

COMMONWEALTH OF PENNSYLVANIA HOUSE OF REPRESENTATIVES

House Appropriations Committee  
and  
House Judiciary Committee

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PENNSYLVANIA PLAN FOR :  
PRIVACY AND SECURITY :  
OF CRIMINAL HISTORY :  
RECORD INFORMATION :  
:  
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Majority Caucus Room  
House of Representatives  
Main Capitol Building  
Harrisburg, Pennsylvania

Thursday, November 4, 1976

Met, pursuant to notice at 10:10 a.m.

BEFORE:

For the Judiciary Committee:

NORMAN BERSON, Chairman  
ROBERT O'DONNELL  
ANTHONY SCIRICA  
WILLIAM HUTCHINSON

For the Appropriations Committee

THOMAS FEE  
ROBERT GEISLER  
JAMES GOODMAN  
AMOS HUTCHINSON  
IVAN ITKIN  
JOEL JOHNSON  
JOSEPH KOLTER  
RUSSELL KOWALYSHYN  
WILLIAM SHANE  
FRED SHUPNIK  
RUDOLPH DININI  
GUY KISTLER  
CHARLES MEBUS  
L. EUGENE SMITH

STAFF:

For the Judiciary Committee

SAM MC CLEA

For the Appropriations Committee

STEVE ROSSKOPF

For the Speaker's office

ROBERT KAGAN, Esq.

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P R O C E E D I N G S

CHAIRMAN BERSON: Would each committee member state his name and the committee that he belongs to it can be on the record.

REPRESENTATIVE KISLLER: Guy Kisler, Cumberland, Appropriations.

REPRESENTATIVE ITKIN: Representative Itkin, Allegheny, Appropriations.

REPRESENTATIVE SCIRICA: Tony Scirica, Judiciary Committee.

REPRESENTATIVE SHANE: Bill Shane, Appropriations.

REPRESENTATIVE O'DONNELL: Bob O'Donnell, Judiciary.

REPRESENTATIVE KOWALYSHYN: Russ Kowalyshyn, Northampton and Monroe Counties, Appropriations Committee.

REPRESENTATIVE SHUPNIK: Representative Shupnik, Appropriations Committee.

CHAIRMAN BERSON: I am Norman Berson, Chairman of the Judiciary Committee.

We are here today to commence two days of public hearings on the Pennsylvania Plan for Privacy and Security of Criminal History Record Information.

These hearings will be devoted to giving us a broad background of this problem, which has aroused a great deal of comment in the press and among the public.

This is a joint hearing of the House Judiciary

Committee and the House Appropriations Committee.

Our first witness is Lieutenant Governor of Pennsylvania, Ernest Kline.

LIEUTENANT GOVERNOR KLINE: Mr. Berson and members of the Committee, for the past five years I have served as Chairman of the Board of Pardons; actually almost six now. I and the other members of the Board have reviewed criminal records of over 500 persons each year.

As members of the Board, each of us considers the decision whether or not to grant commutation or pardon as critically important to the individual applicant, and to the larger community of citizens of the Commonwealth.

I recall on one occasion several years ago when an applicant personally appeared before the Board requesting a pardon. All the members had carefully reviewed his record and were concerned about a continuing pattern of arrest and conviction.

Our intention was to deny the commutation on the basis of this criminal history. During the applicant's oral appeal -- and by the way, he wanted to go to work for the Federal Bureau of Investigation -- I began to carefully question him about his past history.

He adamantly denied the incidents recorded on the criminal histories contained in our records. After continued questioning and continued denials by the applicant

of each arrest and conviction, I became more than a little concerned. The discrepancy between the applicant's contentions and the record before us was increasing by the minute.

So the Board decided to hold the case over for further consideration. During the interim between Board meetings, I discovered that the record before us was, indeed, inaccurate.

I also discovered that the denials by the applicant were accurate. The Joe Smith applying for commutation was not the Joe Smith whose records we had before us for review.

Had Mr. Smith not appeared personally before the Board, we might have denied or granted his application for commutation based not on his, but somebody else's record.

What I have just related is not an uncommon occurrence. Based on my own experience on the Board of Pardons, I am constantly aware of the woeful state of record-keeping systems in Pennsylvania.

Because of the case just cited to you, I am particularly aware of the personal impact these records can have on individual citizens.

This Commonwealth has been collecting information on individuals through the maintenance of criminal histories for many years. Unfortunately, it is only within the past five years that we have concerned ourselves with safeguards to protect that information and individual citizens.

In 1950, the Federal Government maintained information on 150 computers. In 1968, this number had grown to 1500. Today, the number of computers and the kinds of information stored on them has grown many times over.

Today, more information is collected about more people, by more people, for more reasons than was ever contemplated 20 years ago.

It is not surprising that this tremendous growth is surrounded by great controversy and great debate.

This morning, I want to reiterate exactly what the Pennsylvania Plan includes, and what it doesn't include; who it applies to and who it doesn't apply to.

Before getting into some of these details, I would like to discuss a number of questions that go beyond the particular point of criminal history information.

During the past five years, the issue of crime has increased as a matter of public concern. Every three months the FBI issues statistical reports showing that crime is constantly increasing. Pennsylvania State Police figures support this increase in Pennsylvania.

Individuals fear crime; most often burglary, robbery, armed robbery and rape. The public's fear of crime is neither unfounded nor unwarranted.

In response, the public demands action by the police, the courts, corrections, probation and parole to more

diligently work to reduce crime. The public also demands action by legislative bodies to get tough on crime.

Such demands fall most heavily on the criminal justice agencies: the police, the courts, the county jail and State prison, and local and State probation and parole offices.

At the same time, the ability of both public and private agencies to collect and maintain information has given rise to questions about basic protections of individual privacy and the public's right to know.

The balance between an individual's right to privacy and the public's right to know has never been successfully defined. The boundaries of when one right infringes upon another are constantly changing.

Government's ability to collect information and the public demand to reduce crime has only spotlighted the importance of these issues and highlighted the potential conflicts between them.

Five years ago, individual agencies of both State and local government all collected criminal history information. It was collected by one agency and, all too often, recollected by another agency.

Inaccurate, incomplete information at all levels of government occurred all too frequently. That the Board of Pardons has criminal history record information on the wrong



Joe Smith is certainly unfortunate and appalling, but not surprising.

The collection of inaccurate and incomplete information directly affects individual citizens. Maintenance of an arrest without disposition two years after the incident, particularly if the arrest was in error, can be of irreparable harm to the individual citizen.

For the past five years, this Administration has attempted to coordinate the efforts of criminal justice agencies in collecting, storing and disseminating criminal history record information.

A primary concern in these efforts has been to improve the ability of government agencies to reduce crime. An additional concern has been to improve the accuracy and completeness of information and to minimize its abuse and misuse; all this while attempting to strike a reasonable balance between the protection of the individual's privacy rights and the public's right to know.

In many ways, more questions have been raised than answered. I suspect that new questions will continue to be raised as rapidly as the old ones are answered.

In 1972, the Law Enforcement Assistance Administration requested each state to develop a Comprehensive Data System for Criminal History Record Information. The requirements of this plan involved components already existing in

Pennsylvania. However, the coordination of those components in Pennsylvania was woefully lacking.

It is accurate to say that this lack of coordination severely hampered our ability to effectively act to reduce crime.

In March of 1975, the Governor approved a CDS plan for Pennsylvania. The basic elements of this plan will be presented later this morning by other witnesses who are more capable than I am to explain the details to you.

However, I want to speak directly about one of those elements, so called OBTS/CCH or Offender Based Tracking System/Computer Criminal History.

This element, as envisioned by LEAA provides for the use of computers to collect and store criminal history record information. It is, by our own calculations, an incredibly expensive system, even when assuming the availability of LEAA funds.

More importantly, it is a potentially threatening system to the right of individual privacy. This is particularly true when the completeness and accuracy of information cannot be guaranteed.

Because of this, the Governor specifically did not approve the Computer Criminal History provisions of the CDS plan. In his letter approving the overall plan, the Governor said, and this is a quote, "I cannot approve further action

on CCH until provisions for security and privacy have been incorporated into such plans and/or are incorporated into both state and federal law."

Four months later, in July 1975, the Governor appointed the Task Force on Criminal Justice Information Systems:

The responsibilities of the Task Force, which I share, had four basic points. One was to adopt policy positions on issues concerning criminal justice data systems.

Two was to plan for and oversee the implementation of the Pennsylvania Criminal Justice Information System.

Three, to promulgate a state plan for the security and privacy of criminal history record information.

Four, we were to recommend to the Governor and General Assembly needed legislation, especially in the area of security and privacy of criminal history information.

I have chaired all of the meetings of the Task Force. I have met with the Advisory Council to the Task Force. I have met with Task Force staff innumerable times.

During the course of those meetings, all of the questions now raised by the press and others have been carefully considered.

At the first meeting of the Task Force in August of 1975, we addressed the question of the use of computers in the development of criminal justice information systems. At that meeting, the Task Force reaffirmed the previous action of

the Governor by rejecting the use of computers for any centralized statewide and state-maintained criminal history file.

There is little need and no point in maintaining a centralized computer file of information that is known to be inaccurate and incomplete in all too many instances.

Pennsylvania does not now maintain, nor contemplates a centralized computer criminal history file. The Comprehensive Data System Plan approved by the Governor indicates this; the action of the Task Force reiterates this position.

