA IN THIS FIELD IS PART OF THE SET OF DATA RELATING TO ONE COUNT.

(A) ALPHA CHARACTERS
(S) SPECIAL CHARACTERS
(N) NUMERIC CHARACTERS

CRIMINAL HISTORY FILE - RECORD FORMAT

CUSTODY - SUPERVISION SEGMENT (SEGMENT 4)



(# OF CHARACTERS)

TOTAL OF ALL FIELDS: 119 CHARACTERS

(L) DATA NOT FILLING FIELD IS LEFT JUSTIFIED.
(R) DATA NOT FILLING FIELD IS RIGHT JUSTIFIED.
IF NO (L) OR (R) INDICATED, DATA MUST FILL FIELD.
(A) ALPHA CHARACTERS
(S) SPECIAL CHARACTERS
(N) NUMERIC CHARACTERS

D. AUTHORIZED NON-LAW-ENFORCEMENT USERS OF CRIMINAL OFFENDER RECORD INFORMATION (RAP SHEETS AND CCH)

Noncriminal justice and non-law-enforcement agencies have access to criminal offender record information pursuant to state and Federal law.

FBI Training Document #26 itemizes applicable state statutes giving such access, and it is attached. These statutes apply to dissemination to noncriminal justice agencies of both FBI Identification Division manual records, and CCH records. (This document was made available to the subcommittee in November 1972 and in February 1974).

The NCIC Advisory Policy Board has ruled that the ability to directly access the NCIC CCH file by means of a terminal device will be permitted only for criminal justice agencies in the discharge of their official, mandated responsibilities. At this time the U.S. Bureau of Prisons is the only Federal non-law-enforcement criminal justice agency with direct access to CCH data. The NCIC Advisory Policy Board has stated that CCH data is to be made available to criminal justice agencies for criminal justice purposes, and dissemination is restricted to these agencies unless such dissemination is pursuant to state or Federal statutes. Federal non-law-enforcement agencies are authorized use of CCH data for official purposes only. State control agencies are responsible for dissemination of CCH data within their states in accordance with NCIC policy and state statutes.

E. NEEDS OF NONCRIMINAL JUSTICE AGENCIES FOR CRIMINAL OFFENDER RECORD INFORMATION

The FBI has not conducted any surveys to determine the criminal offender record information needs of noncriminal justice agencies, or to determine the current volume of noncriminal justice inquiries; however, some of the needs are fairly obvious.

Examples of noncriminal agencies in the Federal community which have access to offender record information are the U.S. Civil Service Commission, the Atomic Energy Commission and the Department of Defense. During fiscal year 1973, the FBI received approximately 1.9 million fingerprint cards for processing from such Federal agencies. Examples of noncriminal agencies outside the Federal Government are state civil service commissions, state licensing boards, and banking institutions. During fiscal year 1973 the FBI received approximately 846,000 prints from such agencies.

These agencies desire all arrest information available, except on minor offenses such as traffic violation or intoxication. The records are used for evaluation for sensitive national defense positions, and financial, educational and social positions affecting the public interest; and for various state and local licensing purposes, e.g., gun registration.

While we have not surveyed noncriminal justice agencies to determine if arrest records, without disposition, are considered valuable to them, it is apparent there is some value in such a record. While the denial of employment or issuance of a license might not properly be denied on the basis of the arrest alone, postponement of licensing, employment or access to sensitive material would be justified pending disposition of the arrest charge. Further, in many instances disposition data is not included in the record because court disposition reporting procedures have not been established. In those instances the interested agency can make inquiry to obtain the disposition.

Use of computerized criminal histories by noncriminal justice agencies is anticipated to closely parallel the use made of manual rap sheets since to a large extent, they contain this same information.

As an indicator of the value placed on offender record information by noncriminal justice agencies, it is noted that the FBI, on May 15, 1970, suspended Identification Division service to noncriminal justice agencies because of a shortage of personnel. We received 360 letters, including 140 from congressional sources, complaining about the suspension. Subsequently, the Administration determined the service met its criteria for essentiality and recommended it be reinstituted. Congress provided the additional funds to continue service via Public Law 91–472.

F. USE OF CRIMINAL OFFENDER RECORD INFORMATION BY CRIMINAL JUSTICE AGENCIES

The FBI has conducted no surveys to specifically determine the nature of the use of offender record information by criminal justice agencies, however, general

areas of need are common to all criminal justice activity, whether local, state, or Federal. The most basic need is to definitely establish identity. Positive identification of individuals arrested is made via comparison of the fingerprints taken during the arrest with those on file at the FBI Identification Division.

Prior to that, offender record information may have been used for investigative leads; and subsequent to that arrest record information is used for prosecutive determinations, cross examination and impeachment, evaluation by custodial agencies as to escape risk, violence potential, etc.

An indication of the value placed on record information by criminal justice agencies is that the FBI Identification Division receives an average of 13,000 fingerprint cards daily for comparison.

G. SECURITY MEASURES AND ACCURACY PROCEDURES REGARDING CRIMINAL OFFENDER RECORD INFORMATION

1. FBI Identification Division

Offender records are furnished to authorized agencies upon receipt of (1) a fingerprint card provided by the FBI to the contributing agency. (If a fingerprint card is received from an agency which was not provided by the FBI containing the agency's name, identifying number and address, then the card will not be processed.) (2) a communication from an authorized agency requesting a copy of a record by name, together with the individual's FBI number or local arrest number. (These requests are handled by employees who carefully determine that the requester is authorized to receive the offender record before they respond to the request.)

In the event a record is misused by a contributor, we seek to fix responsibility within the contributing agency and demand that corrective action be taken. If further abuses occur, we threaten that our identification will be denied to that agency. We feel this threat has been extremely effective over the years, since a national identification service is essential to the effective operation of any criminal justice agency. Currently, no criminal justice agency is restricted from receiving record information from the Identification Division.

The FBI Identification Division's recordkeeping function is that of a repository agency only; that is, the Identification Division does not submit records, it merely holds them. It does not have the facilities to verify the accuracy of the original submission, to obtain subsequent material to update records, or to verify the accuracy of these later submissions. In this regard, the Identification Division relies entirely on the contributing agency.

To assure accuracy within the Identification Division, the repository agency, current procedures require that an offender record be updated upon receipt of a new arrest fingerprint card and/or disposition sheet.

Every fingerprint identification is verified by a second fingerprint technician to insure accuracy of identification prior to adding new arrest information to the individual's record. Every arrest entry contained in the rap sheet is supported by fingerprints in FBI files. In addition, all the material transcribed from the fingerprint card into the record is proofread to insure accuracy.

We have not conducted a survey to determine how many arrest entries on file with the Identification Division are accompanied by dispositions. During the early days of the Identification Division, dispositions were reported; however, a sampling of current arrest submissions indicates that dispositions are eventually reported for approximately 75 percent of the arrests.

The Identification Division expunges a record, except those expunged according to an age criteria, only upon request of the contributing agency or a court, consistent with the Identification Division's repository role. Expunction is accomplished by returning the original fingerprint card to the contributing agency and eliminating all reference to the arrest from the files of the Identification Division. During fiscal year 1973, more than 18,000 arrest fingerprint cards were expunged from our files.

2. NCIC/CCH—Arrest/Disposition Ratio

On November 18, 1973, a survey was made of the CCH File to determine the total number of arrest incidents reflected in the File and the percentage of those arrests for which accompanying court disposition data was included. The CCH records surveyed include historic data converted from existing manual records which were prepared in the past when disposition reporting was not emphasized as it is today. The study did not identify those arrests which were disposed of prior to appearance in court; e.g. released by police. Also, it should be noted that

the records in the CCH File are selected and entered on the basis of current activity within the criminal justice system and, therefore, in numerous cases, charges would not yet have been adjudicated. The survey indicated 40.3 percent of the arrest records included in the CCH File reflected court disposition data.

The Background, Concept, and Policy Statement approved by the NCIC Advisory Policy Board provides as follows:

STEPS TO ASSURE ACCURACY OF STORED INFORMATION

A. The FBI/NCIC and state control terminal agencies will make continuous checks on records being entered in the system to assure system standards and criteria are being met.

B. Control terminal agencies shall adopt a careful and permanent program of data verification including:

1. Systematic audits conducted to insure that files have been regularly and accurately updated.

2. Where errors or points of incompleteness are detected the control terminal shall take immediate action to correct or complete the NCIC record as well as its own state record.

The individual directly contributing states have responsibility for assuring that CCH on file are updated. The FBI has the same responsibility with respect to the Federal offenders histories on file, and the offender histories for the 44 non-directly contributing states. To assure the accuracy and currency of the histories the FBI has a trained staff which conducts random audits of the CCH File, including comparisons of the computerized history and the respective manual rap sheet.

H. ADMINISTRATIVE PROBLEMS CAUSED BY PROPOSED LEGISLATION

Sealing

Administrative problems are caused by the various sealing requirements of these bills. These problems are discussed, in summary, at pages v and vi of my oral statement, and at pages 2, 3, 6, 7, and 8 of my written statement, which accompany this paper.

S. 2964 recognizes a different degree of administrative difficulty in sealing manual records, which comprises the lion's share of current Identification Division records, as opposed to sealing computerized records (Section 9(c)(1)). To seal manual records, except on a case-by-case basis as they arise, would require a massive manual operation involving an employee examination of each record on file. An entirely new staff would have to be hired and trained to seal records, since current personnel are only sufficient to keep abreast of today's needs.

Dissemination

Section 206(c) of S. 2963 indicates that a criminal justice agency may disseminate criminal justice information only after determining it is accurate, and complete information is available. The Section says it will be required that, if technically feasible, prior to the dissemination of arrest record information an inquiry be automatically made of, and a response received from, the contributing agency to determine if disposition data is or is not yet available. This is technically feasible but the requirement does not appear to recognize associated administrative and procedural problems. The requirement provides that the request must be held in abeyance until a response is received from the contributor. This can involve a manual process covering a period of hours or days. Additional personnel will be required for manual systems and additional programming and extra equipment will be required in computerized systems.

Section 206(a) of S. 2963 indicates that procedures would have to be established to insure that all agencies and researchers which have received a record or which have contributed to a record must, regardless of how long ago the recipient obtained the record or what his original purpose in obtaining the record was, be informed of any correction, deletion, or revision. This is a costly and difficult procedure both manually and automatically. This requirement could be implemented, but the administrative inherent could be avoided by providing that a record be used only for the purpose intended at the time of request, and if later the record is required for another purpose a current inquiry of the system must be made.

Positive Identification

A matter that should be considered is that present programming allows for retrieval of a record based upon a name, a date of birth, the sex and the race of an individual. A record can also be retrieved if the individual's name and some number (FBI, state or local agency, social security, or military serial number) is furnished by the requester. Section 205 of S. 2963 indicates that dissemination of information can be made only if the inquiry is based upon "positive identification of the individual by means of identification record information," i.e., by fingerprints or "other reliable identification record information." The system is not yet capable of answering an inquiry of the basis of unique fingerprint characteristics. Therefore the inquiry must be by name and other identifiers as mentioned above. Fingerprint comparison to establish positive identification follows receipt of a record possibly related to the individual concerning whom the request is made.

I. CRIMINAL INTELLIGENCE INFORMATION

My position on the dissemination of criminal intelligence information, either manually or by computer, is set out at pages xi and xii of my oral statement, and pages 28–31 of my written statement.

In summary, I am opposed to the inclusion of criminal intelligence information in a criminal justice system if there is direct, unchecked access to that system by a criminal justice agency other than the contributor of the intelligence information. I support in-house computerization of criminal intelligence information in order to improve the operation of a criminal justice agency, and I support dissemination of criminal intelligence information to other criminal justice agencies with a need to know such information; however, one criminal justice agency should not have direct access to another's criminal intelligence information without being required to demonstrate its need for the specific information requested.

Mutual dissemination of criminal intelligence information among Federal, state, and local agencies constitutes a major portion of the nationwide fight against organized crime. For the most part, this dissemination centers around information regarding criminal violations uncovered by one agency but which fall within the primary investigative jurisdiction of another agency.

During the past seven years, for example, information originally developed by the FBI in the organized crime field and forwarded to other Federal, state, and local agencies resulted in some 5,000 raids by the recipient agencies, resulting in more than 26,000 arrests; the confiscation of approximately $10 million worth of cash, property, weapons, and gambling paraphernalia; the seizure of $106 million worth of illicit drugs and narcotics; and the confiscation of, or assessment of liens against, almost $15 million worth of property by the Internal Revenue Service.

In addition, the FBI disseminates copies of its organized crime investigative reports to the Department of Justice, plus intelligence data for the Department's computerized "Racketeer Profile" (including such information as the subjects' aliases, birth data, marital status, education, social security number, military service records, descriptions of automobiles used, employments, residences, physical descriptions, travel habits, places frequented, illegal activities, prosecutive history, relatives, and associates). The "Racketeer Profile" is completely controlled by the Department of Justice. There are no outside terminals to the computer. Any dissemination of the information is controlled by the Department and limited to their Strike Forces in the field. Data from the computer is, of course, available to the FBI.

J. SURVEYS REGARDING USE, PURPOSE, AND COST EFFECTIVENESS OF THE USE OF CRIMINAL OFFENDER RECORD INFORMATION

The FBI Identification Division has conducted no surveys along these lines.

Establishing criteria to gauge the cost-effectiveness of the use of offender record information might be extremely difficult. The cost of servicing requests for such information would not be difficult, but how to gauge the resultant benefit might be e.g., what expenses might have been incurred in looking for a fugitive if he had not been identified by his fingerprint record; how many lives were saved because a firearms license was denied because of a violent record; how much unnecessary investigative activity was avoided because of leads developed from an offender record; how much money was kept from being embezzled because of an employee record check; how many children went unharmed because a board of education checked a sexual deviate/applicant's record; etc. These examples merely indicate that there are many services expected of law enforcement and other criminal justice agencies, including offender record keeping, regardless of the cost.

[Letter of Inquiry to the Law Enforcement Assistance Administration]

FEBRUARY 20, 1974.

RICHARD VELDE,
Justice Department,
Law Enforcement Assistance Administration,
Washington, D.C.

DEAR PETE: There are three major areas in which the hearings would benefit from the head of LEAA, and which might be the subject of questions to you and other representatives of the agency. I am writing to set out these three areas, and to give you some idea of what specific types of information the Subcommittee might expect from LEAA. I hope this might help us and LEAA in preparing for the hearings.

The three areas are as follows:

1. The Subcommittee will probably expect a rather comprehensive discussion of LEAA's investment in Computerized Criminal Histories (CCH). The Subcommittee will no doubt question LEAA representatives about the agency's original funding of the Project SEARCH/CCH program and the history and decision-making process which resulted in the Bureau's Implementation of the SEARCH prototype in the National Crime Information Center. We would also be interested in LEAA's involvement with CCH and other criminal justice information exchange since the Project SEARCH/CCH program. This would include information on how many systems LEAA is presently funding, in whole or in part, the total amount of funds outlayed thus far, etc.

You should also anticipate questions on the agency's efforts to implement the so-called "Kennedy-McClellan" amendment to the most recent LEAA authorization legislation and inquiries about the Comprehensive Data Systems Program. The Subcommittee will also be interested in LEAA's involvement with the National Law Enforcement Teletype System (NLETS) and the question of whether NLETS should become part of NCIC.

I am sure there will also be a number of detailed questions about the operation of local criminal justice information systems. This would include any information the LEAA might have about how non-criminal-justice agencies use Rap sheets and computerized criminal histories. Perhaps the National Institute has conducted surveys or sponsored resolutions in this area. For example, it is possible that a survey has been conducted of non-criminal justice agencies such as federally-chartered banks or state civil service agencies to determine exactly what type of information they need for law enforcement agencies. (Do they need raw arrest records or would conviction records suffice? How often do they query CCH and Rap sheet files?)

We would also be interested in any surveys or studies which LEAA might have on how Rap sheets and CCH's are used by local police departments and other criminal justice users. For example, does LEAA know of any studies indicating at which point in the criminal procedure there is the greatest demand for CCH and Rap sheets. (Are they used primarily prior to the arrest for informing judges of prior records in setting pretrial release, for example.) We would also be interested in any data LEAA has on the completeness of CCH and Rap sheet records on the national, state, and local levels. (What percentage of Rap sheets and CCH's are without dispositions and therefore are incomplete? What is the incidence of inaccurate records in both manual and automated systems?)

2. Although S. 2963 and S. 2964 only address the intelligence question in a very general fashion, I suspect that the Subcommittee will hear testimony proposing more specific standards on the exchange of intelligence information. LEAA should be prepared to discuss in some detail its involvement in funding and evaluating information systems which collect and disseminate intelligence information, whether or not automated. I anticipate questions not only on the extent of LEAA's investment in such systems but Subcommittee members will be interested in precisely how intelligence information is used by local police departments. You should be prepared to discuss any cost-effectiveness studies conducted by LEAA on intelligence systems, in particular Project SEARCH's evaluation of the Interstate Organized Crime Index prototype. The Subcommittee will be interested in any studies which LEAA or Project SEARCH has conducted on privacy and security of intelligence information.

3. Finally, you will probably want to be quite specific in describing the administrative problems (as distinct from policy questions) LEAA will have in complying with either S. 2963 or S. 2964.

Any of the above information which you can get to us in advance of the hearings would certainly improve the quality of the dialogue and perhaps shorten the amount of time we will have to spend in oral testimony. If you have any questions or want any clarifications, please do not hesitate to call me or Mark Gitenstein at 225-8191.

Sincerely,

LAWRENCE M. BASKIR,
Chief Counsel and Staff Director.

Attached is a copy of a January 1974, NCIC Criminal History Statistics Report which reflects the frequency of use of the CCH file during that month. The agencies listed on this report are those which have direct access to NCIC records; however, not all of the listed agencies can access the CCH file; e.g., RCMP, certain military investigative units and specific local and state law enforcement agencies. This survey is the extent of studies made by the FBI regarding CCH record use. It should be noted that the high volume usage by the six participating states and the FBI is occasioned in large part by file maintenance transactions.

While we have no data reflecting the purposes for which CCH records are obtained by system users at the state and local levels, we are aware that the Bureau of Prisons utilizes that data, in part, for studies of recidivism.

With respect to the costs and benefits of the CCH file of the NCIC system, it should be noted that the Institute for Law and Social Research has instituted a survey under a grant funded by LEAA. The study will undertake to provide a cost and benefit analysis, including a projection of the total developmental and operating costs for the 50 states.

LEAA RESPONSES TO ISSUES RAISED BY THE SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS, COMMITTEE ON THE JUDICIARY, U.S. SENATE, MARCH 11, 1974

I—ORIGINAL FUNDING OF SEARCH

Project SEARCH was established by LEAA in 1969 to examine the general requirements for criminal justice statistics and for demonstration of the automated exchange of criminal histories. The original funding for Project SEARCH was $600,000 for six states—Arizona, California, Maryland, Michigan, Minnesota and New York. This was augmented in fiscal 1970 with additional grants totaling $832,200. Ten states were involved in this grant. In addition to the six above, Connecticut, Florida, Texas and Washington were added. Another $230,000 were granted in fiscal 1970 and 1971 to pay for interstate switches and telecommunication lines. The final grants through SEARCH for the development of what became the CCH system total approximately $2,250,000 for record conversion.

It is impossible to look at CCH without examining the original NCIC. That basic system has been supported by LEAA as well as its predecessor agency, OLEA. The original fiscal 1966 interagency agreement with the FBI to develop an automated information system to aid the states with wanted persons, stolen property, etc. was for $97,000. Subsequent agreements were for $407,000 in fiscal 1967 and $295,000 in fiscal 1968. LEAA provided $250,000 in fiscal 1969 for the "continuation and expansion" * * * of NCIC. Since then LEAA support has been limited to funding meetings of the NICC Working Groups; the Policy Advisory Committee and related state oriented efforts.

SUBSEQUENT LEAA INVESTMENT IN CCH PROGRAM

At present there is no comprehensive data on the use of LEAA funds in the development of the CCH program. Funds for that program come from a number of LEAA funding sources. Since 1972 the only source at the discretion of LEAA is the Comprehensive Data Systems (CDS) Program. To date $9,956,802 from discretionary funds have been obligated to CCH through CDS.

These funds, however, probably represent only a small proportion of the total LEAA funds which go into CCH. At present we do not know the total amount of funding which goes into the system. Large amounts of block grant funds as well as state appropriated funds are probably used to fund parts of the system. However, since implementation of the system can range from funding parts of a criminal identification bureau to the provision of telecommunications lines, it is difficult to isolate the costs.

In recognition of the needs for cost data, however, the National Criminal Justice Information and Statistics Service (NCJISS) has awarded a grant to the Institute for Law and Social Research to carry out a research program which will enable us to estimate the eventual costs of the system. The General Accounting Office (GAO) has reported that both the federal government and state participants lack knowledge of potential costs and benefits in the project and suggested that states be given such knowledge so they can make more intelligent decisions and plans.

The Institute for Law and Social Research, a nonprofit corporation will undertake to provide cost and benefit analysis methodology aimed toward satisfaction of the GAO recommendation and, in addition, will project the total developmental and operating costs for the 26 states which have submitted CDS plans and for the remaining states and the District of Columbia; and will provide technical assistance to the states on the use of the new cost and benefit technique.

The project will proceed through two phases: During phase one, the basic cost analysis will be developed and tested in two states and then applied in two additional states. During phase two, a methodology will be developed and tested analyzing cost and benefit relationships.

The project is expected to result in state-level acceptance and use of methods of cost and benefit analysis of the comprehensive data system and related criminal justice information systems and to lead to better planning and resource allocation decisions in the criminal justice field.

Attached is a task schedule of the Cost Study Project, a full list of all grants to Project SEARCH, and a description of the Comprehensive Data Systems Program and the original CDS Guidelines. There is also attached a status report of the CDS Program.

INSTITUTE FOR LAW AND SOCIAL RESEARCH,
Washington, D.C., March 4, 1974

Mr. AL ASH,
NCJISS, LEAA,
U.S. Department of Justice, Washington, D.C.

DEAR MR. ASH: Enclosed is a task schedule, as of March 1, 1974, showing current time estimates for completion of the cost estimation portion of the total CDS/Benefit study which ILSR is performing under grant from LEAA.

Work commenced in November of 1973 and, as of today, the complete project team has been assembled and is working on the project. The Advisory Board has been selected and will meet on March 27, 1974, to review the cost-estimation approach. We have been fortunate in assembling a group of very eminent public and private sector experts in the field. We have also completed much of the cost framework and system definition tasks.

Following the Advisory Board meeting we will commence on-site data gathering in the first two study sites. We expect to formulate and test a cost methodology in two additional States by August. A cost projection for all States should be ready for Advisory Board review in October, and will be formalized in a cost report by late November.

Cost figures to be published in November will be based on extrapolations for States in which detailed data has not been collected. As you know, the detailed methodology will then be applied to all States so that a refined cost figure may later be calculated.

Very truly yours,

JOHN L. MCCARTY,
Project Director.

Enclosure.

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COST ESTIMATION TASK SCHEDULE

CDS Cost/Benefit Study as of 1 Mar '74

Task | Nov - Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec

Assemble Project Team
Select Advisory Board
Develop Cost Analysis and Framework and Data Collection Instrument
Define C.D. System and its operational alternatives — C.D.T. — Study states 1&2 — Entire System
Review project - Advisory Board — Review Approach — Review Interim Reports — Review Final Conclusions
Collect Data in Study States — States 1&2 — States 3&4 — Small states
Extend Cost Estimates — States 1&2 — States 3&4 — All States
Prepare Cost Report — Cost Report

▽ Milestone

▼ Completed Milestone

NOTE: These tasks comprise only a part of the total CDS Cost/Benefit Study

PROJECT SEARCH GRANTS*—INCEPTION OF PROJECT THROUGH FEB. 15, 1974

Grant name and number	Award amount	Award date	Remarks
Arizona, California, Maryland, Michigan, New York, Minnesota—6 State project, development of model criminal justice information and statistics system: 69-DF-022.	$600,000	June 20, 1969	
PROJECT SEARCH			
70-DF-041	832,200 [1] −84,260	Nov. 6, 1970	Original grant reduced by $84,260.[1] Search then supplemented by same amount from S and S funds.
Supplement to 041; 71-DF-649	84,260	Dec. 31, 1970	
Observation and familizaration effort	30,000	Apr. 28, 1970	(a) $6,000 to each of 5 States; (b) $2,474 refunded; (c) $2,894 deobligated.
71-DF-645	1,552,060	Dec. 9, 1970	
71-DF-645 (S-1)	196,570	June 24, 1971	1st supplemental grant.
71-DF-645 (S-2)	500,000	Aug. 9, 1971	2d supplemental grant.
Central index and switching center:			
SG-70-004	50,860	June 30, 1970	
SG-71-002	18,000	Nov. 24, 1970	Supplemental grant to SG-70-004.
SG-71-006	119,751	June 21, 1971	Continuation of Project Search index.
Communication lines:			
SG-70-005	33,400	June 30, 1970	(a) Supplemental grant to SG-70-005.
SG-71-005	8,200	June 8, 1971	(b) $2.45 returned.
Evaluation; SG-70-006	90,000	June 30, 1970	
Statistical system:			
SG-71-003	675,000	Mar. 24, 1971	
72-SS-99-6007	60,809	July 17, 1972	Supplemental grant to SG-71-003.
Satellite communications experiment:			
SA-71-003	150,000	Mar. 24, 1971	
SA-71-003 (S-1)	60,000	June 7, 1971	Supplemental grant to SA-71-003.
Demonstration of optical techniques for fingerprint comparison: SA-71-004.	150,000	Mar. 24, 1971	
Organized crime computerized central index:			
SA-71-06	200,000	Sept. 7, 1971	
SA-71-006 (S-1)	142,224	Mar. 17, 1972	1st supplemental grant to SA-71-006.
73-SS-99-3305	129,552	Jan. 9, 1973	Continue project begun under SA-71-006.
Development of standardized crime report format: 72-SS-99-3001.	76,387	May 1, 1972	
50-State consortium:			
72-SS-99-3003	439,076	May 25, 1972	
73-SS-99-3312	608,420	June 1, 1973	Continues project group for 2d year.
Requirements analysis of State identification bureaus: 73-SS-99-3301.	399,397	June 26, 1972	
Criminalistics laboratory information system: 73-SS-99-3309.	143,420	May 11, 1973	
Standard criminal justice data elements manual: 73-SS-99-3314.	68,425	June 28, 1973	
State judicial information system: 73-SS-99-3313.	260,545	do	
State participation in a State judicial information system:			
72-DF-99-0040	1,368,301	do	For implementation of system in 11 participating States.
72-SS-99-3005	231,699		
Prisoner accounting information system: 73-SS-99-3315.	181,325	do	Name of project changed to "Offender Based State Information System".
Participation in a prisoner accounting information system: 72-ED-99-0015.	2,500,000	do	For implementation of system in 10 States.
Discretionary funds	$7,579,131		
Systems and statistics funds	4,325,303		
Total	11,904,434		

[1] Does not include NILECJ grants to Project Search, specifically: 73-NI-99-0035-G, $68,350; 72-NI-99-0036-G, $37,970; total, $106,320.

[Comprehensive Data Systems Program, Revised April 1, 1972]

A Program To Develop State Criminal Justice Comprehensive Data Systems

SUMMARY

It has been axiomatic for decades that there is a paucity of data at the national level about crime and the administration of criminal justice. That this is so is unfortunate. That hard data are also not available at the state and local level is tragic. At a time when the crime rate continues to climb and the entire criminal justice system faces an ever increasing burden, comprehensive data for

planning purposes is simply inadequate. This lack of data prevents the rational allocation of resources at both the local and national level. Because the administration of criminal justice is largely a local function, much of the data needed must be developed at this level. It is obvious that a way must be found to systematically capture, organize and analyze this information.

The Statistics Division has adopted a strategy designed to encourage the establishment of criminal justice data collection systems in each state. It will make available funds to establish criminal justice data systems. The systems would include several components, as follows:

A State Criminal Justice Data Center.
Offender Based Transaction Statistics System.
Management and Administrative Statistics System.
Uniform Crime Reports System.
State Technical Assistance Capability.

Each of these components can be established as a module, giving the state the capability to develop the information needed for program and budgetary planning and evaluation. In order for states to establish comprehensive data systems, a significant amount of preparatory work must be accomplished. System studies must be undertaken, channels of data flow must be established, forms designed and processing procedures established. Extensive work is often required to obtain the cooperation of persons in other parts of the criminal justice system.

Since transaction statistics is one of the most important yet most difficult parts of a comprehensive criminal justice statistics system, work should begin first in its development. Moreover, since criminal histories converted for statistical purposes will also be used for systems of criminal history exchange, this developmental activity should receive high priority.

Eventually, all states will have these systems. However, to provide maximum impact, participation in the first year of funding will be limited to those states which have already made a commitment to the collection of criminal justice statistics. Priority will also be given to those states in which other impact programs are being carried out so that the information required for planning and evaluation can become quickly available.

The states themselves will be the main beneficiaries of this program. With the data collected, the planning process will be enhanced, rigorous program evaluation will become possible and rational budgeting will become possible.

Limited data collected at the state level will also be made available to LEAA's Statistics Division so that national data will become available. This will permit LEAA to phase out some of its existing national data collection programs. Data required for statutory determinations such as the "variable passthrough," will hopefully be drawn from these state sources.

Data System Components

STATE CRIMINAL JUSTICE DATA CENTER

General considerations

There is a long standing need for the establishment of independent data centers with the competence to analyze data and respond to the perceived needs of criminal justice planners and operating agencies. This data center need not be large nor should it have any non-statistical functions. It should be limited to such activities as the acquisition, analysis and dissemination of data, the development and maintenance of quality control procedures for data collection centers in the states and related non-operational applications. LEAA will continue to encourage the states to set up collection centers within operating agencies. These agencies would be responsible for the collection of data such as Uniform Crime Reports and offender-based transaction statistics. While these operating agencies could analyze and utilize the data for their own internal needs, they would be required to make the output from the system available to the Data Center according to Data Center specifications.

The State Data Center, on the other hand, would be a modest operation in terms of staff; however, they would provide an analysis and publication of data across criminal justice lines. Similarly they would be responsible for providing data to the state government to satisfy their planning and evaluation needs. This center would also be responsible for the establishment of a policy advisory group within the state consisting of representatives from police, courts, corrections, etc., to insure that the various parts of the states' statistical system are

meeting each other's needs. The state center would be involved in basic data collection only in the area of management or administrative data. Since this is an area that directly involves not only criminal justice agencies, but also general administrative activities at the city, county and state level, it would be inappropriate for an operating agency to handle that collection function.

The center would have the responsibility for developing quality control procedures for each component part of the comprehensive system. In this activity, it would rely on guidelines generally developed by LEAA (LEAA and the FBI for UCR program). The center would arrange for system audit and inspection to insure the maintenance of maximum quality in each of the component systems.

Location of center

The state data center could conceivably be located in any agency. However, there are serious problems with placing it in any operating agency. The arguments against using an operating agency as the data center are significant. But primarily, the background to examine all parts of criminal justice objectively is lacking in a specialized operating agency.

If a state has an existing general data center, the criminal justice data center could simply become a division of the larger operation. Another logical choice would be to locate the center within the State Planning Agency. However, to achieve the necessary continuity, the director and senior analysts must have tenure and not be subject to frequent changes due to political changes in the state. In addition, the qualifications of the position of director of the data center will be subject to review by LEAA. If the SPA is to be able to approach comprehensive planning, it must have access to a comprehensive in-depth data base and have the capacity to analyze it. A major argument against placing this function in the SPA relates to the essentially temporary nature of some of these agencies. However, if the function is developed in the SPA, it could be transferred intact to another agency if the need arose.

OFFENDER BASED TRANSACTION STATISTICS

General considerations

It has frequently been asserted that there is no such things as a criminal justice system, that the so-called system is nothing more than a series of inter-related but independent systems which do not share mutual goals. However, if LEAA is to make any impact on its overall goal of reducing crime and delinquency, some unanimity of purpose must be achieved. One way of accomplishing this is to show that in many cases the activities of specific segments of criminal justice are actually counter productive to other segments and generally detrimental to the crime reduction goal.

This can be done through the development of a system of statistics which would indicate the effectiveness with which offenders and accused offenders are handled in various parts of the system and the inter-relationships between the activities of various parts of the system. Such a data system is of course essential if rational and effective justice processes are to be developed and implemented.