During the past 15 months, the Task Force developed and submitted to LEAA the Pennsylvania Plan for Privacy and Security of Criminal History Record Information. This plan has received a tremendous amount of criticism.

Some have criticized it as being too comprehensive; others as not comprehensive enough. Some have commented that it goes too far in protecting individual privacy; others think it doesn't go far enough.

Some, particularly members of the press, think it directly infringes on the public's right to know.

From the editorials, columns and letters that I have received, there is apparently no middle ground.

I want to clarify exactly what the plan does, what it does not do, and what remains to be done.

The plan presents guidelines for the collection and

dissemination of criminal history record information; period. These guidelines apply only to agencies of the state and local government now receiving LEAA funds.

It applies to sophisticated systems contemplated by large and complex police departments such as Philadelphia. It also applies to small counties, but only if they now receive or plan to receive LEAA funds.

The plan applies only to criminal history records, which are narrowly defined as the compilation of official actions of the criminal justice system, such as arrests, court action and sentencing.

This information is commonly referred to as the "rap sheet." The rap sheet contains the following information and only this information: a fingerprint card, the docket transcript, the sentence status report, the classification summary of basic administrative information prepared by the Board of Probation and Parole, and any action by the Board of Pardons.

The plan continues to provide for unlimited access to original court records. Those persons now having access to original court records will continue to have access to them.

The plan provides that for the first time, individual will have a right to review their own criminal records and challenge inaccurate information.

Finally, the plan establishes procedures to improve

the accuracy and completeness of criminal history records, records which have been collected by the state and local governments for nearly 50 years.

The scope of the plan is limited. It pertains to only information contained on rap sheets.

What the plan does not do is as important as what it does. The Pennsylvania Plan for Security and Privacy of Criminal History Record Information does not restrict in any way access to original court records of criminal proceedings or police blotters that are chronologically maintained.

The public and the media will continue to have access to original court records, which have traditionally been open to the public.

Once, again, I want to emphasize that the plan does not create a centralized statewide computer-operated data bank for criminal histories or personal records. At the state level, criminal histories have been, and will be, maintained by the Pennsylvania State Police in manual, non-computerized files.

There has been much confusion over the issue of computers. Because it is a statewide plan, its requirements must apply equally to local systems, whether they are manual or computerized. This is critically important, as Philadelphia now contemplates the extensive use of computers in one of its plans.

Finally, the plan does not cover intelligence or investigation files or medical or treatment information. This kind of information is not now, nor is it contemplated that it will be maintained as part of the rap sheet.

As part of the Task Force's work, I have asked that staff begin to develop recommendations regarding the collection and storage of this kind of information. But intelligence or investigative files or medical or treatment information is not included in the plan; not because it is not an important issue, but because it is simply not within the area covered by the plan.

Two sections of the plan have received particular comment and criticism, the section on the limits on dissemination, or who has access to what is clearly defined.

The plan provides for access by criminal justice agencies to rap sheets for official purposes only. Detailed procedures for maintaining logs of which agency made what inquiry at what time are included. This is to prevent the misuse and abuse of information by criminal justice agencies.

Persons and agencies not involved in the criminal justice system must have legislative authority to gain access to criminal history record information. Again, access to court records is not restricted in any way.

Agencies which now have specific statutory authority will continue to have access to rap sheets for

licensing, employment and other purposes.

It is not the position of the Task Force that non-criminal justice agencies should be denied access to information. The Task Force's concern is simply that persons and agencies not involved in a criminal justice system must have clear legislative authority to have access to such sensitive information.

It is the position of the Task Force that an issue of such importance must receive detailed legislative as well as executive consideration.

In attempting to strike an appropriate balance between the protection of individual privacy and the public's right to know, the position of the Task Force was that until such time as the completeness and accuracy of information can be guaranteed, strict limits, legislatively established, must be maintained.

As I mentioned before, the dissemination of an arrest record without reference to disposition can do irreparable and unnecessary harm to individual citizens.

The section dealing with sealing and expungement of criminal history record information is extremely limited. Records will be sealed only when a full pardon is granted. Such information will not be destroyed.

Information will be expunged only in limited instances: when the police elect to drop the charges, when



no final disposition has been received within 18 months and it is clearly established that no action is still pending, by order of the court, and to remove records in cases of death or extreme old age.

Wholesale sealing of records and expungement of records will not occur.

For the first time, an individual is provided the opportunity to review and challenge information contained in his or her file. If it can be shown that incorrect information has been maintained, it will be corrected.

Users who may have received incorrect information will be notified of the error. This kind of procedure is absolutely critical to guarantee the completeness and accuracy of information and to prevent its misuse and abuse by both criminal justice and non-criminal justice users.

I want to make one final point about the status of the Security and Privacy Plan. It was developed by the Task Force, submitted and approved by LEAA. It is within the boundaries established by LEAA. The motivation for its development grew out of concern for the security and privacy of information.

Had we as a Task Force not developed this plan, and had it not received the approval of LEAA, local governments would have been ineligible to apply for LEAA money; this prohibition would have included all jurisdictions, including

Philadelphia.

At the state level, the plan is just that; it is a plan. It will require legislative action to implement.

The future actions of the Task Force to implement the plan will be carefully considered and, as in the past, with full public involvement.

The actions required by the legislature must be, of course, as carefully considered. I have no doubt about your ability to do that. This hearing today obviously is one indication of your concern.

The plan provides the General Assembly with a position that, in my view, represents a comprehensive approach, which considers three very fundamental principles: individual privacy, the public's right to know, and the needs of the criminal justice community.

Any attempt to strike the delicate balance necessary among these three principles is difficult. That is why the issue of privacy and security has been and will continue to be an issue of great controversy at both the state and national level.

However, because the issue is controversial is not reason to compromise important principles or side-step the issue. It must be dealt with in a straightforward manner.

I believe that our plan strikes this delicate balance among these principles. Moreover, it allows almost

all of the sensitive issues to be debated by the General Assembly.

Mr. Joseph Riggione, staff director of the Task Force, will be testifying before you later this morning. I have asked him to explain in detail the criminal history information system now existing in Pennsylvania.

I have found out over the past 15 months that security and privacy is a critical issue in our efforts to reduce crime. I have also found that it must be understood in the context of what information systems now exist and how they are used.

If you have any questions, I am certainly available to try to answer them. The members of this Task Force and its staff will also respond.

CHAIRMAN BERSON: Thank you very much.

Do any of the members of either committee have any questions for Lieutenant Governor Kline?

Representative Kisller?

REPRESENTATIVE KISLLER: You say in part the plan does not cover intelligence or investigation files or medical or treatment information. This kind of information is not now, nor is it contemplated that it will be maintained as part of the rap sheet.

Am I to understand that this information would mean that psychiatric reports would be intentionally excluded from

the reports and files?

LIEUTENANT GOVERNOR KLINE: Let me try to explain what happens now and why we made it very clear that we did not want those to go into a so-called central depository. They are not now kept there and have not been in the central depository, which has been maintained by the Pennsylvania State Police.

I am concerned about those, and sooner or later somebody is going to have to address what happens to those reports. Some of the members of the Committee talked to me privately about contemplating doing that. It is my contention that simply because we don't have any guidelines at all, either internally in the State, as to where these things go or what kinds of security guidelines are available, that we ought not to change now and begin to make them part of the rap sheet.

All the Pennsylvania State Police have ever maintained has been that basic criminal justice data that I mentioned earlier.

The part that concerns me is, for example, that everyone who enters our State Correction system certainly gets some kind of psychological evaluation. They very often get some kind of psychiatric evaluation. In the pre-sentence reports that are done in almost all of the counties now, invariably complicated cases get that kind of data.

I think it should be a cause of concern for all of us as to what happens to that information, who sees it, who maintains it.

But that is the big question. We are not entirely copping out on that and saying: here, legislature, you figure out what to do with this. That is what I have now directed the Task Force staff to begin to work on, to begin to develop data, how many of these things are there, who keeps them, where are they, what are they doing with these things, who gets a chance to see them. It is really almost like a never-never world when you start to look into it.

Right now our position is that our plan will only eventually contain what has been traditionally maintained by the Pennsylvania State Police. That is all. There may be disagreement on that.

REPRESENTATIVE KISSLER: I have two additional questions. You did say that the implementation of the plan is a legislative matter for subsequent legislatures, didn't you

LIEUTENANT GOVERNOR KLINE: In my judgment, the bulk of it is. But there are things that we plan on doing, as an Administration, which I think we can do internally without involving the big issues, the privacy and security and the others.

We agreed at the last Task Force -- and I had so directed the staff of the Task Force -- to begin to draw up

a series of Executive Orders over those areas where we have somewhat limited control.

I also agreed, because of the public hue and cry that went up over the implementation of this plan, frankly -- I don't agree with all of it, but I am sensitive to it -- that anything that we do as an Administration will be done through the "Pennsylvania Bulletin" process, which is a process where due notice will be given and public hearing opportunities will be made available, so we are not going to do anything unilaterally without going through at least an established legislative process.

What I am saying, in effect, is -- and that will cover those areas which have traditionally had access to this information. We know that the criminal justice agencies need access to the information to do their work, but we are saying to the legislature, if you want to broaden who should have access to the information, that is your matter.

Should a bank have the opportunity to find out if a prospective bank employee has a record of embezzlement? Some people think they should; some people think they should not. If they should, then that ought to be handled by the legislature. There should be a law as to who has access to this information.