It is envisioned that this kind of system will be needed to assess criminal justice activities in order to meet any criminal justice standards which may be developed as a result of the National Advisory Commission on Criminal Justice Standards and Goals.

Development of the system

This data system can be developed by utilizing a method of uniquely identifying arrestees, then tracing their passage through the system, recording pertinent information about each transaction during the process. Such a system is generally known as an offender based transaction statistics system.

For the past two years, LEAA has been actively supporting the development of such systems in the states. To date, six states have received no-match money and four others discretionary funds to work on the establishment of such systems. We expect that by July 1972, at least six state-level jurisdictions will be providing data to the state center for analysis. Similarly limited data will be sent to the Statistics Division to begin to provide an overall view across state lines.

In order to most effectively utilize available resources, this data system will have to be compatible with systems for the exchange of criminal history information which are now being developed. To date, LEAA has spent in excess of $4.5 million on the development of a national criminal history exchange system through Project SEARCH. The state information systems developed as part of the national system will have to be utilized to the extent possible to provide the basis for the transaction statistics system.

In a related area, management data systems based on the offender will be encouraged in the area of courts and corrections. Courts especially have been slow in developing effective systems. Ideally the courts and correctional institution should develop systems which will provide simultaneously information for tactical decision making and data for strategy planning and evaluation. While such court and correction systems need not be an integral part of a state system they must be capable of "interfacing" with such a system.

In order to assume complementary systems, this program visualizes the provision of technical assistance by the state data center to courts and correctional agencies.

Location of the System

In order to effectively utilize existing facilities, the transaction statistics system should probably be located in an operational agency—one that is already responsible for the FBI's National Crime Information Center system, (NCIC), the NCIC-CCH (Computerized Criminal Histories) or the state criminal identification function. Thus, existing hardware and communication channels which have been or need to be established to support these operational activities can also be used to facilitate data collection. However, the data requirements will be decided by the data center or a committee of users chaired by the director of the data center.

Relationship to SEARCH and NCIC-CCH

SEARCH–NCIC–CCH.—Over the past several years, this has been one of the largest single programs LEAA has funded. This program envisions a continuation of the record conversion activities but with a different focus. Since there will be the requirement that individual records be adequate for statistical purposes, the simple conversion of the old "RAP Sheet" which contains primarily arrest data with limited information from courts or corrections would not be acceptable for this program. The support for this system will be limited to automation of records of persons presently in the system and those now entering the system.

MANAGEMENT AND ADMINISTRATIVE STATISTICS SYSTEM

General Considerations

To attempt to determine needs in criminal justice without knowing the current status of the system is folly. Unfortunately, there is now no regular systematic data on the characteristics of the work forces in law enforcement, courts and corrections; no comprehensive information on the quantity or quality of equipment used for criminal justice or the adequacy of existing facilities. To date, the only information available on expenditures and employment in criminal justice is from the annual sample survey conducted by the Statistics Division. While this is an extremely valuable survey for national planning, it does not provide the local detail required for managers and state or regional planners.

There have been some attempts to develop administrative data through already over extended SPA facilities. For two years the SPAs were required to complete a "data schedule" which attempted to address this need. However without professional staff and guidance, the SPAs were able to provide only marginal summary data which were inadequate for their own needs and completely valueless for operational management.

National standards for reporting many kinds of management and administrative data already exists or are being developed in conjunction with the Criminal Justice Employment and Expenditure Census. Other standards are currently being considered in the Statistics Division. Adherence to these minimums would be required of the grantee. The data centers, with technical assistance from the Statistics Division, will develop reporting forms and procedures for use in the collection of these data.

Date processing technical assistance would be available from the LEAA Regional Office for the processing of these data.

UNIFORM CRIME REPORTS

As more and more planning relates to the reduction of specified crimes, information on the incidence and distribution of crime becomes essential. It is no more reasonable to plan criminal justice programs without crime data that it is without cost and budget figures. Therefore, it is essential that reliable crime information be available.

Perhaps the most maligned statistical system in the Federal Government is the Uniform Crime Reports. This is a system in which data on crimes known to the police and arrests are generally provided to the FBI by local police agencies. LEAA will continue, with the Federal Bureau of Investigation, to encourage the states to accept the responsibility for the basic collection of the uniform crime data and for the development of quality control procedures for the UCR System. Participant states must continue to provide police statistics to the FBI for analysis and publication. The development of quality control and audit requirements for the states to implement will be a joint FBI-LEAA responsibility.

TECHNICAL ASSISTANCE

General Considerations

In order to provide all of the data required at each level of government and for each part of the criminal justice system, data development efforts will have to take place at many levels of government and for various parts of the system. The state data center will have the responsibility for providing technical assistance for these activities. The states through contracts or direct personal services should be prepared to provide technical support to all agencies in the state.

IMPLEMENTATION

It is clear that in all cases it is neither possible nor necessarily desirable for any state to attempt to implement all phases of this program simultaneously. However, it will be necessary for each interested state to develop an action plan for the entire program. The acceptance of the plan and subsequent funding is contingent in the state's agreement to develop all five components of the program:

In addition to indicating agreement to implement the entire program, the plan must describe all relevant existing legislation and executive orders which relate to any of its component parts. For each component the plan must indicate where the basic responsibility will be located organizationally. It must also clearly outline how the relevant criminal justice agencies at all levels of government will be integrated into the program and provide a detailed description of any existing data collection or processing efforts which would be merged into the Comprehensive Data System. There must also be a set of milestones and an indication of the general level of funding required for each component of the program.

Selection of the initial participants will be based on the action plan and an independent evaluation of the state's capability to meet the performance goals. Actual funding of the component parts of the program will be based on specific grant applications which must be developed for each component of the program.

The states which are the most advanced in terms of statistical capability will be eligible for full funding under this program. However, additional states may receive partial funding for planning their transaction statistics-criminal history exchange programs, to upgrade their state identification bureaus and similar basic activities.

COMPREHENSIVE DATA SYSTEM GUIDELINES FOR EVALUATION OF GRANT APPLICATIONS

SUMMARY

The attached grant guidelines have been prepared to provide state governments with knowledge of general criteria which will be used to evaluate grant applications submitted in support of the Comprehensive Data System action plan. Separate grant applications should be prepared for each component of the program. In general, the guidelines are designed to require the states to develop flexible systems to best address the specific need of each individual state while still having the capability of providing essential uniform data to the National Center for inter-state purposes. Each state participating in the program will have to provide data to the National Center, so that comparative statistics can be published.

The guidelines in many areas will be augmented by detailed specifications, general publications, worksheets, and other tools to assist in the implementation of the various programs.

Moreover, the guidelines envision a cooperative system for the exchange of criminal histories essentially under the joint control of state governments and the Federal Government insofar as it represents federal offenders. The guidelines permit the development of intra-state systems which will be compatible with an

eventual interstate system which will include extensive telecommunication and switching capability and an index which will provide only directory information to records held at the state level.

The guidelines should not be considered inflexible. However, deviation from the specifications will require detailed justification.

Other documentation

The following publications should be considered as appendices to these guidelines:

SEARCH Technical Report No. 3—Designing Statewide Criminal Justice Statistics Systems—The Demonstration of a Prototype.

SEARCH Technical Report No. 4—Implementing Statewide Criminal Justice Statistics Systems—The Model and Implementation Environment.

NCIC Operating Manual (FBI).

SEARCH Technical Report No. 2—Security and Privacy Report in Criminal History Information Systems.

SEARCH Technical Memorandum No. 3—A Model State Act for Criminal Offender Record Information.

SEARCH Technical Memorandum No. 4—Model Administration Regulations for Criminal Offender Record Information.

Uniform Crime Reporting Handbook (FBI).

STATE DATA CENTER

FUNCTION

The primary function of the Center is to analyze and interpret data, for the Governor, State Planning Agencies, the Legislature and the Courts. The application should clearly indicate how the information lines required to carry out this function will be developed.

Criminal Justice Advisory Committee

The Center will also serve as the focal point for all criminal justice statistics efforts within the state. A state advisory committee is highly desirable. This committee should be broadly representative of all parts of the criminal justice system at all levels of government. It would also be desirable for the academic community to be represented on this committee. The application should clearly describe how this committee will be constituted or how the coordinative function will be carried out in the absence of such a committee.

Organizational Location

The State Data Center can organizationally be located in a variety of areas. However, it is important that the center not appear to be biased toward a particular criminal justice activity. In general, this can be best achieved by establishing the center outside of an active operational entity. Typically this can be achieved by locating the Criminal Justice Data Center in the State Planning Office, the State Statistics Office or another such agency devoted to general planning or statistics or to criminal justice in general. However, if the center is located outside of the general area of criminal justice, it is extremely important that the director have broad criminal justice experience. The application must provide a complete description of the organizational location of the center, and clearly outline how it will service the criminal justice community.

Data Center versus Collection Centers

The CDS program envisions that different agencies may be designated as "collection centers" to be responsible for the collection of data from the various parts of the system. For example, it would be possible for the state police to be responsible for the collection of UCR data or for the Identification Bureau of the State's Department of Justice to be the "collection center" for Transaction Statistics/Criminal History Exchange.

Data Processing

Further, data processing can be handled in a number of ways. The State Data Center should not have either data collection or data processing as its principal function. Its function should be the coordination of the State's overall criminal justice statistical activities as well as the analysis and interpretation of statistical data. If however, a state wishes to assign the collection and processing function to the State Data Center, this Center must be provided with adequate resources to handle those functions properly and the application must clearly indicate that this is the case.

Data Requirements

The Data Center will be responsible for the development of data requirements which will be passed on to the various data collection/processing centers. These requirements should not be decided upon unilaterally, but should be developed with the aid of the Advisory Committee or its surrogate. The application should clearly indicate how this is to be done.

Staff

The professional staff of the Center should have career status and tenure within the state's civil service system or its equivalent. The director should be a fully qualified statistician. The director should be experienced in criminal justice or should have broad experience in substantive analysis and interpretation of data for decision making. A resume of the qualifications of the director should be included in the grant application if the director has been identified. If the director has not been identified at the time of the application, the resume must be sent to LEAA for approval after the director is identified but prior to his being hired.

The remaining members of the professional staff should combine a working knowledge of data collection procedures, sampling, and mathematical analysis of data. They should also have a working familiarity with data processing, information systems, telecommunications and related technical areas. It is obviously not necessary or even desirable to initially have an expert in each of these fields.

Interstate Coordination

The Director of the Center will automatically be included in the membership of any national group of State Data Center Directors and relevant State Collection Center Directors which may be established to meet periodically to exchange information and to act as a policy board, to develop publication criteria for federal publications of state data, and to modify interstate requirements for collection or processing of data. Periodic regional and national meetings would be held to effectuate this portion of the program.

Federal Support of Center Staff

The grant program will support a staff of approximately three professional and three clerical personnel. "No match" funds will be made available for this purpose if the center is established in other than an operating agency. In subsequent years, the center will be expected to provide uniform statistics to the federal center on a reimbursable basis. Such funds will, of course, not require a match and may be used to support those center personnel involved in the preparation of those data.

Transaction Statistics/Automated Criminal History Exchange

General

The following guidelines have been established to provide standardized criteria for the evaluation of grant applications for the development of "transaction statistics" programs at the state level. These programs which are being developed as part of LEAA's state Comprehensive Data Systems program must include the capability of the state to utilize the same data base for the exchange of criminal histories. The basic data required for the statistical program is a complete and accurate criminal history, this is also the basic ingredient for systems for the automated exchange of criminal histories. Thus the only reasonable method of achieving both ends is to establish a single operation to accomplish both goals.

Policy

The approval of grants for funding any part of a computerized criminal history/offender transaction statistics system must be in consonance with the state's accepted Comprehensive Data Systems plan, the LEAA/Guide for Discretionary Grant Programs and/or consistent with LEAA policy elsewhere delineated. In addition, the application should be evaluated to determine if the intent of this guideline for system development has been met. The general direction and possibly the general systems design and specifications for this systems effort should be elucidated in the State Comprehensive Plan and, depending upon the status of the state in terms of legislation, computerization of systems, etc., will cover a one to four or five-year period. Due to the fact that Block Grant funds will undoubtedly be required in most states to fund part of the transaction

statistics/automated criminal history exchange effort, the overall program should be addressed in some detail in the State Comprehensive Data Systems Plan. In either case the guidelines for evaluation contained herein apply.

LEAA will support the funding of computerized criminal history systems in accordance with the computer management and organizational concepts established by that state's legislation or gubernatorial policy. Supporting this concept, LEAA will fund systems where criminal justice participation is involved in, and contributes to the management of the computerized criminal history system and associated hardware and software operations. The criminal justice participation in system management must be sufficient to insure the integrity of the system and the security of its physical facilities and the information contained therein.

Due to the expense involved in the development and operation of a system of this magnitude, normally LEAA funds should not be approved for the establishment of computerized criminal history files below the state level. This means basically that files should be formatted for the computerized criminal history/offender transaction statistics system at the state level only, although it is not intended to preclude the development of a certain micrographic/computer systems which may contain some of the same type of data at lower levels of government. These systems will, however, normally be much more comprehensive in the types and amounts of data stored; e.g., arrest reports, case records, mug shots, fingerprint cards, court reports, evidence, and the like.

It is the intent of LEAA to insure that all components of the criminal justice system are served. Plans or grant applications that address only one component (e.g., police or corrections) will not qualify for funding. The following are activities which may qualify for funding:

1. Record conversion.
2. Systems analysis and design.
3. Hardware augmentation required for the system including terminals needed for expanding service beyond police departments, i.e., prosecutor, courts, corrections. Similarly other peripheral hardware associated with the computerized criminal history system may be funded for limited periods of time; e.g., auxiliary storage devices (drums, disk, etc.), certain input-output hardware, communications interfaces and the like.
4. Software for data handling and high speed telecommunications interface to NCIC.
5. Communications lines to nonpolice agencies during the "start up" phase of the program.

In general, funds should not be used for:

1. Computer central processing units and hardware generally associated with main frame operation such as printers, card readers, etc.
2. Police terminals (unless the state does not provide want/warrant, stolen vehicle or other services to police departments, and then normally only for the first full year of operation).
3. Physical facilities with the possible exception of modification of facilities to insure system security.

Evaluation Guidelines

A grant application must reflect a detailed breakdown of the steps and milestones involved in the development of the system from "day one" until the system becomes fully operational. This is necessary for several reasons. First, LEAA must be assured that the money granted will be spent judiciously for this specific purpose with the potential existing for a high degree of success. Secondly, the system must function within certain parameters: the computer center organization policy of the governor, the operational compatibility of the system with NCIC CCH, the rules evidenced or planned governing security and privacy, the mandatory reporting of offenses and dispositions, etc. Thirdly, an undertaking of this scope requires detailed planning and integration of effort. The inclusion of those milestones which are appropriate in the Plan or grant application will insure that these factors have been addressed. It should be noted that these guidelines are perhaps more detailed than most state grant applications would be due to the fact that some pieces of the total system may already be "in place," e.g., the state computer system on which the system will be run. Factors that should be addressed in a time phased plan are as follows (many should be date oriented):

Legal

1. Legislation:

(a) Whether legislation exists for mandatory reporting of arrests from law enforcement agencies and case dispositions from the courts and corrections.

(b) A central state agency should exist for the collection of arrest and disposition information. This function should include the ability to correlate positively the arrest and disposition information with the identity of the individual through fingerprint comparison. This function is traditionally carried out by or in conjunction with the State Criminal Identification Bureau.

(c) If (b) above is not in being, there should be a plan which provides for the establishment of this function.

(d) If plan for (b) above exists, date function is to become operational (should be prior to operational status of the state's computerized criminal history system).

SYSTEMS DEVELOPMENT AND SUPPORT

Grant applications must address each of the following:

1. Number of records to be automated. This includes persons presently in the criminal justice system as well as new arrest and disposition reports received on a daily basis. LEAA will fund the conversion of those records where offenders are presently in the system (in custody or on parole or probation). In addition, the conversion (more appropriately, entry) of new records will also be funded provided that the state agrees to flag a first arrest offender's record (single state offender only) in the state system so that no information is entered at national level or exchanged on an interstate basis until a disposition is received. If arrest charge is dropped, the case dismissed by the courts or a finding of not guilty is received, the record will likewise not be entered into the interstate system. This applies to new record entries only; not historical information converted from RAP sheets or fingerprint cards. No funds are available for converting "old" records; i.e., records of offenders who are no longer in the system. To qualify for funding, records must meet all criteria contained herein (Guidelines for Evaluation of Transaction Statistics/Automated Criminal History Exchange). In addition, records funded must be classified in accordance with the NCIC CCH Uniform Offense Classifications; however, the state must agree not to transfer on an interstate basis, those records included in the LEAA Interstate Transfer Exclusion attachment where the excluded offenses represent the entire content of the criminal history record.

2. Data to be included in the criminal history record including coding of data and record size. As a minimum data elements must include those specified for the NCIC CCH system and the statistical data elements necessary for offender transaction statistics system specified in SEARCH Technical Report No. 4, implementing Statewide Criminal Justice Systems—the Model and Implementation Environment.

3. Input and output forms required for operation of the system. If not presently designed, date forms design will be completed should be reflected in the plan.

4. The complete flow of documents (reporting scheme) through the system from police agencies, courts and corrections to the criminal justice central repository.

5. Plan for data conversion. New records will be automated as received. Recidivists' records will be converted upon new arrest, while offenders presently in the criminal justice system will be converted as time permits (with an outside date established for this "historic" conversion). Plan should definitely reflect these considerations. If system is to be run "dual" for a period of time, this should be stated.

6. The files to be contained in system if system extends beyond the criminal history/offender transaction statistics system.

7. Statement regarding required personnel and financial support required for operation of the identification function considering the system's additional workload.

8. Date all personnel will be trained (includes field and central agency personnel).

9. Personnel requirements for all phases of the criminal history operation. This may include any or all of the following:
   (a) Fingerprint technicians.
   (b) Systems analysts.
   (c) Programmers.
   (d) Computer operations personnel.
   (e) Data coders (for data conversion).
   (f) Communicators.
   (g) Statisticians or data analysts.

10. Provisions for quality control of data at the centralized level, including fingerprint verification of input data, data editing, and limitations on input of dubious information.

11. Training considerations relative to implementation of the system in the field.

12. Plan for provision of services to all authorized criminal justice agencies within the state along with financial and equipment implications of this plan.

13. The existence of a plan for providing statistical data to the state data center and for providing LEAA with a data tape for statistical purposes consistent with LEAA guidelines.

COMPUTER AND TELEPROCESSING SYSTEMS

At the point where a grant application is submitted for system development, the hardware requirements for the system should have been well defined. The following points assume that some level of computer hardware is presently in use in the agency which will operate the system. If this is not the case, hardware and teleprocessing considerations must be more thoroughly investigated to determine if the state will have the capability to support the system. Specifically the grant application should address:

1. Teleprocessing requirements including terminal and line costs, teleswitching hardware required, etc. This will include the needs of the central location as well as field hardware. If the computer system is already in place, is the vendor capable of providing the necessary teleprocessing/communications software? Similarly does the computer configuration require augmentation as a result of this system's workload?

2. Total number of records to be converted and the amount of additional data storage required.

3. Data programing is scheduled to begin and end.

4. Beginning and ending dates for pilot test of the system.

5. Provisions for computer-to-computer interfaces both with local agencies within the state and with the Federal system.

6. Date system is to be fully operational.

7. Anticipated "life" of the system. This may be based upon increased use of the system with resultant queuing and response problems, to upgrading of the state-of-the-art with its associated ramifications. The period of time that the system (hardware and software) is considered to be viable should affect the hardware acquisition method, i.e., rent, lease-purchase or outright purchase. These considerations should, if possible, be reflected in the grant application.

Ultimately the systems telecommunications will be upgraded to permit direct exchange from state to state through national or regional switch/indexes. At such time, there will be no necessity for any substantive data to be held at the national or regional level. At such time as these telecommunication capabilities become available, states participating in this program should agree to retain *all* substantive information at the state level, using the regional and regional facilities only as index/switches.

SECURITY AND PRIVACY REQUIREMENTS

The question of installation security and its inseparable complement, the protection of individual privacy are of paramount importance in the development of a CCH system. Several publications have been produced which are relative to this subject. Publications which should be used as guides by the states are:

1. Project SEARCH Technical Report No. 2, dated July, 1970, entitled, "Security and Privacy Considerations in Criminal History Information Systems."

2. Project SEARCH Technical Memorandum No. 3, dated May 1971, entitled, "A Model State Act for Criminal Offender Record Information."

In addition, consideration should also be given to the Security and Confidentiality section of the National Crime Information Center (NCIC) Computerized Criminal History Program as approved by NCIC Policy Board, March 31, 1971.

Specifically the application should address at least the following points.

1. Precise rules establishing the types of criminal justice agencies authorized access to the data must be defined. In general, rules should be based on the recommendations on page 25 of SEARCH Technical Report No. 2, limiting direct access to criminal justice agencies. LEAA will not fund conversion efforts where the sale or dissemination of information from the system to non-government entities is allowed except where required by law.

2. Rules concerning the purposes for which authorized users can gain access to the data bank (e.g., applicants, arrests, investigations, etc.) must be stated, and must be in accordance with state and Federal laws.

3. Policies, procedures, and techniques for the purging, sealing, expunging of records or entries from the system and a plan specified for carrying them out.

4. A physical security plan for the facilities and the terminals on the system must be presented.

5. Adequate audit capability of system operation must be provided, including minimally, a continuous audit trail of all transactions occurring in the system.

SUMMARY

The awarding of a grant for the development of a transaction statistics/criminal history requires consideration of many factors. States vary in their degree of readiness to undertake this project; therefore the intent behind these guidelines must be recognized. They are not meant to be invariant rules with which a state must comply, but rather guidelines which will help to assure that Safe Streets money is being prudently spent for development of a tool which will assist the entire criminal justice community to function more effectively and efficiently while still providing adequate protection of individual rights of privacy.

LEAA INTERSTATE TRANSFER EXCLUSIONS

LEAA will not fund conversion efforts where a state permits the interstate transfer of records when any of the following is the highest offense:

NCIC code	Category	Offense
		Abortional act on self.
1402		Submission to abortional act.
1403		Bestiality.
3606		Incest with adult.
3607		Seduction of adult.
3608		Homosexual act with woman.
3609		Homosexual act with man.
3610		Obscene material, possession.
3704		Neglect family.
3801		Bigamy.
3804		Nonpayment of alimony.
3807		Nonsupport of parent.
3808		Card game, playing.[1]
3903		Dice game, playing.[1]
3906		Lottery, playing.[1]
3917		Frequent house of ill fame.
4005		Liquor possession.
4104		Misrepresenting age, minor.[1]
4105	Liquor	Drunkenness (free text).[1]
4200	Drunkenness	Do.
4299		False fire alarm.[1]
5308	Public peace	Disturbing peace.[1]
5312		Curfew.[1]
5313		Loitering.[1]
5314		Moving traffic violation.[1]
5405	Traffic offense	Nonmoving traffic violation.[1]
5406		Vagrancy, free text.[1]
6300	Vagrancy	Do.
6399		

[1] NCIC noncriteria offenses.

MANAGEMENT AND ADMINISTRATIVE STATISTICS

The purpose of the Management and Administrative Statistics segment of the Comprehensive Data Systems is to provide descriptive information about the criminal justice agencies in the state—information vital to the criminal justice planning process. Systematic data on expenditures, employment, facilities and equipment in criminal justice agencies will provide the state and LEAA with the basic data needed to identify needs, allocate funds and evaluate programs.

Whereas the design of each state system must reflect the particular data needs of the state, certain minimum data elements will be necessary to achieve comparability among the states. The following list broadly outlines the minimum data which will be required of each participating state:

Expenditures for criminal justice from all levels of government;
Criminal justice employment for all levels of government;
Characteristics of employees for all criminal justice agencies;
Facilities available for all types of criminal justice activities at all levels; and
Equipment available to all agencies.

The information required for expenditures and employment will be similar to that now published by the LEAA in its annual report "Expenditure and Employment Data for the Criminal Justice System." Information on facilities must include the kinds of data which were included in the 1970 National Jail Census (LEAA). Additional requirements are now being developed.

Data collection and processing

In many states, the SPA will be the obvious choice to act as the collection center for this part of the program since much of the information collected will be of direct utility to the SPA but not to other agencies. Grant applications should clearly indicate the organizational location of the Management and Administrative Statistics collection center. Since it is probably unnecessary for such an agency to develop its own data processing capability for these data, a limited amount of "no-match" money will be available to allow the agency to process these data on facilities which presently exist in the state or through a service contract with an outside group.

Model forms will be supplied by LEAA for this part of the program. Thus the major expenditures would be processing the data and preparing the reports. Analysis of data should be the responsibility of the Data Center.

National data

Certain data collected under this system will be submitted to LEAA for national publication. These data will be phased into existing LEAA national programs.

UNIFORM CRIME REPORTING

PURPOSE

The objective of this program is to encourage the states to accept the responsibility for the basic collection of uniform crime data.

Project scope and specifications

1. *Funding Priorities.*—Emphasis will be placed on support of states which have passed legislation or which have executive authority to collect law enforcement statistics, but whose apparatus for collection is, at the present time, either nonexistent or in a rudimentary or beginning state of development. Priority will also be given to more advanced states to expand or improve existing systems. In either case, an applicant state must include provisions in its proposal for providing crime data which meets national standards of the Federal Bureau of Investigation.

2. *Technical Assistance Component.*—The quality of law enforcement statistics is dependent upon adherence by local, county, and state agencies to the standards established for offense classifications and reporting procedures. Crime statistics are a direct result of sound recordkeeping systems. State agencies responsible for the collection of data for statewide programs of crime statistics must train and maintain adequate field staff to assist local and county law enforcement agencies in sound records keeping and crime reporting standards, and must also provide guidance in the proper use of police statistics for police management purposes. Project proposals should reflect and program for these functions.

Special Requirements

1. *Application Content.*—Applications should:

(a) Describe mandatory systems authorized or operating; and supporting legislation and regulations;

(b) Indicate which kind of users will be serviced (police, courts, prosecution, corrections) or what expansion to new users is contemplated;

(c) Describe the applicant's plans for the technical assistance referred to in paragraph 2 of the preceding section;

(d) Specify what statistics are being or will be furnished to existing national statistics programs during the project period.

2. *Mandatory Reporting Requirement.*—An absolute requirement for eligibility will be the existence in the applicant state of mandatory reporting authority to collect law enforcement statistics for police agencies. Although this usually requires authorizing legislation, applicants may establish the existence of such a system based on general intergovernmental powers (rather than specific reporting legislation) or imposed by executive order or regulation.

3. *Program Establishment Conditions.*—The conditions under which these statewide programs are established are as follows:

(a) The state program must conform to the national Uniform Crime Reports standards and information required. This, of course, does not prohibit the state from collecting other statistical data beyond the national collection.

(b) The state agency must have a proven effective mandatory statewide program.

(c) Coverage within the state by a state agency must at least be equal to that attained by Uniform Crime Reports.

(d) The state agency must have adequate field staff assigned to assist local units in record practices and crime reporting procedures.

(e) The state agency must furnish to the FBI all of the detailed data regularly collected by the FBI in the form of duplicate returns, computer printouts, or magnetic tape.

(f) The state must have the proven capability (tested over a period of time) to supply all the statistical data required to the FBI in time to meet national Uniform Crime Reports publication deadlines.

(g) The FBI will continue its internal procedures of verifying and reviewing individual agency reports for both completeness and quality.

(h) The FBI will continue to have direct contact with individual reporting units within the state where necessary in connection with crime-reporting matters, but will coordinate such contacts with the state agency.

(i) Upon request, the FBI will continue its training programs within the state with respect to police records and crime-reporting procedures. For mutual benefit these will be coordinated with the state agency.

(j) Should circumstances develop whereby the state agency cannot provide the data required by the national program, the FBI will reinstitute a direct collection of Uniform Crime Reports from police units within the state.

(k) The state must institute quality control and audit procedures using guidelines provided by the FBI and LEAA.

In order to receive money from this program, the applicant must agree to work toward conforming to the conditions above. States that already have a statewide UCR reporting system may apply for funds for program improvement and quality control.

Technical Assistance (TA) for Criminal Justice Statistics and Information Systems

Local units of government and criminal justice agencies frequently seek assistance from consultants or readily accept proposals put before them by a variety of contractors. Although it is desirable to seek outside help, frequently these uncoordinated efforts result in programs which cannot be economically interfaced, duplication of files and general inefficiency.

If a state provides a broad range of technical assistance it will encourage maximum compatibility between local systems in the states, reduce unnecessary redundancy between local, regional and state systems and minimize general duplication of effort.

This program requires the state to accept that responsibility. The acceptance of this responsibility should *not* be interpreted as a suggestion that a single agency increase its staff significantly to perform this function. The actual resources can be drawn from many areas, but the Data Center must accept the responsibility for assuring that these TA services are available to state and local agencies.

Providing a service is useless unless the potential user knows of its existence and how it may be obtained. In addition to arranging for the services, the Data Center must develop a system of keeping potential users informed.

The state must insure that any technical assistance provided is in conformance with the states CDS Plan or the general Comprehensive Plan.

The state should be ready to provide technical assistance in such diverse areas as: Statistical Methodology—Sampling, survey design, mathematical data analysis and related areas; Data Processing; Telecommunications; Criminal Identification; Information Systems; and Command and Control and Other Law Enforcement Systems.

The Technical Assistance component of the CDS program should not be confused with the normal operational requirements of the collection centers. It is the operational responsibility of the collection center to provide direct guidance to reporting agencies.

CDS PROGRAM—STATUS SUMMARY (AS OF FEB. 22, 1974)

Region and State	CDS action plan	CDS grants					
		SAC [1]	OBTS/CCH [2]	UCR [3]	MAS [4]	TA [5]	Search JIS/PAS projects [6]
Region I:							
Connecticut							
Maine	X		In review	X			
Massachusetts	X	X	X				X
New Hampshire	In preparation.						
Vermont	do.						
Rhode Island	X						
Region II:							
New Jersey	X	X	X				
New York							
Puerto Rico	Rejected; new plan in preparation.						
Region III:							
Delaware							
District of Columbia	X	X					
Maryland	X		X				X
Pennsylvania	In preparation.						
Virginia	do.						
West Virginia							
Region IV:							
Alabama							
Florida	X			X			X
Georgia	X	X					X
Kentucky							
Mississippi							
North Carolina							
South Carolina							
Tennessee							
Region V:							
Illinois	X						X
Indiana							
Michigan			X				
Minnesota	X		X	X			X
Ohio	X		X				
Wisconsin	Rejected						
Region VI:							
Arkansas	X		X				
Louisiana	X	In (RA) review.	X	In (RA) review.		Under consideration.	X
New Mexico	X	do.					
Oklahoma	X	X	X		X	X	
Texas	X						
Region VII:							
Iowa							
Kansas							
Missouri	X						X
Nebraska	Thinking about it.						
Region VIII:							
Colorado	X	X					X
Montana							
North Dakota							
South Dakota							
Utah	X	X	X	X			
Wyoming							
Region IX:							
Arizona	X					X	
California	X	X		X			X
Hawaii	X	X					X
Nevada	In preparation.						
Region X:							
Alaska							
Idaho	X		X	X			X
Oregon	X	X		X			X
Washington							

[1] Statistical Analysis Center.
[2] Offender based transaction statistics/computerized criminal history.
[3] Uniform crime reports.
[4] Management and administrative statistics.
[5] Technical assistance.
[6] Judicial information system/prisoner accounting system projects.

II—RECENT LEAA INVOLVEMENT IN CRIMINAL JUSTICE INFORMATION EXCHANGE

LEAA's NCJISS continues to develop information systems. As part of the overall OBTS/CCH program a number of programs have been funded. A recent project which has just come to a successful conclusion is a SEARCH project to develop a model state criminal identification bureau. A successful state OBTS/CCH project requires a viable indentification bureau. The decentralized concept of criminal histories is anchored in a viable state ID Bureau.

Other related projects are the recent state judicial information systems project and the state correctional information systems project.

The judicial information project will generate a requirements analysis and design effort for the development of a statewide judicial statistics and information system. The project will seek to establish the minimum judicial data elements required and to design and document a model for collecting and analyzing judicial information and statistics.