REPRESENTATIVE KISSLER: In other words, modification and extension is a matter for the General Assembly.

LIEUTENANT GOVERNOR KLINE: That is right.

Beyond what we have included in the plan, which I think is very limited, in my judgment, ought to be a matter for the General Assembly.

REPRESENTATIVE KISSLER: I have a final question, Governor. You say in part that records will be sealed -- records will be sealed only when full pardon is granted. Such information will not be destroyed.

Under what circumstances could that information be unsealed, and by whose authority?

LIEUTENANT GOVERNOR KLINE: Is that covered?

REPRESENTATIVE KISSLER: When information is sealed, who is sealing it? In this case, the court or the law?

LIEUTENANT GOVERNOR KLINE: Let me try to go through that. That is an interesting point. I don't know whether it would ever be unsealed.

The power of pardon is a Constitutional pardon, which is built into the Constitution, where, in effect, the Governor, exercising his right as a sovereign power, can say "your record is now --" Well, there is even some question among the people as to what a pardon means.

Some of us think it means you now have a free and clear record, and you ought not to be dogged for the rest of

your life for something, because you had a pardon.

Our suggestion is a common device in use, in effect, to say we are not going to destroy the record, but it is sealed.

How is it unsealed? I don't know. I don't think we have ever directed any thought to that. It is something that should have consideration.

REPRESENTATIVE KISSLER: My point and logic is that if it could never be unsealed, there is no point in retaining it.

LIEUTENANT GOVERNOR KLINE: Yes, that is an excellent point, and I will tell you why. You run into all kinds of complicated circumstances, like under the drug law, which is rather interesting. The way that law is written, the record is not there if you serve a certain probationary period and behave yourself. But you can't get a double dip.

The only way that they can tell if you got a double dip is to maintain this law. Then all of sudden, you really are not clearing somebody entirely. It gets very complicated.

That is a question that I will tell you I will direct some attention. It ought to be included in the thinking of the General Assembly; if you go to this business of expungement and sealing. There is even some question now as to what expungement means. That battle has been going on.

When a person's record is expunged, do you take it



out and burn it forever, or do you just put a little note down at the bottom that this record is expunged, but leave it there for someone later to come and see?

It is kind of an unresolved thing. The point I am thinking, Mr. Kissler, is that I don't think the Governor or the Lieutenant Governor or anyone else should be making that kind of decision. That is the kind of decision the people ought to make through their legislature.

REPRESENTATIVE KISSLER: I have no further questions

CHAIRMAN BERSON: Representative Scirica.

REPRESENTATIVE SCIRICA: Governor, I think I understand your position with the creation of the centralized computer data bank for personal information, and the Task Force's position as well.

You have indicated that Governor Shapp has also ~~proposed~~<sup>proposed</sup> the creation of such a data bank. That probably would be kept in Harrisburg. In view of the fact that there is no legislation right now that would prohibit any State agency from setting up such a data bank in the future and

In view of the fact that people with your views may not be in government five or ten years from now, although maybe you will be, I take it you would have no objection to the legislature considering next session, along with the implementing legislation for the Task Force proposal, additional provisions that may limit or restrict the creation

of such a data bank and the information that could go in there.

LIEUTENANT GOVERNOR KLINE: Mr. Scirica, I feel very strongly that certainly the United States Congress -- and, hopefully, the Pennsylvania General Assembly -- may courageously lead the way. We have got to get some legislation on record that begins to control the collection of material on the computer.

It is a frightening thing in this country, and it is a tough job, but I would certainly support you in some effort to lay down guidelines as to who maintains computers and what they do with that data information; which is one of the basic philosophical reasons that I strongly opted against the use of computers, as did the Governor, also because no one has laid down the guidelines.

The second reason, which was a very practical reason and which the members of the Appropriations Committee ought to consider, and that is the enormous cost.

When the federal government first started -- and, by the way, this whole thing started on a federal basis strongly recommending computers, and Pennsylvania was one of those that had convinced some of the other states not to make that a mandated feature of the whole LEAA plan, because of the enormous costs involved in the maintenance of this data, not only for the state but for the local people.

You are right. I certainly would support that. I

think the legislature should do that.

REPRESENTATIVE SCIRICA: I think you also mentioned that your Task Force was going to be looking into this particular area in the future. Are they going to be developing legislation, or is there some way they can work with us?

LIEUTENANT GOVERNOR KLINE: I am always sensitive about the Administration handing a package of bills to the legislature, especially the last several years, because I think the legislature has developed a capacity to do much of that itself, with the staffs and the work that they do.

I directed Mr. Riggione to begin to do some internal surveying of who keeps records for what, without any specific direction. I would prefer that we work more closely with the staffs of the legislature, rather than our saying: here is what we think you ought to do.

I am not afraid to do that, as you know, but I think it would be much better if you were involved. All they are going to do now is, not develop policy, but basically find out where all this data is kept.

Just for your information -- and I don't want to burden this Committee because I know you have a lot of work to do -- but during the course of our labor negotiations, we had been confronted repeatedly by labor unions who demand some right to do something with our workers' personnel files. Apparently, we have, since we started this Commonwealth 300

years ago, kept every scrap of paper on every one of our employees. There sits that file. It is unbelievable.

We are directing some internal attention to that. That isn't a matter, necessarily, for this Committee, but this goes to show you how many records we keep around this place.

REPRESENTATIVE SCIRICA: The only other thing: I am pleased to hear you say that when it comes matters of policy involving rights of access and rights of privacy that you are going to be willing not to have an Executive order <sup>in New York</sup> that would expect the legislature to handle it.

LIEUTENANT GOVERNOR KLINE: All we are doing now, Mr. Scirica, is to try to lay down some guidelines to control what we have already inherited. We know the police need the data, we know that the Board of Probation and Parole need the data, we know the traditional agencies need the data; but to go beyond that -- as a matter of fact we have even restricted some of the use of the Governor's office, which is an interesting point.

Heretofore, every time someone wanted to be an employee of the State and he filed an application, the Governor sent over for his rap sheet, the Governor's personnel office.

Now, I think it is proper that we ought to check who we are hiring; we get into trouble a lot of times when we don't check very carefully.

What the plan says, in effect, is that if the Governor wants to see that information, the person making the application has to sign off on it; so if the person comes for a job and wants to be Secretary of some department and says to the Governor, "I want to be appointed," he has to sign a paper saying that he has the right to check to see if he has a criminal record.

CHAIRMAN BERSON: Representative O'Donnel.

REPRESENTATIVE O'DONNEL: Governor, I have a series of questions. I am not sure what the concept of a rap sheet entails. In Philadelphia, for instance, in determining whether or not someone should be entitled to a given level of bail, they do an interview and they ask a number of questions which are relevant to the consideration of the amount of bail.

They have questions which deal with the predictability of his showing up for later hearings. There are questions about his personal life, his ties in the community and what-not. That interview sheet, or the ROR sheet in Philadelphia, becomes part of his permanent criminal file.

Under the Pennsylvania Plan, would that information be part of the information gathered as the rap sheet or whatever?

LIEUTENANT GOVERNOR KLINE: No.

REPRESENTATIVE O'DONNEL: Under the Pennsylvania Plan, if someone is accused of a crime and enters the criminal

justice system, would a third party, non-agency, be able to find out information about the progress of the case and monitor it?

LIEUTENANT GOVERNOR KLINE: Only if that third party agency --

REPRESENTATIVE O'DONNEL: Non-agency.

LIEUTENANT GOVERNOR KLINE: You mean some private citizen?

REPRESENTATIVE O'DONNEL: Yes.

LIEUTENANT GOVERNOR KLINE: No.

He would not be able to do it through our central repository, which they have not been able to do since we began.

REPRESENTATIVE O'DONNEL: Let me give you an example, and maybe you can clarify it for me.

Suppose somebody contacted a legislator and said, "I have been burglarized and I understand the police have caught a fellow named Smith. I haven't heard anything and it has been two months. Would you find out if they are going to do anything, or what is the status of the case is?"

The State legislator calls the President Judge or whatever or goes to the Clerk of Court of that court and says, "What is the status of the Smith case?" Would the State legislator or private citizen be able to find out that, in fact, Smith has been accused of nine burglaries on that day,

and no hearing has been held yet?

LIEUTENANT GOVERNOR KLINE: Yes. There is nothing in the plan that would impede that kind of thing.

I do want to tell you that, using the very same example, if the legislator were to call the Pennsylvania State Police and say, "I want to see so-and-so's rap sheet," they would tell you, "No, you can't."

But nothing would impede the normal ability of a public official to find out, through those sources that you outlined.

REPRESENTATIVE O'DONNELL: What I am really saying is: does the private citizen have access by name of accused; for example, rather than having to deal through chronological order. Frequently data is out there, but if you don't know the day of arrest, for instance, you might be dead; or if you don't know the CP number of the case -- people can say that the information is there, but what is the CP number?

You say, "I don't know; it is a fellow named John Smith." In other words, would it be available by name? The reason I am confused about that is that in reading the introduction to the plan, it appears that that information would be only available via chronological date, chronological order. Do I have a misunderstanding?

LIEUTENANT GOVERNOR KLINE: It is not a misunderstanding. The situation that you described to me had you going

through the court system to get that information.

If you got it through the court system in a legitimate way, the Plan in no way would impede that.

It would depend on a whole lot of circumstances, and I don't want to be overly complicated. As I understand what the plan proposes, you would have no difficulty in finding out the status of that case using the court system.