The correctional information system will design, demonstrate by implementation and evaluate an automated correctional information system for use in state prison systems. The information system will provide to state corrections the capability for individual offender accounting, management information, research, and response to ad-hoc inquiries. The design of the system will consider the necessary interface with the National Prisoners Statistics (NPS) collection, and the state level computerized criminal history (CCH) and, offender-based transaction statistics (OBTS) systems. The implementation of the information system is part of the LEAA Comprehensive Data Systems (CDS) program; in particular the CCH/OBTS module of that program. In this way, the system design will meet the information needs of the legislature, correctional administrators, and researchers/planners, as well as being fully compatible with the CDS development in the state.

Both of these projects are designed to improve the management of important components of the criminal justice system. These management systems, however, will provide critical transactional data for the OBTS record.

III—IMPLEMENTATION OF KENNEDY, HRUSKA, M'CLELLAN AMENDMENTS

Regulations pursuant to the Kennedy-Hruska amendment have been drafted and published in conjunction with regulations involving management of the FBI's information services—Identification Division and NCIC. The regulations are now in the public review process.

In July 1973 prior to the actual passage of the 1973 Crime Control Act, a memorandum was sent to each of the State Planning Agencies alerting them about the pending legislation and recommending actions they should take. Later a special condition was prepared to be appended to all appropriate LEAA grants.

All of these documents are attached.

DEPARTMENT OF JUSTICE

[28 CFR Part 20]

[Order No. 561-74]

CRIMINAL JUSTICE INFORMATION SYSTEMS

Notice of Proposed Rulemaking

The Department of Justice proposes to issue regulations governing the dissemination of criminal record information and criminal history information, as set forth below. The purpose of these regulations is to afford greater protection of the privacy of individuals who may be included in the records of the Federal Bureau of Investigation, criminal justice agencies receiving funds directly or indirectly from the Law Enforcement Assistance Administration, and interstate, state and local criminal justice agencies exchanging records with the FBI or these federally-funded systems. At the same time, it is the purpose of these regulations to preserve legitimate law enforcement need for access to record and criminal history information.

The initial hearings on these proposed regulations will be held on Friday, March 1, 1974 and Monday, March 4, 1974 at 10:00 a.m. in Room 532 of the Federal Trade Commission Building, 7th and Pennsylvania Avenue, NW., Washington, D.C. The date, time and place of any additional hearings will be published hereafter in the FEDERAL REGISTER. Interested persons who wish to testify should notify Thomas Madden, General Counsel, Law Enforcement Assistance Administration, 633 Indiana Avenue, NW., Washington, D.C. 20530 no later than February 22, 1974.

Written views on the proposed regulations may be submitted to Thomas Madden, General Counsel, Law Enforcement Assistance Administration, 633 Indiana Avenue, NW., Washington, D.C. 20530, no later than March 29, 1974.

Pursuant to the authority vested in the Attorney General by (28 U.S.C. 509, 510 and 5 U.S.C. 301), and the authority vested in the Law Enforcement Assistance Administration by sections 501 and 524 of the Omnibus Crime Control and Safe Streets Act, (42 U.S.C. 3701 et seq.), as amended by Pub. L. 93-83, 87 Stat. 197, it is proposed that a new Part 20 be added immediately after Part 19 of Chapter I of Title 28, Code of Federal Regulations, to read as set forth below:

PART 20—CRIMINAL JUSTICE INFORMATION SYSTEMS

Subpart A—General Provisions

Sec.
20.1 Purpose.
20.2 Definitions.

Subpart B—State and Local Systems

20.20 Applicability.
20.21 Implementation of Criminal Offender Record Information Systems to provide complete, accurate, and current information.
20.22 Certification of compliance.
20.23 Documentation; approval of LEAA.
20.24 Penalties.

Subpart C—Federal System and Interstate Exchange of Criminal Justice Information

20.30 Applicability.
20.31 Responsibilities.
20.32 Includable offenses.
20.33 Dissemination of criminal offender record information.
20.34 Individual's right to access criminal offender record information for purposes of accuracy and completeness.
20.35 National Crime Information Center Advisory Policy Board.
20.36 Participation in the Computerized Criminal History Program.
20.37 Responsibility for maintenance of date in the Computerized Criminal History File, National Crime Information Center (NCIC).
20.38 State participation.

Subpart A—General Provisions

§20.1 Purpose.

It is the purpose of these regulations to assure that criminal justice information systems are operated in a manner to ensure that adequate provisions are made for: The completeness, integrity, accuracy, system security, and the protection of individual privacy.

§ 20.2 Definitions.

As used in these regulations:

(a) "Criminal justice information system" means a system, including the equipment, facilities, procedures, agreements and organizations thereof, for the collection, processing, preservation or dissemination of criminal justice information.

(b) "Criminal justice information" means criminal offender record information and criminal intelligence information.

(c) "Criminal offender record information" means information contained in a criminal justice information system, compiled by a criminal justice agency for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, rehabilitation, pardon and release.

(d) "Criminal justice agency" means a public agency or component thereof which performs as its principal function a criminal justice activity.

(e) "Criminal justice" means any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities.

(f) To "seal" records means to retain those files, records, tapes, photographs or other recording of information but to limit their dissemination to the following purposes:

(1) Where the information will be used by criminal justice agencies solely for criminal justice purposes.

(2) Where the information is to be used for statistical compilations or research studies as specifically provided for in § 20.22(e).

(3) Where the individual to whom the information relates seeks to exercise rights of access and review under applicable regulations.

(4) Where necessary to permit the adjudication under these regulations of any claim by the individual to whom the information relates that it is misleading, inaccurate or incomplete.

(g) "State" means any state of the United States, the District of Columbia the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(h) "Attorney General" means the Attorney General of the United States.

(i) "Act" means the Omnibus Crime Control and Safe Streets Act. 42 U.S.C. 3701 et seq., as amended.

Subpart B—State and Local Systems

§ 20.20 Applicability.

(a) The regulations in this subpart apply to all components of any criminal justice information system if any part or component of such system is funded in whole or in part either directly or indirectly with funds made available by the Law Enforcement Assistance Administration, pursuant to Title I of the Act; or state and local systems which exchange information with any information system operated by the Department of Justice to the extent of its participation in any such system. These regulations apply to both manual and automated systems.

(b) The provisions of these regulations do not apply to lists or systems for identifying or apprehending fugitives or wanted persons.

§ 20.21 Implementation of Criminal Offender Record Information System.

(a) A detailed and specific plan shall be prepared by each state to which these regulations are applicable to establish a method of developing and maintaining criminal offender record information for serious offenders and for keeping all such information complete, accurate and current. Such a plan shall be submitted for approval to LEAA by July 1, 1974. The plan must provide for the procedures or systems to be implemented and totally operational by July 1, 1976. This section shall not be construed in any way as a substitute for affirmative action required by paragraph (b) of this section.

(1) For a criminal offender record to be considered complete for the purposes of this section, a record must contain information on all transactions, that is: The fact, date and charge of each arrest which occurs after the date upon which the system becomes operational, along with the fact, date and result of any pretrial proceedings, any trial proceeding including any sentence or penalty, any direct or collateral review of that trial or proceedings, the period or place of any confinement, any release proceedings, any act of pardon or clemency and any formal termination of the criminal justice process.

(2) For a criminal offender record to be current, all transactions must appear on the state record within 30 days of the date of the transaction.

(3) The plan must clearly indicate the agencies or persons responsible for the implementation of the system and the agency or person responsible for these regulations.

(4) For the purpose of this part a serious offender is one who has been arrested for an offense which qualifies for inclusion in an interstate system according to § 20.32.

(b) In the interim, each state shall take the following affirmative actions:

(1) Institute procedures, and provide to LEAA within 30 working days from the promulgation of these regulations, certification that procedures have been placed in effect to provide that all criminal offender record information, collected, stored or disseminated shall contain to the maximum extent feasible, dispositions as well as arrest data where arrest data are included therein. The certification shall include a description of any legislation or executive order, or attempts to obtain such authority, that have been taken to assure participation by all criminal justice agencies within the state. The documentation should also include a description of the steps which have been taken to overcome any fiscal and administrative barriers to the development of complete, accurate, and current criminal offender record information.

(2) Institute procedures, and provide to LEAA within 30 working days of the promulgation of these regulations, certification that procedures have been placed in effect to provide that the collection, storage and dissemination of criminal offender record information shall take place under procedures reasonably designed to insure that all information is kept complete, accurate, and current therein. This certification shall include a description of any legislation, or executive order or attempts to obtain such authority that have been taken to assure the timely participation by all criminal justice agencies within the state. The certification should also include a description of the steps which have been taken to overcome the fiscal and administrative barriers to the development of current criminal offender record information.

(3) The plan must clearly indicate the procedures which will be implemented to insure the accuracy of the data. Complete description of provisions for audit and audit trials must also be included.

§ 20.22 Certification of compliance.

Each state to which these regulations are applicable shall within 30 working days after the promulgation of these regulations provide the following:

(a) Dissemination of criminal offender record information.

(1) Certification that procedures have been placed in effect to limit the dissemination of criminal offender record information, whether directly or through any intermediary, only to (i) criminal justice agencies, for criminal justice purposes or other purposes expressly and specifically required by state statute, federal statute or federal executive order;

(ii) such other individuals and agencies as are expressly and specifically required by state statute, federal statute or federal executive order, to have access to criminal offender information.

(2) Certification that dissemination of criminal offender record information to individuals or agencies other than criminal justice agencies is limited to serious offenders.

(3) A listing setting forth all non-criminal justice dissemination being allowed within the state pursuant to paragraph (a) (1) (i) of this section, showing the specific identity of the non-criminal justice individuals or agencies, the specific purpose or use, and the statutory citation requiring dissemination.

(b) Sealing of criminal offender record information when arrest does not result in a conviction.

Certification that procedures have been instituted to provide for the sealing of any arrest record maintained in any criminal offender record information system when the arrest does not result in a termination adverse to the individual, or no disposition is provided within five years of arrest; or upon formal notice from the agency that made the arrest. This provision shall not be construed to affect the retention of the identification record in the state or federal identification file; except that any such identification record shall be sealed when the corollary arrest record is sealed pursuant to the foregoing provisions. Any such sealed identification record shall only be opened pursuant to the submission of a subsequent identification record for an arrest, or other purpose specifically authorized by state or federal statute or federal executive order. Any identification record so opened shall be re-sealed if the arrest results in the sealing as provided for in this subsection.

(c) Physical security of criminal justice information.

(1) Certification that the security of information in a criminal justice information system subject to these regulations shall be assured by dedication to criminal justice purposes or by management control by a criminal justice agency; and that procedures have been instituted to make each and every criminal justice agency in the state, and any other individual or agency authorized access, responsible for: (i) The physical security of criminal offender record information or criminal intelligence information under its control or in its custody; and (ii) The protection of such information from unauthorized access, disclosure, or dissemination.

(2) Certification that procedures have been instituted to reasonably protect any central repository from theft, sabotage, fire, flood, wind or other natural or manmade disasters.

(d) Individual's right to access criminal history information for purposes of accuracy and completeness.

Certification that procedures have been instituted to provide that any individual shall, upon satisfactory verification of his identity by fingerprint comparison, be entitled to review any criminal offender record information maintained about

him and to obtain a copy of it for the purpose of challenge or correction. Such procedures must contain provisions for administrative review and correction for any claim by the individual to whom the information relates that it is misleading, inaccurate or incomplete. For the purposes of this subsection, a record shall be considered incomplete if it does not contain disposition information when a disposition has occurred.

(e) Use of criminal offender record information for statistical compilations or research studies.

(1) Certification that procedures have been placed in effect to insure that criminal offender record information that is identifiable to an individual is not disseminated for any statistical compilation or research study except as authorized by state or federal statute or federal executive order; and then only if disseminated pursuant to an agreement that prohibits any such information from being revealed to any person or agency, or used in any way, for any purpose other than that for which it was obtained; and that such information may not be used for any purpose in any action, suit, or other judicial or administrative proceedings.

(2) Certification that procedures have been placed in effect to insure adequate protection for security and privacy of criminal offender record information for research purposes. The procedures, among others, must insure that:

(i) Authorization to use criminal offender record information is only given when the benefits reasonably anticipated from the project outweigh the potential harm to security and privacy; and

(ii) research will not be used to the detriment of persons to whom the information relates nor for any purpose other than those specified in the research project.

§ 20.23 Documentation; approval by LEAA.

In addition to the certification required by §§ 20.21(b) and 20.22, each state shall provide full documentation of such procedures as have been instituted to meet the requirements of these regulations.

The certification and documentation described shall be presented to the Law Enforcement Assistance Administration within 30 working days of the promulgation of these regulations. The LEAA shall, within 30 working days after receipt, rule on and approve or disapprove of the adequacy of the provisions. If disapproved the state must resubmit the documentation within 15 working days. If LEAA does not act within the 30-day period such submission shall be considered approved until a specific disapproval is received from LEAA.

In determining the adequacy of the state's procedures, LEAA will consider the following documents: National Advisory Commission on Criminal Justice Standards and Goals, Report on the Criminal Justice System; Project SEARCH: Security and Privacy Considerations in Criminal History Information Systems, Technical Report #2; Project SEARCH: A Model State Act for Criminal Offender Record Information. Technical Memorandum #3; and Project SEARCH: Model Administrative Regulations for Criminal Offender Record Information. Technical Memorandum #4.

§ 20.24 Penalties.

Violation of procedures approved by the Law Enforcement Assistance Administration pursuant to these regulations shall be punishable in accordance with the provisions of the Act.

Subpart C—Federal System and Interstate Exchange of Criminal Justice Information

§ 20.30 Applicability.

The provisions of this subpart of the regulations apply to any Department of Justice criminal justice information system that serves criminal justice agencies in two or more states and to state and local criminal justice agencies to the extent that they utilize the services of Department of Justice criminal justice information systems. These regulations are applicable to both manual and automated systems.

§ 20.31 Responsibilities.

The Federal Bureau of Investigation (FBI) shall have the sole responsibility for the collection, processing, preservation and dissemination of criminal offender record information relating to Federal offenders. The FBI shall operate the following criminal justice information systems to facilitate the interstate exchange of criminal justice information.

(a) *National Crime Information Center (NCIC)*. The FBI shall operate the National Crime Information Center (NCIC), the computerized information

system and associated telecommunications lines and switching facilities linking local, state and federal criminal justice agencies for the purpose of exchanging information on:

(1) Wanted persons and stolen property and,

(2) The Computerized Criminal History (CCH) File, a cooperative federal-state program for the interstate exchange of criminal offender record information. CCH shall provide a central repository and index of criminal offender record information for the purpose of facilitating the interstate exchange of such information among criminal justice agencies.

(b) *Fingerprint Identification Services*. The FBI shall operate the Identification Division to provide the following services:

(1) Perform criminal identification functions on all federal offenders.

(2) Perform criminal identification functions for state and local criminal justice agencies to the extent that such services are not made available, and only until such time as they are made available, by the state criminal offender record information system that provides centralized identification and criminal record information services within the state.

(3) Perform criminal identification functions in support of criminal offender record information systems at the state and local levels. This includes the maintenance of master fingerprint files on all offenders included in NCIC/CCH for the purposes of determining first offender status and to identify those offenders known in one state but unknown in another where they have become criminally active.

(4) Perform criminal offender record information dissemination functions for state and local criminal justice agencies to the extent that such services are not made available, and only until such time as they are made available, by the state criminal offender record information system that provides centralized identification and criminal offender record information services within the state.

(5) Perform identification and criminal offender record information dissemination functions for noncriminal justice agencies and authorities where authorized by federal statute, Presidential Executive Order or Attorney General regulations.

§ 20.32 Includable Offenses.

Offenses includable in federal criminal offender record information systems shall be restricted to serious and/or significant violations. Excluded from such systems are juvenile offenders as defined by law, unless the juvenile is tried in court as an adult; charges of drunkenness and/or vagrancy; certain public order offense, i.e., disturbing the peace, curfew violations, loitering, false fire alarm, traffic violations (except data will be included on arrests for manslaughter, driving under the influence of drugs or liquor, and hit and run); and nonspecific charges of suspicion or investigation.

§ 20.33 Dissemination of criminal offender record information.

Criminal offender record information contained in any Department of Justice criminal justice information system will be made available:

(a) To criminal justice agencies for criminal justice purposes; and

(b) To federal agencies authorized under Executive Order or federal statute.

Dissemination of such data for use in connection with licensing or local/state employment or for other uses is prohibited unless such dissemination is pursuant to state or federal statutes.

§ 20.34 Individual's right to access criminal offender record information for purposes of accuracy or completeness.

Any individual, upon satisfactory verification of his identity by fingerprint comparison, may review criminal offender record information maintained about him in a federal criminal offender system in accordance with the procedures established in Subpart C of Part 16 of Chapter I of Title 28, Code of Federal Regulations.

§ 20.35 National Crime Information Center Advisory Policy Board.

There is established an NCIC Advisory Policy Board whose purpose is to recommend to the Director, Federal Bureau of Investigation, general policies with respect to the philosophy, concept, and operational principles, particularly the NCIC's relationships with local and state systems relating to the collection, processing, storage, dissemination and use of criminal offender record information contained in the Computerized Criminal History File.

(a) The selection and tenure of the Board shall be at the discretion of the Director of the Federal Bureau of Investigation after appropriate consultation with criminal justice agencies who are participants in the National Crime In-

formation Center system. The Board shall be representative of criminal justice agencies at state and local levels and include representation of the police, courts, and corrections segments of the criminal justice community.

(b) The Board shall review and consider rules, regulations and procedures for the operation of the National Crime Information Center.

(c) The Board shall consider the National Crime Information Center operational needs of law enforcement agencies in light of public policies, and local, state and federal statutes and these regulations.

(d) The Board shall review and consider security and privacy aspects of the National Crime Information Center system and shall have a standing Security and Confidentiality Committee to provide input and recommendations to the Board concerning security and privacy of the National Crime Information Center system on a continuing basis.

(e) The Board shall recommend standards for participation by law enforcement agencies in the National Crime Information Center system.

(f) The Board shall report directly to the Director of the Federal Bureau of Investigation or his designated appointee.

(g) The Board shall operate within the purview of the Federal Advisory Committee Act, 86 Stat. 770 (1972).

(h) The Director, FBI, shall not adopt recommendations of the Board which are inconsistent with these regulations.

§ 20.36 Participation in the Computerized Criminal History Program.

(a) Entry of criminal offender record information into the Computerized Criminal History File will be accepted only from an authorized state or federal criminal justice control terminal. Terminal devices in other authorized criminal justice agencies will be limited to inquiries.

(b) Each criminal justice agency having direct access to the Computerized Criminal History File shall execute a signed agreement with the Director, FBI, to abide by all present rules, policies and procedures of the NCIC, as well as any rules, policies, and procedures hereinafter approved by the NCIC Advisory Policy Board and adopted by the NCIC.

§ 20.37 Responsibility for maintenance of data in the Computerized Criminal History File, NCIC.

It shall be the responsibility of each criminal justice agency contributing data to the Computerized Criminal History File to assure that information on individuals in the Computerized Criminal History File is kept complete, accurate and current in accordance with § 20.21 so that all such records shall contain to the maximum extent feasible dispositions, as well as arrest data.

§ 20.38 State participation.

No state which has not complied with Subpart B of this part may participate in or receive services from a Federal criminal offender information system.

Dated: February 8, 1974.

WILLIAM B. SAXBE,
Attorney General.

Dated: February 8, 1974.

DONALD E. SANTARELLI,
Administrator, Law Enforcement Assistance Administration.

[FR Doc. 74-3602 Filed 2-13-74; 8:45 am]

DEPARTMENT OF JUSTICE,
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION,
July 23, 1973.

To: LEAA Regional Administrators, State Criminal Justice Planning Administrators.

From: George E. Hall, Acting Assistant Administrator, National Criminal Justice Information and Statistics Service.

Subject: Security and privacy: Criminal justice information systems.

This memorandum is to bring to your attention certain actions taken by the Congress of the United States, by amendment to LEAA legislation, relative to the security and privacy of Criminal Justice Information Systems (CJIS).

As you know, LEAA originally imposed special conditions on the State Comprehensive Plan and Discretionary Awards, requiring grantees and sub-grantees to address the security and privacy of Criminal Justice Information Systems. In recent Guidelines for State Comprehensive Plans—the same condition has also been applied to discretionary awards—*General Condition No. 27* has been applicable to this area:

GENERAL CONDITION NO. 27—LEAA GUIDELINE MANUAL M4300.1

"*Information Systems.*—In respect to programs related to Criminal Justice Information Systems, the grantee agrees to insure that adequate provisions are made for system security, the protection of individual privacy and the insurance of the integrity and accuracy of data collection."

The National Advisory Commission on Criminal Justice Standards and Goals has made specific recommendations in the CJIS security and privacy area. The Standards follow the basic recommendations of Project SEARCH. They can be found in the Commission's "Report on the Criminal Justice System" (to be published in the immediate future). Part II of this report is directed at Criminal Justice Information Systems.

A continuing effort is being directed at the security and privacy area by Project SEARCH. The results of their early work has been widely distributed. Several documents were prepared specifically for the security and privacy of Criminal Justice Information Systems:

Project SEARCH Documents:

(1) Technical Report No. 2, Security and Privacy Considerations in Criminal History Information Systems, July 1970

(2) Technical Memorandum No. 3, A Model State Act for Criminal Offender Record Information, May, 1971

(3) Technical Memorandum No. 4, Model Administrative Regulations for Criminal Offender Record Information, March, 1972.

It is interesting to note that at least one state—Massachusetts—has passed state legislation that follows the recommendations of Technical Memorandum No. 3—A Model State Act for Criminal Offender Record Information; others have adopted selected provisions into existing legislation.

During deliberations on the LEAA legislation in the Senate (see Congressional Record for June 28, 1973, S12436–S12439), an amendment was introduced by Senator Kennedy: "All criminal history information collected, stored, or disseminated through support under this title shall contain, to the maximum extent feasible, disposition as well as arrest data where arrest data is included therein. The collection, storage, and dissemination of such information shall take place under procedures reasonably designed to insure that all such information is kept current therein."

The foregoing amendment was supplemented by an amendment introduced by Senators McClellan and Hruska:

"The Administration shall assure that the security and privacy of all information is adequately provided for and that information shall only be used for law enforcement and criminal justice and other lawful purposes. In addition, an individual who believes that criminal history information concerning him contained in an automated system is inaccurate, incomplete, or maintained in violation of this title shall, upon satisfactory verification of his identity, be entitled to review such information and to obtain a copy of it for the purpose of challenge or correction."

"Criminal history information includes records and related data, contained in an automated criminal justice informational system, compiled by law enforcement agencies for purposes of identifying criminal offenders and alleged offenders and maintaining as to such persons summaries of arrests, the nature and disposition of criminal charges, sentencing, confinement, rehabilitation and release."

The following excerpts are from Senator Kennedy's discussion of the purpose and intent of the amendments:

"Mr. President, the purpose of this amendment is to encourage agencies and governments operating data and information systems which are in any way supported by LEAA funds to include information concerning dispositions where arrest information is included in the system * * * the use and misuse of arrest records in data banks has been the subject of extensive attention * * *. This amendment does not adopt a rigid, inflexible standard requiring purges or inputs into any criminal information system, and it recognizes the difficulties where disposition information does not reach law enforcement authorities because of

judicial control over such information. The amendment does require that where LEAA funds are used "procedures" be adopted to assure that every arrest record indicate the current status of the criminal charge growing out of that arrest. By "procedures", it is intended that the criminal justice information system at least adopt the procedures set out in Technical Report No. 2 of Privacy and Security Committee of Project SEARCH. LEAA is presently attempting to require criminal justice information systems in funds under its Comprehensive Data Systems Program to adopt these procedures.

"Unfortunately LEAA has met resistance in its effort probably because of the absence of any explicit federal statutory requirement, such as that proposed by this amendment. * * * [The Amendment] is an attempt to write into the legislation the language to insure that there is no excuse by the Departments—the law enforcement agencies, the police departments, and other relevant agencies—for not complying with this provision. This is the strongest language I could think of at this time, without being totally inflexible, to insist that the local departments that do receive LEAA funds will actually comply with our intentions. * * * I would expect that these procedures be incorporated promptly, immediately. Procedures already have been developed * * * [By] Project SEARCH. * * * I ask unanimous consent to have printed in the Record the recommendations as to the procedures contained in the SEARCH Report. [Chapter 2, Recommended Systems Policies Related to Security and Privacy, SEARCH Technical Report No. 2, July, 1970]. I think there will be very little excuse for there not to be prompt adoption by local agencies. These recommendations are sound, constructive and well thought out. * * * I would expect that there would be immediate action by local agencies. * * * We want to recognize again that this is not a final answer to the problems raised by the collection and dissemination of criminal history information. It is difficult. It is a sensitive issue and problem. There are competing issues in this area. But this is a first step. I think it is a step which is responsible and one which can be implemented immediately."

The amendment(s) were approved and incorporated in the Senate version of the LEAA legislation. LEAA expects this to be approved by the Joint Conference Committee. LEAA will then be required to develop regulations to carry out the congressional mandate for security and privacy provisions/procedures for Criminal Justice Information Systems. Attached is a copy of SEARCH Technical Report No. 2. Note from Senator Kennedy's remarks that he had Chapter 2 included in the Congressional Record.

Each state and all criminal agencies are strongly encouraged to consider the SEARCH recommendations relative to their criminal justice information system activities.

LEAA is working on a plan on how this requirement should be managed and implemented. You will be advised as soon as possible of any developments.

Attachment—Project SEARCH Technical Report No. 2, July 1970. [See appendix, Volume II].

cc: LEAA Executive Committee.

DEPARTMENT OF JUSTICE,
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION,
October 5, 1973.

To: All LEAA Regional Administrators.
Through: Mr. James T. Devine, Assistant Administrator, OCJA.
From: George E. Hall, Acting Assistant Administrator, National Criminal Justice Information and Statistics Service.
Subject: Crime Control Act of 1973, Section 524—Security and Privacy: Criminal Justice Information Systems.

My memorandum to you and the State Criminal Justice Planning Administrators of July 23, 1973, outlined the background pertaining to Section 524 of the Crime Control Act of 1973. You will recall that LEAA General Condition No. 27 was also discussed.

The Guidelines for Section 524 are being developed at this time. We do expect hearings to be held as soon as these Guidelines are ready. You will be kept advised of all activities.

The Office of General Counsel has advised that until detailed Guidelines are issued that all grants and contracts should include a security and privacy clause as appropriate, for "Research and Statistical Information" 524 (a) and (c) and or "Criminal History Information" 524 b, (c) and 601 (o). To accomplish this

purpose the attached clauses should be incorporated, as appropriate, into all grants, contracts, sub-grants or sub-contracts.

Because of the importance and potential impact of Section 524—and the forthcoming Guideline/Regulations—on the states and units of local government, I strongly recommend that you bring this personnally to the attention of the SPA.

You will recall that my memorandum of July 23, 1973, was distributed to the SPA's in San Diego; subsequent to San Diego it was also mailed to each SPA. NCJISS has recently been contacted by operational criminal justice personnel from several states that have not been advised of either General Condition No. 27 or Section 524. The SPA's should be strongly encouraged to bring these matters to the attention of the appropriate officials.

ARTICLE—"COLLECTION, STORAGE, AND DISSEMINATION OF CRIMINAL HISTORY INFORMATION"

A. As used in this article:

(1) The term "title" means Crime Control Act of 1973, Title 1 Law Enforcement Assistance.

(2) The term "criminal history information" includes records and related data, compiled by law enforcement agencies for purposes of identifying criminal offenders and alleged offenders and maintaining as to such persons summaries of arrest, the nature and disposition of criminal charges, sentencing, confinement, rehabilitation and release—601 (o).

(3) All criminal history information collected, stored, or disseminated through support under this title shall contain, to the maximum extent feasible, disposition as well as arrest data where arrest data is included therein. The collection, storage, and dissemination of such information shall take place under procedures reasonably designed to insure that all such information is kept current therein; the recipient of assistance and any contractor or subcontractor shall assure that the security and privacy of all information shall only be used by law enforcement and criminal justice and other lawful purposes. In addition, an individual who believes that criminal history information concerning him contained in an automated system is inaccurate, incomplete, or maintained in violation of this title, shall, upon satisfactory verification of his identity, be entitled to review such information and to obtain a copy of it for the purpose of challenge or correction—524 (b).

(4) Pursuant to Section 524 (c) of title I of the Crime Control Act of 1973 any person violating the provisions of this section, or of any rule, regulation, or order issued thereunder, shall be fined not to exceed $10,000 in addition to any other penalty imposed by law.

ARTICLE—"NONREVELATION OF RESEARCH OR STATISTICAL INFORMATION"

A. As used in this article.

(1) The term "title" means Crime Control Act of 1973, Title 1—Law Enforcement Assistance.

(2) Except as provided by Federal law other than the Crime Control Act of 1973, Title 1—Law Enforcement Assistance, no officer or employee of any recipient of assistance or contractor or sub-contractor under provisions of this title shall use or reveal any research or statistical information furnished under this title by any person and identifiable to any specific private person for any purpose other than the purpose for which it was obtained in accordance with this title. Copies of such information shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceedings—524(a).

(3) Pursuant to Section 524(c) of title I of the Crime Control Act of 1973 any person violating the provisions of this section, or of any rule, regulation, or order issued thereunder, shall be fined not to exceed $10,000 in addition to any other penalty imposed by law.

IV—LEAA FUNDING OF INFORMATION SYSTEMS AND COMMUNICATIONS AND INTELLIGENCE SYSTEMS

One of the major uses of LEAA funds has been for the development of information systems and communications. We estimate that approximately $320 million has been used for this purpose since the establishment of the agency. This does not include any funds which were made available by OLEA, the LEAA predecessor agency nor does it include any funds that were appropriated by state and local governments nor any Highway Safety funds made available to law enforcement agencies.

V—NON-CRIMINAL-JUSTICE USE OF RAP SHEETS

LEAA has conducted no detailed study of the non-criminal justice use of "rap sheets" or ciminal histories. However, Section 20.22 (a) (3) of the Security and Privacy Regulations (28 CFR Part 20) just published will require the states to list all non-criminal justice agencies which will have access to criminal histories, the noncriminal justice uses to which they can be put and the statutory authorization for their dissemination. (See p. 42.)

VI—INTELLIGENCE

Currently there are serious problems with organized crime. These problems require that information about known or suspected organized crime figures be available to appropriate federal, state and local law enforcement agencies.

Recognizing this need LEAA funded a project in mid 1971 to establish an automated organized crime index: The Interstate Organized Crime Index. Project SEARCH was involved in the development of the prototype. The prototype has now been operational for approximately one year.

We are providing both the SEARCH evaluation of the prototype development and an evaluation of the operational phase which was required as a condition of our most recent grant. A copy of the summary of the most recent analysis is attached.[1]

In addition to the need for intelligence information in remote access automated systems, there is a need for computerized intelligence information for internal analytical purposes. Frequently the only way a criminal case can be developed against organized crime figures is through the detailed analysis of financial and tax data.

LEAA strongly supports this kind of activity. In the past we have provided technical assistance to state and local intelligence units to help them develop this analytical capability. We would expect to continue and even expand this kind of activity in the future.

Excerpts From SEARCH Evaluation of IOCI

I. INTRODUCTION

This Final Report is the result of a three phased project to conduct an independent evaluation of the present Interstate Organized Crime Index (IOCI) prototype system. The report summarizes the results of each project phase as follows:

Phase I—Analysis of System requirements and development of conceptual alternatives

Phase II—IOCI prototype evaluation and improvement planning

Phase III—Security and Privacy Policy and Procedures considerations.

1. Project background

The need to exchange information related to organized criminal activities has been recognized by law enforcement for some time. The Law Enforcement Intelligence Unit (LEIU) was formed in 1956, by mutual agreement of concerned agencies, for the purpose of gathering, recording, investigating, and exchanging such information. LEIU now consists of over 220 members nationwide, and was a prime mover in creating a computerized prototype system in 1972 called the Interstate Organized Crime Index (IOCI) to enhance the flow and coordination of information exchange.

The prototype IOCI system was intended to test the benefits of using a computerized index to improve information exchange on a nationwide basis using a telecommunications terminal network. The ultimate goal, of course, was to adversely impact organized criminal activities.

The IOCI data base was initially created from LEIU card information relating to approximately three thousand subjects. The data base presently contains approximately 20,000 names including principal subjects, associates, aliases and monikers. The IOCI data base serves as a central index of subjects. The index and the related terminal network is controlled by the Michigan State Police computer in East Lansing, Michigan. IOCI data base updating is controlled by the California Department of Justice, Organized Crime and Criminal Intelligence Branch which acts as the Central Coordinating Agency (CCA). IOCI data is prepared for system input in conjunction with maintaining the LEIU card file, which is also a task performed by the CCA.