When you get down to the way the court keeps records and the method in which they maintain the data, then you might run into some difficulties, particularly if it were computerized. I don't know precisely what you are asking.

REPRESENTATIVE O'DONNEL: That is what I am saying. In other words, all the criminal justice agencies will be presumably -- those that receive LEAA funds -- will be adopting these guidelines, so, therefore, the record-keeping system will be relatively uniform throughout the agencies.

LIEUTENANT GOVERNOR KLINE: Yes.

REPRESENTATIVE O'DONELL: If the method of retrieval of information that is available to third non-agency parties, is it to be only by chronological date?

LIEUTENANT GOVERNOR KLINE: Let me ask Mr. Riggione. He might understand better than I do.

(Lieutenant Governor Kline confers with Mr. Riggione.)

LIEUTENANT GOVERNOR KLINE: I think Joe has a point. All court records have an alphabetized index.



REPRESENTATIVE O'DONNEL: I am really asking a bottom-line question. If we know the name of an accused, can we find out the status of his case; "we" a third party?

LIEUTENANT GOVERNOR KLINE: You can't find out from a central repository by asking to see his rap sheet.

REPRESENTATIVE O'DONNEL: The Pennsylvania Plan does not affect the access in that regard?

LIEUTENANT GOVERNOR KLINE: It does not affect the traditional access through the court system, through the docket records, through the alphabetized system, and that kind of thing; no, it does not.

REPRESENTATIVE O'DONNEL: Okay. After someone has been convicted of a crime, would the press be able to examine his past history of convictions and sentencing? Does the Pennsylvania Plan affect the access to that information by the press?

LIEUTENANT GOVERNOR KLINE: They couldn't get a rap sheet. They couldn't call up and ask the State Police to give them a rap sheet, no.

They can't do that now.

REPRESENTATIVE O'DONNEL: There seems to be some conflict about what they can do and can't do now; and it may be because in Philadelphia the way of operating may be different than in other places.

LIEUTENANT GOVERNOR KLINE: That is possible.

REPRESENTATIVE O'DONNEL: I don't want to ask you about the State Police; what I am really asking is a bottom line question. That is: will the Pennsylvania Plan affect the ability of the press to get the information about past convictions and sentences?

Frequently, you read in the Philadelphia paper, "John Smith was today convicted of burglary and sentenced to two and one-half hours in prison," and the press says, "This is his 55th burglary. He has spent a total of ten hours in prison," or whatever.

I want to know: will that information continue to be available to the press? Does the Pennsylvania Plan affect that access?

LIEUTENANT GOVERNOR KLINE: I don't know, Mr. O'Donnel, because I don't know how they get the data now. I can only describe to you this way; they may not use traditional sources now.

REPRESENTATIVE O'DONNEL: You have indicated that the only people affected by this are those agencies or counties or whatever who are recipients of LEAA money.

LIEUTENANT GOVERNOR KLINE: Yes, that is right. The answer to that is "Yes."

REPRESENTATIVE O'DONNEL: Being from Philadelphia, you get a certain insularity; who is not receiving LEAA money?

LIEUTENANT GOVERNOR KLINE: I think there are 47 agencies that in some way will receive LEAA funds for information systems, that are affected statewide.

REPRESENTATIVE O'DONNEL: That are affected statewide. Well, I am wondering about the coverage of the plan. I am wondering who is not covered. Philadelphia County is covered.

LIEUTENANT GOVERNOR KLINE: Of course. It would be a mistake for me to try to tell you that those agencies that don't receive LEAA funds would not be impacted by the Plan. They would be.

We are, in effect, going to treat everyone precisely the same as to their access to the data in the central repository.

The point about the flow of LEAA funds is that without the plan, that could be imperiled. That is the basic point.

But it would be foolish administration to treat counties differently. That would not be the case.

REPRESENTATIVE O'DONNEL: I have two other questions about the LEAA motivation, your motivation. You started out with a story about inaccurate records and the danger presented by them. I think it is a significant danger.

How does the computerization insure greater accuracy? I think they have a saying in the computer business -- I forget

exactly what it is -- about "Garbage in; garbage out."

If you put the garbage in a physical manila folder or if you put the garbage on a magnetic tape or whatever, you have still got garbage.

I am wondering how the computerization eliminates the possibility of that story recurring.

LIEUTENANT GOVERNOR KLINE: I think it does not, which is precisely why we took the very strong position that before we begin to computerize, let's get the garbage out. At least it will flow a little slowly when it is in a manila folder and some human being will have a chance to take a look at it to see whether the person is alive or dead.

That is our position. You are right about that. I agree with that. Really your question supports our position that rushing to a computer in order to put all this stuff on a computer is, in my judgment, folly. I wouldn't necessarily forever preclude the use of some computerization, but I think until we reach a point where we know what the guidelines are and everyone agrees as to who should have access and who should not, and until we get the record cleaned up, we ought not to even consider computers.

REPRESENTATIVE O'DONNELL: One final question: you indicated that read into LEAA is a certain motivation to enhance the security and privacy of the records.

LIEUTENANT GOVERNOR KLINE: I think that was the

original motivating factor. If you will recall four or five years ago, there was a great concern on the national level about privacy and security, and some of the early positions taken by LEAA, which have since been changed, some of them two or three times, which makes it pretty tough to file a plan, reflected that kind of national thinking.

I think there has been a shift in that, which happens all the time.

REPRESENTATIVE O'DONELL: I am wondering: how does the Pennsylvania Plan enhance the security or the privacy?

LIEUTENANT GOVERNOR KLINE: Security or privacy of what?

REPRESENTATIVE O'DONELL: Of the records.

In other words, LEAA's motivation in putting forth these various suggestions, that you come up with something or you are imperiling your money, you have given them the motivation of wanting to make the record more secure and more private.

I am wondering how the Pennsylvania Plan does that.

LIEUTENANT GOVERNOR KLINE: I think it does, and I think it is a step, a first step in the direction in the way that we ought to go.

What I wondered all along is why everybody has been so excited about the plan, because it really doesn't do that very much, either in the area of privacy or security or in any

area. It does, I think, take the first giant step in setting the record straight.

We have been able, through long and diligent work and through cooperation of local authorities and the court systems -- and by the way, the Supreme Court was represented on the Task Force by the administrator who is strongly involved in the development of this plan, and we asked the court to cooperate because, in my judgment, under our judicial structure now in Pennsylvania, no plan will succeed without the cooperation of the courts.

We are now working toward common designations in the system; common terms. It is unreal when you think about it: each county has its own little set of symbols, and that kind of thing. It was amazing.

At least, we will begin to have some privacy and security in the plan if we get the records cleaned out. That is important.

The second important point is that we have now publicly drawn the issue, and the legislature has publicly responded, I think, in a very reasonable way by saying, "Let's do something about this on the long haul."

It has also addressed the question of computers, which has frightened a lot of people. All those things are now being addressed.

To that extent, I think we have made some progress.

Is that responsive to what you are asking; I don't really get what you may want me to explain.

REPRESENTATIVE O'DONNEL: It appeared to me, just reading the plan, that the records were no more secure than they had been in the past, no more private than they had been in the past.

LIEUTENANT GOVERNOR KLINE: I think they will be. I think they will be because we have now laid down a set of internal guidelines that will control access clearly.

What is occurring now -- and Major Kwiatek is here and can comment on it for you if you have any interest -- the State Police have been operating under a law that has been on the books for a long time that, in effect, says to them: you draw the guidelines.

There has always been a kind of uneasiness even on their part as to who should have access, who should draw the regulations. This whole question has never really been addressed as a matter of public policy, which in my judgment is the job of the legislature.

So we have set up a plan which is a holding action. That is my appraisal of the situation.

REPRESENTATIVE O'DONNEL: Thank you.

CHAIRMAN BERSON: Representative Kowalyshyn.

REPRESENTATIVE KOWALYSHYN: Governor, you spoke about the need to coordinate the existing criminal information

systems in the state. Just now, you spoke about the proposal for non-use of computers. Would you clarify something for me? Is it not true that the central State Police repository does use computers in assisting their operation?

LIEUTENANT GOVERNOR KLINE: No, Mr. Kowalyshyn, it is entirely a manual system. They use a computer for a whole lot of things, but as far as the maintenance of the rap sheets and the criminal history records, which they are charged to maintain by the state law, that has been traditionally a manual system, and will continue to be, at least for the foreseeable future.

REPRESENTATIVE KOWALYSHYN: Is the delivery of information assisted in any way by the computers?

LIEUTENANT GOVERNOR KLINE: I don't know if the transmission of the rap sheets is assisted in some way by computers or not. Major Kwiatek would be the one who would know.

Do you mind, Mr. Chairman, if I ask him?

Major, do you use computers in any way?

MAJOR KWIATEK: When we receive requests over the communications network, we respond to the agency with the record information.

LIEUTENANT GOVERNOR KLINE: With an electronic device?

MAJOR KWIATEK: Over an electronic device, yes.



REPRESENTATIVE KOWALYSHYN: I am not going to defend the computers, as such, but it is alarming. It seems a too generous condemnation of the use of computers when we think that all of our banking records, practically, at least a large part of them now and more and more, are being kept by computers. They have been found to be very reliable.

Of course, there is a determination to keep them accurate. Possibly, there hasn't been that determination up to this point on criminal histories. Maybe that makes the difference.