Initially, sixteen CRT terminals were located in agencies across the country to provide remote access to the Central Index. Recently, the number of terminals was increased to thirty including seven CRT and twenty-three teletype terminals.

[1] Evaluation of IOCI by the Arthur Young Co. appears in appendix.

Agencies with terminals are able to communicate administratively with all other terminals in the network as well as make subject inquiries of the Central Index (CI).

The system is managed by an IOCI Executive Committee consisting of the LEIU Executive Board, and representatives from the CCA, the CI, and six terminal agencies. The Law Enforcement Assistance Administration (LEAA) provides Federal funds for system development and operation and has a non-voting representative on the Executive Committee. A California Crime Technological Research Foundation (CCTRF) representative is also a non-voting member of the Committee. CCTRF administers the Federal funds, provides technical staff services, and generally coordinates and monitors development activities including this evaluation project.

Before further expanding the terminal network, management determined that there was a need to evaluate the prototype system. Arthur Young & Company was selected to conduct an independent evaluation of the IOCI prototype. User requirements were to be fundamental in evaluating the system expansion feasibility, constraints, and approaches. The specific objectives of the project were as follows:

To identify user requirements for the interstate exchange, storage, and analysis of information related to organized criminal activities;

To define cost-effective alternative system approaches to satisfy user requirements;

To recommend a system approach which is not only cost-effective but which satisfies user needs to the extent possible within practical constraints such as funding requirements, and security and privacy issues;

To evaluate the present IOCI prototype as compared to the recommended system and to establish a plan for improving IOCI as appropriate and feasible; and

To develop security and privacy policies and procedures necessary for implementing the IOCI improvements according to plan.

The project tasks were organized into the following three phases:

PHASE I—REQUIREMENTS ANALYSIS AND SYSTEM ALTERNATIVES

During Phase I, user requirements for information were defined. The Central Index, Central Coordinating Agency, and representative Terminal Agencies were visited to obtain this information. Other involved agencies, such as LEAA were also visited during this phase. Appendix A of this report contains the details of the agencies surveyed during the project. System constraints which limit the alternative approaches were also identified and considered. A recommended system approach was selected from the alternatives based upon an analysis of user needs which were satisfied and upon estimates of developmental and operational costs. On November 28 and 29, 1973 the IOCI Executive Committee reviewed and approved the Phase I recommendations.

PHASE II—IOCI EVALUATION

During Phase II the present IOCI prototype system was compared to the system concepts resulting from Phase I. The comparison resulted in an IOCI improvement plan including tasks, schedule, organization, and funding.

PHASE III—DEVELOPMENT OF SECURITY AND PRIVACY POLICY AND PROCEDURES

Phase III was devoted to an analysis of security and privacy issues and recent developments as they pertain to the approved IOCI approach. Analysis during this phase resulted in a statement of the security and privacy policy and procedures necessary for implementing the approved system. The results of Phases II and III were presented in a combined report to the Executive Committee on January 16 and 17, 1974. The Committee accepted the report and furnished guidelines which were considered in preparing this Final Report.

The project completion date was extended from December 31, 1973 to January 31, 1974. Approximately two additional weeks were necessary for cost analysis, and to allow adequate time for the involved agencies to review and prepare their cost estimates. The remainder of the schedule extension was to permit the preparation of this Final Report subsequent to the January, 1974 IOCI Executive Committee meeting.

As previously mentioned, this report contains the summary of the results of all project phases. The several appendices to the report contain the detailed

information which supports the analysis and recommendations contained in the main body of the report.

2. SUMMARY OF ANALYSIS AND RECOMMENDATIONS

We recommend that an on-line computerized system be developed for IOCI. The computerized system approach would provide for the following functions:

Online subject inquiry to a centralized data base;
Update of subject data via remote terminals;
Coordination between agencies interested in the same subject;
Administrative message capability among terminal agencies;
Data base search and analysis capability; and
System management.

In addition, the use of the recommended automated conceptual approach would incorporate the following features:

Interactive communications between the terminal user and the computer for on-line inquiry and update;
Compliance with public record privacy requirements;
Expansion of the subject data base by establishing coordinative capabilities;
Improvement of the inquiry capability by establishing selective response formats and options; and
Simplification of the sign-on procedure while retaining security.

Our recommendation is based fundamentally upon the need for intelligence agencies to exchange and coordinate information related to organized criminal activities. Presently, information is exchanged by numerous methods few of which are formalized or systematic. On an interstate basis, the IOCI concept is widely supported by users as a means for improving the exchange and coordination of information. Other benefits of the system include:

Coordination among agencies interested in the same subjects;
Leads to criminal associates and businesses;
Identification of unknown subjects; and
Data base analysis capability.

Additionally, IOCI has had the effect of significantly increasing the rapport and coordination of agencies participating in the use of the system. This cooperative atmosphere has aided in bringing the nature of nation-wide organized criminal activities into focus.

It is important to remember that the conceptual approach recommended during Phase I was intended to reflect the IOCI system requirements and the potential technical alternatives considering a minimum application of constraints. In effect, the recommended IOCI approach was to be an "ideal" system. Exhibit I, following this page, presents a summary of the potential technical alternatives which were analyzed during Phase I. Each alternative is summarized in relation to identified system objectives, constraints, and user information requirements. A more detailed analysis of alternatives is contained in Appendix B of the report.

During Phases II and III, the recommended system outlined above was tempered by the identified constraints. From a system development point of view, the primary constraints are development costs, and security and privacy requirements. A summary of recommendations is contained in Exhibit II, following this page. The exhibit highlights some of the technical and economic aspects of the recommended system, and several actions recommended for development.

The most critical area to be resolved is the location(s) of the central coordination and central index functions. The following factors must enter into assessing the final location:

Management control of IOCI and the relationship with the management of the operating agencies;
Security and privacy technical and procedural requirements;
Costs of system development and operation;
Potential security and privacy legislative action in the state maintaining the index function;
Interim IOCI operations during development; and
IOCI relationship to the LEIU card system.

Considering the above, a combined CCA/CI operation at an existing law enforcement facility has merit. But the final location(s) will depend upon negotiations with the key agencies involved.

The remaining sections of this report summarize the results of Phases I, II, and III.

SUMMARY ANALYSIS OF SYSTEM ALTERNATIVES

System technology	Evaluation factors		Basic cost factors	
	Satisfaction of system objectives and constraints	Satisfaction of user information requirements	Development and other 1-time costs	Operations and other on-going costs
Manual	Least expensive system approach; minimum coordination; work load dependent.	Limited analysis and search; limited growth; requires manual coordination.	File conversion; System development; facsimile equipment costs (optional).	Telephone network; coordination staff; space; system management and administration.
Micrographics	Costly approach for relatively small file; weak coordination; poor retrieval capability; no administrative messages.	Document oriented—Not oriented to coordination index; no identified user requirements for central document storage; cumbersome maintenance.	Microfilm equipment costs; file conversion; system development; site preparation.	Microfilm file maintenance; telephone network; coordination staff; space; equipment maintenance; system management and administration.
Batch computer	Straightforward security approach; slow response time; no administrative messages; weak coordination.	Provides search and analysis; promotes data base management.	Computer equipment purchase (optional); file conversion; system development; site preparation.	Telephone network; system operation; equipment rental/maintenance; space; coordination staff; system management and administration; program maintenance.
On-line computer	Promotes use of system; promotes data contribution; modular growth capability; marginal cost over other approaches is justified based upon increased user benefits; requires strict security procedures and programs.	Provides user interaction with data base; provides timely data file update and coordination; promotes data base management; provides administrative message capability; provides search and analysis; effective coordination.	Computer equipment purchase (optional); file conversion; system development; communications and terminal purchase; site preparation.	Telecommunications network; system operation; equipment rental/maintenance; coordination staff; space; program maintenance; system management and administration.

SUMMARY OF RECOMMENDATIONS

IOCI system

On-line computerized approach.
Law enforcement processing environment.
CRT terminals with hardcopy capability.
Data base expansion: Coordination file and expanded associate data.
Leased telecommunications: GSA Telpak service, low speed; multidrop; and no scramblers.

IOCI Application programs

Redesign and rewrite.
Satisfy user information requirements, system objectives, and technical requirements.

Organization

Combined CCA/CI operation.
Central management reporting to the IOCI Executive Committee: IOCI Director and 11 staff members plus a secretary.

Improvement plan

Systematic work plan of 11 major-tasks.
21 month development period.

Development costs

Maximize purchase of equipment to reduce ongoing costs.
One-time base-line cost estimate, $1,564,906.
Annual base-line cost estimate, $497,350.
LEAA funding required.

Security and privacy considerations

Participate in directing state and federal legislation.
Adopt new or improved procedures: Simplified terminal sign-on; data entry criteria; data base purge criteria; security audit; and error correction and recovery.

VII—TELECOMMUNICATIONS ALTERNATIVES

In June 1973, LEAA made a grant to the National Law Enforcement Teletypewritersystem (NLETS) for the purpose of upgrading their interstate communications facilities. This upgrade was designed to permit high speed computer to computer message transmission and switching. At the same time LEAA contracted with the Jet Propulsion Laboratories (JPL) to examine criminal justice telecommunications requirements for the next ten years and to design a system to meet those needs. The NLETS upgrade was considered to be an interim measure to fill the gap until the JPL study could be completed and the system established. The JPL study is underway and results are expected by July of this year.

We would expect that no final decision would be made on the design or management of a national telecommunications systems until the results of the JPL effort are received and evaluated.

Attached is a description of the general work plan of the JPL project which describes the objectives and project procedures.

We are also providing the most recent report from JPL along with an internal memorandum which notes that a revision is being prepared which will be presented to the committee.

A list of the States NLETS interfaces is attached. This list shows existing and planned high speed (computer to computer) interfaces as well as those states with terminal access to the system. A copy of the description of NLETS from the grant application is also attached.

SECTION I—INTRODUCTION

A. BACKGROUND OF THE PHASE I WORK PLAN

This final version of the detailed Phase I work plan reflects experience gained during the past months and guidance received from the Law Enforcement Assistance Administration (LEAA). The work plan covers the activities which will be performed during Phase I and assumes that Phase I will merge into Phase II without interruption in FY 1975. The deliverable outputs during Phase I are 1) the detailed Phase I work plan, 2) listing and analysis of user operational requirements, 3) recommended network concepts, 4) functional requirements of national and pilot networks, 5) user interface guidelines, and 6) the initial program implementation plan.

B. PURPOSE OF THE WORK PLAN

The proposal [1] outlined the activities and end products of Phase I. Item 1) of the Statement of Work of the proposal is to "develop a detailed Phase I work plan" for defining and scheduling activities in much greater detail than was possible in a proposal. The proposal calls for preliminary issues of the detailed work plan and a final issue, due on November 1, 1973.

The purpose of the work plan is to present and define 1) the general approach, 2) the work breakdown structure and work flow showing the interdependence of work elements with each other and with time, 3) the detailed tasks and subtasks, 4) the management organization and control scheme, 5) the resource allocations, and 6) the detailed milestone schedules.

In order to place the foregoing in context without the necessity for frequent referral to the proposal, sections are provided containing the problem statements, overall objectives of the entire multiyear project and the specific objectives of each phase.

SECTION II.—PROBLEM STATEMENT

If law enforcement is to succeed in efforts to lower the crime rate, its various components—deterrence, detection, capture, prosecution, and rehabilitation—must all be effective. The single factor that probably has the greatest impact on the effectiveness of these components of the criminal justice system is response time. A long response time is often associated with low effectiveness, while a short response time correlates with high effectiveness.

Today one of the major problems that tends to increase the response time to criminal events and impede law enforcement processes can be atrributed to the availability, to criminals, of modern transportation and communications techniques. Criminals can move swiftly from one state to another and contraband is easily transported to distant locations. The mobility of criminals and contraband introduces an urgent need for the capability to communicate rapidly and accurately between law enforcement agencies throughout the United States, if the response time is to be held to an effective level.

The complexity of the problem of meeting the need to communicate becomes apparent when one considers the number of different agencies that have the need to communicate with each other. LEAA has estimated that there are roughly 40,000 such agencies. This suggests a communication matrix that is 40,000 by 40,000. Furthermore, to be effective, this matrix must make possible a response time of seconds and minutes instead of hours and days, as is all too frequently the case with present facilities and capabilities.

In response to the need to communicate, local, state, and federal law enforcement agencies have begun to develop both specialized information storage/retrieval systems and the telecommunication systems that will enable users to access the data files and exchange administrative messages with other agencies. Thus far, these efforts have been largely uncoordinated and there is concern that the aggregate of the law enforcement telecommunications parts that result from these independent efforts may not be cost effective and may not fully meet the needs or expectations of the users. The present interstate telecommunication capability is inadequate. Standards for establishing law enforcement telecommunication systems have not been defined and there is considerable duplication of effort. There are no existing provisions for handling data on organized crime or for interfacing with crime laboratories.

It should also be recognized that there is concern by the states that a "Federal" system might establish unwanted constraints or control on their operations.

The following are subjets of the general communication problem:

(1) User requirements for a national law enforcement telecommunications system have not been established.

(a) Who are the users at each level? (local, state, and national)

(b) What types of data are required? Fingerprint transmission is presently a significant problem and is presently handled largely by mail.

(c) What is the data volume at present and projected? Projections of volume for the NCIC system were orignially underestimated, perhaps owing to lack of consideration of new technology effects. The data volume must be broken down to various interagency levels such as local to local, local to state, state to state, and state to federal.

[1] JPL Proposal No. 51-213A (JPL Document 1200-93 (Rev. A)).

(d) What are the data traffic patterns and peak loads?
(e) What should be the boundaries of a national network in terms of data types and link end points?

(2) The problems of privacy and security constraints on data handling need to be resolved. Data types such as criminal histories pose particular problems in handling.

(3) National telecommunications networks which can meet the user requirements and constraints need to be defined.
(a) What links are involved—terrestrial and/or satellite?
(b) How are the needs of sparsely populated areas best served?
(c) How are problems of interfacing a new system with existing systems to be resolved with a minimum of effort?
(d) How can growth potential be factored in to meet future needs and accommodate new technology, new users, and new data types?

(4) How should the system be built and phased into operation?
(a) Who should operate the system?
(b) How can political and jurisdictional interfaces be resolved?

Section III—Objectives

A. Long-Range Objectives

(1) The primary objective is to create a national law enforcement telecommunication system for the purpose of transmitting information related to crime and criminals between criminal justice agencies in a timely and cost-effective manner. The approach will be to construct the system on an incremental or building block basis so as to upgrade the operational capability of the system with the addition of each block.

(2) The secondary objective is to have a significant portion of the national system operating by July 1976.

B. Specific Objectives

Phase I

(1) Define present and future (through 1985) requirements of local, state, and federal law enforcement and criminal justice agencies (users) for interstate telecommunications.

(2) Establish preliminary guidelines for use by the states in planning their interfaces with the national telecommunication system.

(3) Develop a preliminary concept and preliminary specifications for the national telecommunication system to serve as the point of departure for developing long-range implementation plans and defining the first increment of the system. Define candidate law enforcement telecommunication systems and make tradeoffs and analyses necessary for selecting the final system. Obtain concurrence of LEAA/Project Committee on the system selection.

(4) Develop a preliminary concept and rationale for the pilot network(s) to be implemented in Phase II.

(5) Prepare the first iteration of the program implementation plan.

(6) Develop preliminary projected program funding requirements suitable for use by LEAA in their resource planning.

(7) Work with the Project SEARCH staff in their effort to develop a preliminary set of user requirements by November 1, 1973.

Phase II

(1) Refine the user requirements analysis.
(2) Firm up user guidelines and begin to establish user interface standards.
(3) Proceed with the development of the national system.
(4) Implement the pilot network(s) and activate it into operational status.
(5) Refine the program implementation plan.

Phase III

The Phase III objective can be stated only in very general terms at this time:
(1) Add system increments or blocks at a rate compatible with the availability of funds.

Section IV—Approach

A. General

The general approach is to work closely with the users and user organizations so as to develop an understanding of user problems and needs and to translate

these needs into a set of user requirements. The user requirements will serve as the basis for developing functional and performance requirements for the telecommunication system. The users are assumed to consist of line, administrative, and service criminal justice organizations at local (city, county, district), state (and territories), and federal levels. The development of user requirements will be an iterative and continuing process, particularly as they pertain to future needs.