So it is not the computer itself that is at fault; it is the human element; is that not true?

LIEUTENANT GOVERNOR KLINE: Mr. Kowalyszyn, I said that in my judgment I would not forever preclude the use of computers, just out of hand. Basically, until such time as we, first of all, have some guidelines as to who has access to the data and who does not, and, secondly, until we clean it up, I don't think we ought to opt for computers.

It kind of fits about what you are saying. There are some people, by the way, a group of people who have some sensitivity about the banks using computers as extensively as they do; credit agencies and that kind of thing.

REPRESENTATIVE KOWALYSHYN: Would you venture a prediction as to what period of holding action we are thinking about under the Pennsylvania Plan?

LIEUTENANT GOVERNOR KLINE: If we work diligently at cleaning up our records -- first of all, we may never get them cleaned up -- I would hope that the legislature does something in the next session, that the legislature, in effect, during the next year or 18 months or even two years, addresses the problem as one of its major problems, and lays down some pretty clear guidelines as to who does what with what.

I think in the matter of a couple of years, with a little diligence, we could probably get a large percentage of the records close to being cleaned up, but it is an enormous job. You can't imagine how many non-dispositions we have.

Major, how many non-dispositions do you have, percentagewise.

MAJOR KWIATEK: We have dispositions on 34 percent.

LIEUTENANT GOVERNOR KLINE: That is amazingly significant. In effect, the central repository only finds out what actually happens on 34 percent of the cases, which is kind of scary.

They might have Ernest Kline in that computer for some crime and no disposition, and it might have been a favorable disposition. That is the kind of problem that we are dealing with. It just highlights the problem.

REPRESENTATIVE KOWALYSHYN: Thank you.

CHAIRMAN BERSON: Representative Mebus.

REPRESENTATIVE MEBUS: Governor Kline, on page 5 of

your recitation -- this is a very minor point that I just want to make clear in my own mind -- in the paragraph that begins, "It applies," in the second line you said, "large and complex policy departments." That is what it says and that is what you read, and I think you mean "police."

It is a minor point, but I just want to make sure that I have it right.

LIEUTENANT GOVERNOR KLINE: Mr. Mebus, that is correct. With your permission, I would like to correct my statement on the record.

REPRESENTATIVE MEBUS: I have something of a more important nature. Somebody once said that you must not only be honest, you must appear honest. One of the criticisms that has been leveled repeatedly by some of the media at the Pennsylvania Plan was the fact that following the completion of the draft, there were no public hearings; there was no effort made to get input into the whole thing, or at least have it clear as to what all was going on, where input could be gotten before it was submitted to LEAA in Washington for approval.

Was this an oversight, or was it done purposely; and if so, why?

LIEUTENANT GOVERNOR KLINE: It was not an oversight and it was not done purposely. Let me explain to you what we did.

First of all, every one of our meetings were very carefully posted in accordance with the Sunshine Law. We used the Task Force fully representing virtually every interested agency across the Commonwealth. When I detected a lack of interest on the part of news reporters at our Task Force meetings, despite the fact that we had posted notices in connection with the Sunshine Law, I directed Mr. Riggione to go the Pennsylvania Newspaper Publishers Association and say, in effect, "Hey, we are doing this. Why don't you pay some attention to what we are doing?"

Mr. Riggione did that. He met with a representative or two representatives of the Newspaper Publishers Association. They went over the Plan. They offered some input. We made some changes in the Plan, in accordance with their suggestions.

They never did agree with the basic bottom line concept, and I don't think they ever will, as to their total and complete right to have access to any information.

We filed the Plan with the United States Government. We thought it was a good plan, and I agree with your contention that we must appear as honest as we think we are.

When the hue and cry went up, as I mentioned earlier we now agreed publicly, again in a public session, that what we can do from an Executive standpoint will be done very carefully.

The filing of this plan does nothing except say

that this is what we intend to do. Anything we do now we are going to put in the "Pennsylvania Bulletin," and there will be public hearings.

I agree with your contention; I know what you are saying. It bothers me too

As right as you may think you are, if people don't think you are right, it is not a good thing in public business.

But this attempt to make it look as though we did something in secret, frankly, annoys me a bit, because we ran it as open as we could possibly do it.

REPRESENTATIVE MEBUS: Thank you.

CHAIRMAN PERSON: Representative Shane.

REPRESENTATIVE SHANE: The purpose of the Plan, as stated, is to protect Pennsylvania citizens from misuse of criminal history record information. It seems to me, just for pedagogical purposes, for the ordinary person who may be watching this on television and has not been acquainted with this problem, that you might, in summary, just sort of, in addition to the inaccurate data problem, summarize the so-called evils that this plan is attempting to deal with. We have been assuming some of the evils, but it might be good to underscore them, so that the average person can understand what we are attempting to grapple with.

LIEUTENANT GOVERNOR KLINE: That is a tough assignment, Mr. Shane, because what I feel are the evils may not,

necessarily, be the ones you feel. Maybe you could do it as well as I could.

REPRESENTATIVE SHANE: I will start you off. One example would be the arrest information with no disposition, and the fact that that might be around in perpetuity, that is a clear situation that I think would bother the ordinary citizen; if somebody was arrested for no good reason at all, and that information would stay in some kind of criminal record history. I think that is a very basic example of the kind of evil that should be dealt with.

Can you just give us a couple of others, the main ones?

LIEUTENANT GOVERNOR KLINE: Even in an arrest and its disposition and its use might be rather interesting. I was arrested one time for criminal libel, when I was in the broadcast business. I was held for court by a Justice of the Peace. When the matter got to court, the judge was so upset and appalled by the actions which were taken by someone in Pittsburgh that he not only quashed the information, but really dressed down the J.P. who held me for court.

Someplace, in somebody's criminal record, that is there. One of these days I fully expect to read some big headline that Ernie Kline was once arrested on a criminal charge.

The free access to that bothers me because its use

may be wrong. Someone may want to misuse it. I have never tried to hide that fact. As a matter of fact, every time I have ever applied for a job, I always put that down with a little asterisk on it, because it grew out of my work.

That is the kind of thing that can be very very dangerous, in my judgment.

The non-disposition is of as much concern to me as anything else. The wrong person -- and I have cited this man -- here is a man applying for a job with the Federal Bureau of Investigation, and I had his rap sheet, a two-page rap sheet, and he looked like the most gosh-awful man that ever came before the Board of Pardons, and he stands there stunned by what I am accusing him of.

It is his name and his middle initial, and all kinds of numbers are correct. We finally came to the conclusion that his social security number had been transposed, and there was another person who had the rap sheet, but it wasn't this fellow.

On the other hand, I don't want to over-emphasize the right of the individual to privacy. I think one of the points, too, in the plan that is good: right now, there is no guideline for my checking my criminal history record. I don't know what they have over there on me.

If I went over and said, "I want to see it," they would say to me, under their current regulations, "I can't show

this to you."

We now have a system where I can look at it, and if I am not satisfied with it, I can make changes and prove to them that my record is wrong, or that it is right.

I can cite a number of abuses. I am not a lawyer, but the use of that kind of material in the litigation of the criminal case, as I understand it, also becomes very critical.

The court does have, in court proceedings, certain guidelines to control the use or non-use of that data. I think we ought to have them in public too.

REPRESENTATIVE SHANE: One final question: a group of folks from Philadelphia had articulated an approach to this area also. Would you give us a recitation of the two or three significant differences that you perceive between the Pennsylvania Plan and the Philadelphia Plan?

LIEUTENANT GOVERNOR KLINE: I think Mr. Riggione would be better able to do that, and I have asked him to try to draw that into his presentation.

But I do think, if the Committee doesn't mind a moment of explanation as to our administrative approach to that, the so-called Philadelphia Plan is a plan of the court system in Philadelphia that really pre-dated our work.

They, of course, are going to use LEAA funds, and in the process of approval, they must go through the Southeastern Pennsylvania Regional Planning Council and the Governor



Justice Commission.

Now that the State has complied with the LEAA regulations to file an overall state plan, what they do in that plan in Philadelphia must fall within these guidelines.

There are some differences. I personally do not think that they are so great that we cannot get them straightened out in time for everyone to qualify.

At the Governor's direction, our staff has been working with the staff involved with the Southeastern Regional Planning area in an attempt to get those things worked out. There has never been any attempt on my part, nor on the part of the Task Force, and there is no desire now for us to, in any way, impede that plan or its process; only that we get them all together under the same roof.

REPRESENTATIVE SHANE: Can we then summarize by saying that the two evils, at least as I perceive them and there are probably others -- the two evils that the ordinary citizen would be interested in knowing that this plan is going to deal with are the situations where a person's criminal history is in fact inaccurate and he is being blamed for or burdened with something he never did; secondly, the situation where a person is arrested for what could turn out to be a frivolous insubstantial or vindictive reason, that arrest which is later obviously seen as frivolous and vindictive continues to be a blot upon his personal record.

LIEUTENANT GOVERNOR KLINE: I think, Mr. Shane, those are two evils that are addressed in the plan, and I think that we do address them well. I think there are other potential evils, which is the ultimate misuse of the data. Without coming up with an answer, we have addressed the whole question of privacy and security.

We have, in effect, at least highlighted the problem so that our citizens are beginning to become aware of all this data; and we have also said -- and I think this is a good thing -- we have been accused of not saying this, but we have; and if we haven't said it well enough, then I will say it again and try to change the plan -- we don't want those medical records, we don't want those psychiatric records, we don't want those psychological records to be part of the central rap sheet repository data.

REPRESENTATIVE SHANE: I think, as Brandeis has said, the government is the only present teacher, and I feel that it is important for you folks who are advocating this plan, which I agree with -- it is important that you continue to teach our people what the evils are that they are dealing with, because it is very easy for the ordinary citizen to say, "Those guys are just coddling the criminals again," and that is often the sort of Pavlovian reaction for somebody that just gives a superficial glance at this kind of discussion.

So I think it is important that we keep emphasizing

what the evils are that we are trying to deal with as we try to educate the public about what we are involved in in order to create the climate of acceptance that is necessary for this, because it is easy, I think, for the ordinary citizen to get a serious misconception about this.

LIEUTENANT GOVERNOR KLINE: I think you are right, Mr. Shane. I have been agonizing for months over that very same thing. My most recent battle involved my concern over someone's criminal record and someone's conviction record; and there is a big difference.

But they are interchanged so often that the average person on the street says, "I have a right to know whether that guy was convicted for rape; why can't I have it?" Perhaps he does. That is one issue here.

But the criminal record may be entirely different from his convictions.

CHAIRMAN BERSON: Do any members of the Committees have any further questions?

REPRESENTATIVE KISSLER: Governor, one further question: how can you differentiate between a man's criminal record and his conviction record? If he is not convicted, how can that be part of anything, be part of his criminal record?

LIEUTENANT GOVERNOR KLINE: Mr. Kissler, that is one of the problems we are trying to address. Unfortunately,

we have an enormous number of criminal records without one conviction. We call them criminal records because represent a skirmish with the criminal justice system. There is the one that I described; there is still some kind of record on that.

Even though the judge said he was quashing the information, that is the kind of thing that exists in this state, and we have simply got to address it.

CHAIRMAN BERSON: Representative Geisler.

REPRESENTATIVE GEISLER: In the case where a record is impunged or sealed, would there be a record kept with the person's name being there somewhere? In other words, if someone says, "Does Bob Geisler have a record," and he would say, "Yes, but it is expunged or sealed," that would leave a lot of suspicion as to what is in that record.

LIEUTENANT GOVERNOR KLINE: Mr. Geisler, I addressed that earlier without really getting an answer. Mr. Kissler, I think, raised the question.

I would like for you to get from Mr. Riggione a little more precise description of what we propose to do, but that does exist. I mentioned earlier about the way we keep our drug records now, which is rather interesting, which raises that same question. That is, if you have a minor drug conviction which is supposed to be expunged, you are not entitled to a double dip, so if you come in for a second double dip, we now discover that even the law we have passed

keeps a registry; so they say, "Hey, wait a minute. He served his time, okay, but he is still on that registry. What did he do back there ten years ago when he went on the registry?"

Those are the kinds of frightful problems that we have to address.

Mr. Riggione, I think, can give you a little more description of precisely we intend to handle the whole question of sealing, of expungement, of pardons and that kind of thing, what we propose.

CHAIRMAN BERSON: If there are no further questions, then thank you very much, Mr. Kline. We appreciate your coming here this morning.

(Witness excused.)

REPRESENTATIVE MEBUS: Mr. Chairman, may I make one observation? It would almost seem to me that whoever's record is involved might, after expungement or sealing, want to say it is so insignificant that I prefer that it be left open. He ought to have that right, because it might be more of a problem to have it look like it has been glossed over than if it were laid out where everybody could see it.

So if it has been expunged, I think that ought to be part of the record, but maybe he can also have it left where it can be seen if he would prefer to have it that way.

CHAIRMAN BERSON: The next witness is Joseph Riggione, who is the director of the Governor's Task Force on

Criminal Justice Information Systems.

Mr. Riggione, the floor is yours.

MR. RIGGIONE: Mr. Chairman, members of the Committees, I have broken my presentation down into essentially two areas.

One, the first area, really addresses the kinds of information that are being collected now, how they are maintained, and what ways they are being used.

The other area gets into the Privacy plan. This here will probably take about two hours. Do you want me to try to wrap this up in an hour or half an hour?

CHAIRMAN BERSON: Proceed.

MR. RIGGIONE: Basically, what I would like to do, again, is to identify the kinds of information that are being collected, how it is being maintained, and also the uses which it is being put to.

What I would like to do also is give you an overview of the programs, as well the events that have taken place since 1970.

What I am concerned with is if you understand how all of this is involved; then I think you will be able to relate to what we are doing to the issue of privacy.

Essentially, there are a number of agencies that are involved in the effort that we have undertaken, both in privacy and security, as well developing of criminal history

or criminal information systems.

All of them have different needs. We have at the state level the Bureau of Corrections, the Office of Criminal Justice Statistics, which is basically a statistical operation for analysis and data collection, the Board of Probation and Parole, the State Board Administrator's Office, and the Pennsylvania State Police.

At the federal level, we have got the Federal Bureau of Investigation, which maintains manual rap sheets and also the Initial Crime Information Center, which is part of the FBI which maintains computerized criminal histories.

Also, we have LEAA, Law Enforcement Assistance Administration, at the federal level, which is essentially a storage vehicle for emphasizing planning with regard to disposition and dispersement of money to the states.

At the local level, we are dealing with local police departments, courts which include the courts of initial jurisdiction as well as Common Pleas Court, and also county institutions, as well as county probation and parole offices.

So I think you can understand that the issue is really kind of a complicated matter, and there are so many different types of agencies involved; just identifying the needs is really kind of an overwhelming task.

Some of the general problems that we have had in the Commonwealth in regard to criminal justice information is

that we don't know who is collecting what. Each agency collects information that they need for their own internal operation.

The Bureau of Corrections collects information for the Bureau of Corrections. The Board of Probation and Parole collects information for the Board of Probation and Parole.

Neither one of the two agencies, for example, relate their data needs to the data needs of the other agency. So, in essence, you can't take data from one component of the criminal justice system and apply it to the next, because they are basically geared differently.

Until there is some kind of direction being provided with regard to data collection and data maintenance, many of the questions that could be raised about the criminal justice system might not be raised, or they are basically going to go unanswered; unless there is some kind of direction, we are going to continue to have these uncoordinated information systems. Not all of them are information systems, I might add.

*Why is it needed?*

Generally, what we have tried to do is establish a common objective, which is essentially to monitor the status of an offender as he progresses through the criminal justice system, and develop a plan to meet those particular objectives.

In order to do this, we have got to secure the cooperation of agencies at both the state and local level. This is essentially why the Task Force is, so far, only



requesting money to support a planning effort.

What we want to do is identify who needs what information, how timely they need information, and to identify what is necessary in terms of meeting those requirements.

What has to be automated? Can we improve manual systems? Whatever we do, we have to assess the practicalities of that approach.

For example, we can identify federal monies, we can identify programs and use federal monies to implement those programs, developmental costs as well as some of the start-up costs. But once you have got a system of any sort established, who has to pick up the maintenance costs? The Commonwealth.

So what we are going to do is really assess very critically the costs of maintaining these programs before we start implementing, so that we can at least implement something that is going to be reasonably practical.

Essentially, what I am going to be talking about today is, basically, the data necessary to monitor the status of the offender through the system, such as arrest, court disposition, admissions and releases from correctional institutions. I am not going to address the use of medical, psychological and intelligence or investigative files. These data are not automated; and, as Lieutenant Governor Kline said earlier, we do not intend to automate those records.

What I would like to do is start with the historical

overview. You have a packet somewhere in front of you that is rather thick. It should deal with the pertinent areas.

The first area I would like to get into is the historical overview as to what is happening.

The first chart depicts the general flow of information. You have your law enforcement component, corrections component, courts component, all submitting data to the top where you see "CH," which stands for criminal history. The Office of Criminal Justice Statistics is way down at the bottom.

Essentially, the criminal history program is a rap sheet filed and maintained by the Pennsylvania State Police. The Office of Criminal Justice Statistics maintains just statistical data.

Essentially, again, the type of data that is maintained is arrests, fingerprint cards, court dispositions, admissions and releases, and also the status of the offender, where he is. If for example he has been released on some kind of correctional program, then that would be reflected in there also.

The law enforcement component will submit both fingerprint cards and court dispositions to the criminal history file. The courts do not submit, systematically, court dispositions to the State Police. Essentially, if you are aware of the problem of collecting court dispositions at

the local level, it is virtually impossible for someone to get court dispositions, for the local police department to get them from the Clerk of Court to maintain their own files, let alone update the State Police files.

Also, you have the corrections data. At the State level, corrections information is being submitted to the criminal history file; however, at the local level, either institutional or probation and parole, no data is being submitted to the criminal history file. It is only for statistical purposes.

The next chart depicts programs that were either initiated in 1970 or were established in 1970. Let me just go right across the page.

You have got the offender statistics program, which, again, is the ability to monitor the status of the offender as he progresses through the criminal justice system.

You get programs in court, Common Pleas Courts; county corrections; state corrections; and probation and parole, state and county.

Again, the type of information is simply the name, race, age and sex, charges, type of disposition, sentence, length of sentence, type of counsel, and, again, admissions and releases.

We had established in 1970, by law, the Office of Criminal Justice Statistics in the Department of Justice,

which is primarily responsible for analysis, crime data, as well as data collection in areas that they felt that they wanted to pursue, which is essentially County Common Pleas Courts and county corrections.