The Phase I effort will be influenced by the following assumptions. As the effort progresses, it may become necessary to revise some of the assumptions, however.

(1) It is assumed that the national law enforcement telecommunication system should have the capacity to serve the needs of the three major divisions of criminal justice: law enforcement, courts, and corrections.

(2) It is assumed that the system must be based on existing technology and to a large extent on existing capabilities.

(3) It is assumed that there are no a priori constraints imposed on the system by existing systems (local, state, or federal) other than data and some physical interfaces.

(4) It is assumed that the system should not impose constraints on user data types and formats.

(5) It is assumed that the system will not include voice communications and that digital techniques will be used for the transmission of alpha-numerics and images.

(6) It is assumed that a representative sample of users can be identified and that user requirements derived from this sample will be representative of all users.

(7) Is is assumed that implementation of the system can be accomplished in increments, in a manner that will upgrade the national communication capability as implementation progresses.

(8) It is assumed that the size of the system will make it necessary that it be implemented in increments or segments over a period of years.

(9) It is assumed that the states will exercise jurisdictional control over the access to and use of the information originated within their boundaries, either through reciprocal agreement with other states and agencies and/or controlled access.

(10) It is assumed that each state will have a single interface with the system.

(11) It is assumed that there are a number of options that can be considered relative to determining who will operate the national communication system; e.g., consortium of states, private corporation, federal agency, or other.

There are several factors that will impose constraints on the system. It is premature to define them at this point in time, but they will include—
(1) Political and jurisdictional.
(2) Privacy and security (possible state and federal legislation).
(3) Technology.
(4) Operational.
(5) Funding.

B. Detailed Work Plan

1. Work Breakdown Structure (WBS).

The breakdown of the Phase I study aims to divide the total effort into logical tasks or subtasks of manageable proportions as part of the overall plan for accomplishing the work. This approach categorizes the tasks to be included.

U.S. Department of Justice, Law Enforcement Assistance Administration

Application for Grant Discretionary Funds, Page 7

Project plan and supporting data

Please state clearly and in detail, within ten pages if possible, the aims of the project, precisely what will be done, who will be involved and what is expected to result. Use the following major headings:

P. I. Goals.
P. II. Impact and Results.
P. III. Methods and Timetable.
P. IV. Evaluation.
P. V. Resources.

Number subsequent pages consecutively, i.e., Application Page 8, Application Page 9, etc. See page 7 for further guidance.

I. GOALS

The primary purpose of this project is to provide for an interim (3 Year) upgrade of the National Law Enforcement Teletype System (NLETS) which is recognized as a vital adjunct to the effective functioning of criminal justice operations in the Continental United States (CONUS).

This upgrade will provide, in its first year of operation, a sophisticated law enforcement telecommunications system with sufficient speed and flexibility to meet the varying needs of subscribers in *all* of the CONUS 48 states. Initially, a minimum of 26 subscribers will be equipped for direct high speed (2400 BPS) "computer-to-computer" exchanges. Where state law permits and security and privacy considerations are not contravened, a high speed user in one state will be able to rapidly access and receive responses directly from the computerized data leases in another state. Less advanced users will be provided with medium speed (150 BPS) service which will be fully compatible with the high speed (2400 BPS) users. This means that rapid, high quality exchanges can be made between all users regardless of their individual terminal speed. Intermixing all of the users on the same system will also provide additional incentive for the low speed users to accelerate the upgrade of their own capabilities.

Close coordination will be made with Project SEARCH and the FBI (NCIC) as well as with other recognized proponents of effective law enforcement telecommunications to insure standardization of procedures, codes, addresses and data elements. This latter effort may well result in the nucleus of an all purpose nationwide telecommunications system especially tailored to fit the requirements of a variety of users. In any event, it will preclude duplicative effort in the development of follow-on systems with concomitant economic savings.

A secondary goal of this project is to sufficiently expand the capacity of NLETS to permit additional users of the system not now possible. Other bonafide users in the law enforcement community having a need to exchange information will be permitted access to the system. Provision of service to other subscribers will also result in economic savings through consolidation of duplicative systems.

II. IMPACT AND RESULTS

This project is of interest to law enforcement agencies at all levels of government. Despite the fact that there is a veritable hodge-podge of communications systems now serving the criminal justice community throughout the United States, only the National Law Enforcement Teletype System (NLETS) provides each of the continental United States, as well as selected other subscribers, with a truly nationwide facility for the interchange of all types of operational and administrative information vital to effective law enforcement.

This system is now operating in an inadequate manner to serve the needs of its users due primarily to its inability to efficiently and rapidly process the ever increasing volume of traffic. The technology upon which it is based is obsolescent and it simply cannot cope in the present environment, much less handle the traffic that is certain to increase dramatically in the months to come.

This project will make an improvement, by a factor of more than 31, in the ability of this system to perform its functions and at the same time permit other law enforcement subscribers inside and outside the NLETS organization to utilize the facilities on a non-interference basis.

As previously indicated, this is an interim (three year) upgrade. Development of a follow-on system will be begun as soon as this grant is awarded for a system to meet the foreseeable needs of the criminal justice community in the years to come. Many of the innovative improvements with possible application to the follow-on system will be operationally tested and exhaustively evaluated over links of the upgraded NLETS system.

The principal results of this interim upgrade will be to:

A. Increase the overall thruput of the system by a factor of more than 31.

B. Reduce to almost zero the waiting time for an individual user to gain access to the system.

C. Permit additional law enforcement subscribers to utilize this nationwide system.

D. Vastly enhance the ability of the criminal justice community to exchange operational and administrative traffic vital to effective law enforcement activities.

Additionally the upgraded NLETS, if successful in its new configuration, can serve as the nucleus of the National Criminal Justice Telecommunications System to be established at the earliest possible date, but in no event later than January 1, 1977.

STATE LEVEL LAW ENFORCEMENT TELECOMMUNICATIONS SYSTEMS (AS OF FEB. 22, 1974)

State	Designator	System name or acronym	Interface with NLETS
Alaska	AK	Alaska Justice Information System	Through NCIC.
Alabama	AL	ACIC	Planned for March 1974.
Arizona	AZ	ALETS	2,400 BPS existing.
Arkansas	AR	Criminal Justice Information System	Terminal Access.
California	CA	CLETS	Planned for mid-1974.
Colorado	CO	CCIC	Planned for May 1974.
Connecticut	CT	COLLECT	2,400 BPS existing.
Delaware	DE	CLUES	Planned for late 1974.
District of Columbia	DC	WALES	Planned for late 1974.
Florida	FL	FCIC	2,400 BPS existing.
Georgia	GA	GCIC	2,400 BPS existing.
Hawaii	HI	Department of Information Systems	Through NCIC.
Idaho	ID		Terminal Access.
Illinois	IL	LEADS	2,400 BPS existing.
Indiana	IN	IDACS	2,400 BPS existing.
Iowa	IA	TRACIS	Planned for late 1974.
Kansas	KS	KLETS	2,400 BPS existing.
Kentucky	KY	LINK	
Louisiana	LA	LECCS	Planned for late 1974.
Maine	ME	MIDAS	Terminal Acess.
Maryland	MD	MILES	2,400 BPS existing.
Massachusetts	MA	Criminal Justice Information Systems	Planned for late 1974.
Michigan	MI	LEIN	Planned for late 1974.
Minnesota	MN	Minnesota Crime Information System	Planned for May 1974.
Missouri	MO	MULES	2,400 BPS existing.
Mississippi	MS		Terminal Access.
Montana	MT	LETS	150 BPS existing.
Nebraska	NB	CLEIN	150 BPS existing.
Nevada	NV	SCOPE	Planned for late 1974.
New Hampshire	NH	TRACE	Planned for late 1974.
New Jersey	NJ	NJSCIS	Planned for late 1974.
New Mexico	NM	State Police Communications System	150 BPS existing.
New York	NY	NYSPIN	Planned for March 1974.
North Carolina	NC	PIN	Planned for late 1974.
North Dakota	ND		Terminal Access.
Ohio	OH	LEADS	Planned for late 1974.
Oklahoma	OK	OCTLES	Planned for late 1974.
Oregon	OR	LEADS	2,400 BPS existing.
Pennsylvania	PA	CLEAN	2,400 BPS existing.
Rhode Island	RI		Terminal Access.
South Carolina	SC	Criminal Justice Information System	Terminal Access.
South Dakota	SD	Communications	Planned for late 1974.
Tennessee	TN	TIES	Planned for March 1974.
Texas	TX	TCIC	2,400 BPS existing.
Utah	UT	LEIS	Terminal Access.
Vermont	VT		Terminal Access.
Virginia	VA	VCIN	2,400 BPS existing.
Washington	WA	WACIC	Planned for late 1974.
West Virginia	WV	PRIDE	Planned for late 1974.
Wisconsin	WI	Communications Processing Message Switching	Planned for late 1974.
Wyoming	WY		Terminal Access.
FBI	FB	NCIC	2,400 BPS existing.

PREPARED STATEMENT BY FRANCIS B. LOONEY, PRESIDENT, INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

Mr. Chairman, my name is Francis B. Looney, and I am the president of the International Association of Chiefs of Police (IACP).

The IACP is the leading professional association of law enforcement executives in the United States. On behalf of the more than 10,000 police officials who comprise our membership, I welcome this opportunity to offer a statement on Senate bills 2963 and 2964.

The law enforcement community is acutely aware that the individual's right to privacy is in more jeopardy now than at any other time in our history. Newly developed electronic surveillance equipment has a frightening potential for abuse if used by unscrupulous persons. National computer data banks may soon provide a means of storing and disseminating the details of the lives of every one of us. Incorrect information on these data systems could seriously affect an individual's credit rating, reputation, and ability to get a job and earn a living.

We are therefore in full agreement with the intent of both these bills. The law enforcement community has traditionally been zealous in guarding against improper disclosure of criminal justice information. It is recognized that such information is highly confidential and could be severely damaging to the reputations and general well-being of the individuals involved it it is improperly released.

I am certain that these bills are not intended in any way to create difficulties for law enforcement agencies in the performance of their duties. However, I believe that certain sections of both bills as presently written do work against the interests of the police, and I would like to examine them with you at this time.

Section 202 of Senate bill 2963 would prevent the dissemination of arrest records and criminal history records in several cases in which the information would be quite valuable. For instance, a police agency would not be able to use the past offenses of suspects to support a finding of probable cause. The Supreme Court in *Draper vs U.S.* has recognized that evidence that is not admissible at a trial may nevertheless be used to determine probable cause for an arrest.

In addition, such records could not be released to any prospective employer except another criminal justice agency. This provision is apparently based on the principle that it is undesirable to have a person with an arrest record in a sensitive job like that of a police officer. But there are other jobs outside the criminal justice system that are just as sensitive. Government, scientific research, and technology development are just a few examples. Under this section, arrest information would not be available to such employers.

It is important to keep in mind that only in a relative few of the cases in which there have been arrests but no convictions have the defendants been found not guilty in a courtroom. As the introduction to the bill itself states, "According to the FBI, almost 20 percent of all adults arrested for serious crimes were never prosecuted. Approximately 30 percent of those prosecuted were never convicted. For juvenile arrests and arrests for less serious crimes, the percentage of no prosecutions and no convictions is much higher."

There are several reasons why charges are dropped after arrest. For example:

(1) Charges may be dropped because the defendant has agreed to provide evidence of additional offenses.

(2) Charges may be dismissed or reduced in plea bargaining procedures.

(3) The prosecutor may drop charges because the available evidence is too weak to support proof beyond a reasonable doubt.

(4) Courts may defer final dispositions for defendants to make restitution in simple theft cases.

In none of the above cases has the defendant been cleared in court of the charges against him. He may, indeed, be guilty of some or all of them. And yet, under S. 2963, the police would be unable to make use of the arrest information in these cases.

Section 203 of the bill could have the effect of preventing a police agency from broadcasting to other agencies information on a robbery that has just been committed. Under this section, the description, fingerprints, etc. of a suspect could only be broadcast to another police agency if a warrant has been issued. But in the case of a crime in progress, where the perpetrators are known and are fleeing the scene, there is simply no opportunity to obtain a warrant.

"Identification record information," according to section 203, can be disseminated to criminal justice agencies for "Any purpose related to the administration of criminal justice." Since "identification record information" is defined as descriptive data about an individual that does *not* contain any indication that he has been suspected of or charged with a crime, this section would have the effect, for instance, of allowing a police department to send the fingerprints of an arrested person to the FBI *only* if the fingerprint card did not list the crime with which the person was charged. It is difficult to see what effect this section would have other than to disrupt the criminal investigation process.

The procedure in section 205 regarding access warrants would require a law enforcement agency seeking to identify an offender by means of descriptive data to determine whether the information it seeks is in a State or Federal data system, and then go to the respective court for a warrant. It also requires the agency to show probable cause that access is imperative.

Our first objection to this procedure is that a police agency seeking the arrest records or criminal history of an unidentifiable person has no way of knowing whether that information is in a State system, a Federal system, or in no system at all.

Second, the injection of the fourth amendment standard of probable cause into a preliminary investigation is contrary to existing law. The Supreme Court, in *Terry vs. Ohio*, has established that the proper standard in such investigations is "reasonable suspicion," a lesser and more workable criterion.

Third, there are many rural police departments, especially in the more sparsely populated States, that are hundreds of miles from the nearest Federal court. To require them to travel this distance for a hearing on whether they should have access to information in a Federal data system would be tantamount to barring such information from them completely.

Finally, it should be noted that situations in which such information is needed are often critical. A preliminary investigation may turn up a small piece of evidence that may be the key to identifying the offender. If this is the case, access to arrest or criminal history records is essential if the offender is to be captured quickly. The enormous time delay inherent in the "access warrant" procedure would be a great barrier to effective law enforcement.

Section 206 would require the purging or sealing of criminal records after seven years in felony cases or five years in misdemeanor cases if the individual is "free from the supervision of any law enforcement agency." The bill does not specify what "free from supervision" means, but in any case, the purging of records would put out of the reach of law enforcement agencies information which is often of great value in preliminary investigations.

Further, this provision would effectively neutralize all criminal laws which establish a more severe penalty for second offenders if the offense is more than five or seven years old. It is doubtful that the mere passage of time is a "reliable guide to the behavior of the individual," in the words of the bill, and it would seem unwise to override the clear legislative intent of scores of laws: that repeat offenders should be punished more harshly than first offenders.

In practical terms, this section would destroy a significant quality of our judicial system—the deterrence factor of having a "record." The passage of time would be enough to wipe the slate clean.

Finally, section 208 of this bill flatly bars the computerization of criminal justice intelligence information. The intent of this section is not entirely clear, but it is quite possible that the drafters of this legislation were not aware that investigations—of widespread gambling or narcotics activities, for instance—are often extremely complex and involve numerous jurisdictions. Computerization is often the only way that the disparate elements of such an investigation can be brought together and meaningful patterns developed. Computerization, it seems to me, is not the villain here. It is the use to which the computerized data is put that constitutes the possible danger. A wholesale ban on computer use for intelligence data would appear extremely unwise.

Senate bill 2964 is more general in its approach than 2963. Many of its details are to be spelled out in rules to be promulgated by the Attorney General. But the bill as written, like S. 2963, provides for the purging or sealing of criminal records after specified periods of time. We oppose this provision for the same reasons as stated in connection with the other bill.

Mr. Chairman, the law enforcement community supports and applauds efforts currently being made to protect the individual's right to privacy. Some safeguards are clearly necessary so that police information, especially the sort of unverified tips and accusations that are frequently received in the course of a criminal investigation, are not disseminated to the public at large.

But I believe it will not serve the interests of Society to pass a law that will have the effect of restricting the *internal* flow of information from one law enforcement agency to another, and I believe it will not advance the cause of individual rights to prevent law enforcement in many cases from learning the conviction records of criminal suspects.

Improved communications, including the use of national computer systems, have greatly aided police departments in recent years. Small, rural departments now have access to the same information as metropolitan departments. The rapid transmission of information is essential to successful law enforcement. It is in the interests of society that this flow of information not be impeded.

Let us, by all means, improve the safeguards that now exist to prevent the misuse of criminal justice information. But let us not, at the same time, interfere with the efforts of our nation's law enforcement agencies to protect society from those who are intent on destroying it.

Thank you.

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