The criminal history program was established in 1927, again by law, and essentially that is the rap sheet file that we have been talking about previously.

The uniform crime reporting program is a voluntary program. Essentially, it entails submission of aggregate data on arrests, on incidents, court dispositions, from local police departments to the FBI.

Some of the problems that we encountered with the programs that we had in existence at the time were not only that we did not know who was collecting what, but everybody was counting it differently.

It was trying to compare apples to oranges. For example, what is a recidivist? Depending upon the agency that you are collecting the information from, and the point that they are trying to substantiate, that definition changes.

When is a court disposition a final disposition? Is it before or after a sentence is imposed? What do we count? Do we count the defendants or do we count indictments?

One of the foremost problems is that we couldn't track an offender through the system. You had no way. You are dealing with aggregate data from the uniform crime reporting

program from the counties and the courts; you can do some kind of analysis with that information, but, essentially, it is very very limited.

But if you can take the number of offenders and look at the charges he was arrested for, the court disposition, the length of sentence and so forth, you can start to massage that; you can control for different variables.

For instance, how old, essentially, are the people who are being charged with burglary? How frequently are they being convicted; and if they are convicted, normally how many of these people are committed to an institution and how many are placed on county probation and parole?

The problem that we had, essentially, was the inability to track the offender through the system, and this was because you had a multitude of numbers. You had an arrest number at the local level; at the court level you had the magisterial district with its own docket number; the county courts had the indictment number and docket number; the Bureau of Corrections had a number; and the Board of Probation and Parole has a number. So to really get any kind of meaningful data, you had to know a multitude of different numbers to make any sense out of the information.

The problem that we had in the Office of Criminal Justice Statistics was that we spent so much time collecting data from the courts and the county corrections, developing

systems for analysis, processing the information, correcting the information; we had no time to do any analysis with it.

One of the other problems that we had also was the fact that we had no management information. For example, we still don't know how much it costs the county or local units of government to maintain criminal justice systems.

For example, we still don't know the number of police departments there are in the State of Pennsylvania. We operate kind of on averages.

In 1970, the State Police took a tabulation; there were 1200. The Governor's Justice Commission took another tabulation and they came up with something like 1300; so we are still not sure of the number of police departments.

In the criminal history file, basically the problem is still with us. That is simply that we weren't getting court dispositions. One of the other problems we have, which wasn't mentioned earlier, is that everyone arrested for felonies and misdemeanors in the Commonwealth are not fingerprinted. That information is not in the criminal history file.

So, essentially, we have inaccurate and incomplete records. You have the possibility of someone being arrested a number of times for offenses in the Commonwealth and only having one or two of those offenses being reflected on a rap sheet.

That compounds the problem with regard to criminal

history records.

Uniform crime reporting was a voluntary program, and, essentially, the problem there was there was something like 300 or 350 police departments submitting information to the FBI or these 1200 to 1300 police departments that we had throughout the Commonwealth.

So we really couldn't get an accurate picture of crime in the Pennsylvania criminal justice system. What we tried to do at that time, or what we were planning at the time anyway, was to implement a mandatory program for reporting to UCR, which we have done since; and we will get into that later.

Essentially, the problems that we encountered were basically because of a lack of coordination. Some of the information being collected could have been utilized by different agencies, but never was. It still is not.

In 1972, LEAA announced its concept of a comprehensive data system. The comprehensive data system is not an information system. What it is, essentially, is a concept; it's a program.

There are five distinct components or entities within that package. You have got the Statistical Analysis Center, Technical Assistance, Management and Administrative Statistics, Uniform Crime Reporting, and the Offender Based Transaction Statistics System and the Computerized Criminal

History.

Let me just briefly go through each of these components. Essentially, what the analysis center was intended to do was supply the State with an analytical capability for planning. Some agency or some entity has to take these little pieces of information from each of the components of the criminal justice system and make some sense out of them.

Also, they coordinate the technical assistance effort. If, for example, someone at the local level wanted to conduct some kind of a special study, wanted to implement a certain program, if that expertise could not be made available through state government or other counties, essentially what this technical assistance program did was provide the state with a nominal amount of money to go out and obtain that expertise for use by the local unit of government.

Management and administrative statistics, as I think I mentioned earlier, essentially, we don't have any budgetary data. For example, some of the counties include in their budgets district attorneys for the courts. Some of them encompass all law enforcement under Public Safety; others do not.

So, essentially, what we had was no directional guidelines.

The Offender Based Transaction Statistics System and the Computerized Criminal History; essentially, we wanted



to monitor the status of offenders, to collect relevant data from the criminal justice agencies on various offenders for use in analysis, planning, as well as updating criminal history records.

The difference between the OBTS, the Offender Based Transaction Statistics System and the Computerized Criminal History is, essentially, the Offender Based Transaction Statistics System processes information about the most serious offense; so if you have got somebody who has been charged and found guilty of burglary, larceny or receiving, it will only pick up the burglary.

The Criminal History plots both the fact that he was arrested for those three offenses, the court dispositions related to those offenses, as well as the sentence imposed.

The next chart depicts the compatibility of Pennsylvania's efforts with the LEAA's CDS definition.

Essentially, Pennsylvania has taken that direction anyway; only we really didn't know it. The concept wasn't new. However, it did afford us the opportunity to take advantage of federal monies for start-up costs and developmental costs for the kinds of things we were going to do anyway.

We kind of liked the concept, but before we tried to do anything in detail, we tried to put together a coordinating committee representative of each of these agencies in the criminal justice community; and we added the Bureau of

Management Services to do that, so, essentially, the Bureau of Management Services in the Governor's office is not related to the criminal justice activities. We thought they could possibly be neutral, if anybody could; they had no axes to grind.

They established an ad hoc committee, essentially, to provide a forum to discuss these different data and, generally, the direction we were going to take.

The Committee met and established a few objectives. One was to determine the needs of the criminal justice community and develop a vehicle for monitoring the status of offenders. They were basically to provide a direction, to take the linking components of the criminal justice system.

What the committee did, essentially, was to collect and analyze data to determine what is collected and why it is being collected, to identify where there was commonality on data that was collected. We found somewhere around 40 percent duplication of effort.

You had basic information being collected by the Bureau of Statistics; you had the same information being collected by the Bureau of Corrections; the same information being collected again by the Board of Probation and Parole.

The other thing we wanted to do was define how information gets from one component of the criminal justice system to the next. What you really have to do, if you are

trying to define the kinds of data that you need, if you want to know where it goes and who gets it, whether or not you are talking about a manual or automatic system.

After several months, the committee published a report called "Committee Report Number 1." Essentially, the report outlined the data problems, made recommendations, and received the endorsement of each of the agencies that were participating in the program.

The endorsement thing was really kind of petty, but it was important to us because it was an ad hoc committee. What we wanted to do was -- we assumed that if these people endorsed the effort, then we could begin immediately to start implementing some of the recommendations that were made.

Many of the findings that we came up with basically supported what we already knew. For example, on the lack of information exchange, at one of the meetings someone from the Board of Probation and Parole mentioned the fact that they don't get pre-sentence investigations on somebody who is released from the Bureau of Corrections to their custody. They had been trying for years to get this.

They are two agencies in the State government and they weren't sharing information. Two people at the very very operational level sat down and said, "Okay, you have got it." A couple of letters were written; phone calls; that was it. Now they are getting pre-sentence investigations.

Essentially, one of the other problems which we found was that we had two rather significant data collection programs for statistics, one being maintained in the Office of Criminal Justice Statistics and one being maintained at the Board of Probation and Parole. Both of them were essentially the same information; the exact same information with the exception of one or two pieces of information.

Also, we found that in the Bureau of Corrections, for example, they had three commitment forms. Essentially, the only difference was that they were different colors. There was one for youthful offender, one for female offender and one for something else. It was very simple to just take them and collapse them and make one form.

If you take that and compound it by the fact that there are 67 counties and 68 institutions, as a matter of fact, at the county level, there are 67 different forms perhaps that are being used. So you have got hundreds of forms floating around for the same intention. Why not use one?

Some of the recommendations that this committee made; one was to establish a permanent committee with advisors from the local criminal justice agencies and the academic community. We were talking about addressing needs of the operational types in the criminal justice community, as well as some of these things that we wanted to do in planning and evaluation; and we hoped to utilize the expertise in the

academic community to help us with the latter.

We determined that we ought to develop a tracking number, which we wanted to pre-print at the time on the docket transfer form which the Supreme Court has finally released after about two or three years of hassling. We developed a standard commitment form. Also, we recommended that we use a standard arrest form.

Again, we had the 1200 or 1300 police departments all probably, if they keep records at all other than on a matchbook cover, using different forms. We suggested that they all use one standard arrest form.

Eventually, the committee decided to develop a plan, a Pennsylvania Plan. I make a distinction there between the Pennsylvania Plan and the LEAA plan, because they are two different thrusts.

The Pennsylvania Plan for review by the Governor -- what we decided to do was use the federal money wherever we could, so long as we were trying -- we were meeting needs of Pennsylvania's criminal justice community.

What we did was sit down and defined what it was we wanted to get from the LEAA/CDS program. Essentially, we wanted to do was translate the phrase, "criminal justice system," into an operational reality.

We wanted to provide analytical tools for planning the overall system, evaluation, ordering priorities, identifying

deficiencies and weaknesses in the system.

If you have data on arrests, court dispositions and corrections, what have you, even if the information is not the kind of information that you would like to have, at least you can utilize it to the best capacity possible.

Why rely on gut level reaction; that is what we are asking; if you can use empirical evidence to substantiate or dispute an argument, do so.

The plan addresses the general direction to take by Pennsylvania for the Office of Criminal Justice Statistics, Pennsylvania UCR, Offender Based Transaction Statistics program, and Computerized Criminal History.

Does everybody understand UCR now and OBTS/CCH?

The Office of Criminal Justice Statistics: essentially, we already had the program before the LEAA concept was announced. What we decided to do was to make the Office of Criminal Justice Statistics an analysis center.

Basically, the general function was to conduct broad-based analysis and concentrate on interrelationships between the different components in the criminal justice community, and conduct special and technical studies.

Some of the things we proposed that the Office of Criminal Justice Statistics do was to sit down and identify what it is they wanted in the way of statistics and what it is each of these other agencies wanted in the way of statistics.

What we wanted to do was take a full list of information that was necessary for statistics and give that list to each of the criminal justice agencies at the state level for them to review, so if, for instance, they wanted to develop any kind of a computerized program or statistical program of any sort they would at least then know the needs of the other components of the criminal justice system.

In essence, if they are going to develop a program, why not add four or five different elements if another agency can use it, and can use it legitimately.

The other thing was -- and it is very critical -- we wanted to get the Office of Criminal Justice Statistics out of the collection activities. I would say that 99.5 percent of their time was spent on data collection. What we decided to do then was take the court program, try to get it into the State Court Administrator's office; take the county corrections program and try to get it into the Bureau of Corrections.

The Office of Criminal Justice Statistics put out reports until -- when they wanted to, and nobody would really do anything with them. If you have that kind of information available and the people who can effect the change do something, I think it is more meaningful.

The other things is the Office of Criminal Justice Statistics didn't always know which questions to ask, where

these people in the operational agencies are familiar enough with what they should be doing and the direction that they wanted to take that they could ask those questions.

The chart on the next page depicts the functional organization of the Office of Criminal Justice Statistics. Essentially, what you have is that no collection program areas would be in the Office of Criminal Justice Statistics. The Office of Criminal Justice Statistics is not a primary collection agency.

The next area that we addressed in our plan was the uniform crime report. In 1971, the Office of Criminal Justice Statistics, with the Pennsylvania State Police and the Pennsylvania Chiefs of Police initiated in Pennsylvania the UCR program.

In 1972, that program was transferred to the Pennsylvania State Police for a number of reasons. Essentially, it was in compliance with our data collection policy; also the State Police had more credibility with the local law enforcement officers than some guy with a suit.

Presently, we have somewhere around 750 local police departments reporting, and 105 State Police sub-stations reporting, which is a substantial increase from the 300 to 350 that we had a couple of years earlier.

Some of the primary objectives of our plan -- the direction that we established is essentially we wanted to



improve the timeliness of the processing and provide some kind of feedback to the local police departments submitting information.

The only time prior to this that information was given to the local police departments was when the FBI published their final report, and, essentially, there you only had national statistics and state statistics. They really don't get into community data because they don't want one police department saying, "We made more arrests than you did."

The other thing that we recommended was simply that we implement some kind of standard form for incident reporting and arrest reporting for the local levels.

The Offender Based Transaction Statistics System and the Computerized Criminal History System again is the largest and probably the most ambitious program outlined on the OBTS concept. Essentially, the end goal was to monitor the status of an offender for statistics and for criminal history purposes.

Essentially, what we wanted to do here was, since each of the agencies had systems of a sort in their own agency, what we wanted them to do -- what we wanted to do was take information from that system and develop for them a system, and generate as a by-product of their system this information that we needed to update criminal histories, as well as for statistical purposes.

So we were really trying to identify what their needs were, and develop a system to meet their needs; but keep in mind what we needed for statistics and what the State Police needed for criminal histories.

Essentially, the concept was that the State Police would maintain arrest data, the courts would maintain court data; and corrections would maintain their own data.

Let me just touch on this concept very briefly because it is important, but it is awfully technical. This defense tracking number which we have talked about at staff level, and basically at the State level, for some time, we talked before about not being able to relate these different pools of data.

What we tried to do was to initiate a number, an offense tracking number, OTN it is called. It would follow an incident; it would trace an incident through the system. So if you had an arrest and there were four or five offenses, you would have one OTN number with alpha prefixes and suffixes, the whole ball of wax, that would enable you to follow this.

That number stays with that individual and progresses through the system.

We also had the State Identification number, which is the same number as the State Police had been utilizing for somewhere around 50 years, which is essentially a number that you need for the individual. The guy is fingerprinted,

the fingerprinted is classified; after the fingerprint is classified, they assign a number to that. If that guy comes back into the system a half a dozen times, he always gets that same number.

Essentially, this SID number, State Identification Number, will allow us to then to tie each of the incidents. The OTN would allow us to tie the incidents together; the SID would take all of these incidents and relate them to the specific person, which is extremely important when you are dealing with criminal history, but also when you are dealing with studies of recidivism.

The next chart -- I am on page 16 now. This depicts the planned flow of data. Essentially, you have the courts for the first time submitting dispositions to the computerized criminal history, which is what we were talking about, and to statistics.

You have corrections, both state and county, submitting information to the criminal history file as well as to the statistics programs.

Essentially, little really had to be done. We had a data collection program there, some of which were already automated; so what we are trying to do then is tie this thing together.

Once the plan was completed, we sent it to Governor Shapp for his review. In March of 1975 he approved the plan,

with the exception of the CCH component. I have a letter here, and I will just read a couple of paragraphs to you.

This is addressed to the Regional Administrator for the Law Enforcement Assistance Administration. "I am deeply concerned about the potential loss of privacy of citizens that this program represents. The growing number of data banks and the wide variety of information stored for various reasons represents a real threat to the protection of individual privacy.

"Not only is there great danger that some of the information presently being collected and stored might be used for questionable purposes, but individuals often are unaware that such information is being collected, and usually have no right to review it to determine the accuracy.

"For this reason, I have strong reservations about the CCH component of the CDS plan. At this time, concerns for the individual's security and privacy must take precedence over the immediate need for a comprehensive criminal justice data system.

"Therefore, I am formally approving only those components of the plan that do not deal with the CCH system. While I recognize the need for a comprehensive information system, I cannot approve further action on CCH until provisions for privacy and security have been incorporated into such plans, and/or are incorporated into both state and federal law."

Basically, the computerized criminal history concept was put to rest there. We weren't going to automate criminal history.

One other thing that I would like to point out: this comprehensive data system plan is not a commitment of money. All it does is to put the plan on file with LEAA that says; "Here, we recognize the thrust of your CDS concept. Here is our Pennsylvania Plan to implement it."

You must have a CDS plan to be able to apply for monies, so you then have to generate something much much more detailed, outlining specifically what you want to do and how for final approval for the money.

Essentially, without the CDS program, there wouldn't have been the Philadelphia court project or the State judicial information.

At that time, LEAA was using that as kind of a club to kind of get us to submit the CDS plan to the LEAA. There are a couple of representatives here from that.

We have reviewed the programs that existed in 1970 and how they compared with the LEAA comprehensive data system, and the general direction that Pennsylvania was taking regarding CDS.

What I would like to do is just go over the systems that we have now, and basically begin with 1975. In 1975, Governor Shapp established a Task Force to address policy

regarding criminal justice information systems, as well as privacy and security. The Executive Order also outlined an interagency working group which was essentially comprised of each of the operational levels from the Bureau of Corrections, Board of Probation and Parole, and so on.

Their primary function was to suggest policy alternatives, develop operational procedures as well as planning the kinds of things that we ought to be doing.

It also established an Advisory Council, which is basically comprised of people from the local communities, from Criminal Justice, as well as private interest groups and private citizens. There were no State-level people on the Advisory Council.

One of the things that I have always been concerned with is, if you design a program, regardless of how small, if it can't be implemented, you have wasted months of effort at the state level. So what I wanted to do, here anyway -- I should say: what the Governor wanted to do here anyway was to, if there was a decision made, to run it by people from the local community so they could tell us whether "yes, it is implementable," or "No, it is not."

Some of the things that we did, for example, with the staff: we got a grant to -- after the Task Force was established, from the LEAA, to put together the privacy plan as well as to deal with the detailed plan for integration of

statistics into the criminal history program.

We had a couple of alternatives. We could have hired staff, five or six people, or we could have hired consultants to deal with the issue, and go. What we chose to do, however, was to take people from different State agencies and reimburse those agencies for the time that these people spent on our project.

We got three or four people from the Bureau of Management Services; and somebody from the Board of Probation and Parole has been working with us for over a year now.

Essentially, what I was concerned with was: let's keep the money in the state. The other thing was that these people would be here after whatever it was that we wanted to implement was implemented; so that if there were problems with the system, these people would know what we have done and how to address those problems.

If you have something developed by consultants, they go and the staff has to pick up the pieces and put it together.

I might add, parentetically, that at the very first Task Force meeting, the Task Force reaffirmed Governor Shapp's position on the computerization of case histories.

Let me just take a couple of minutes and start here with the UCR program very quickly and the analysis on that, to let you know where we are with some of these programs.

Essentially, it is operational. There are 950

police departments recorded, and State Police now publish annually their Pennsylvania Uniform Crime Report.

The Office of Criminal Justice Statistics has received money from LEAA to support an analysis capability, and expects to move some of the data collection activities from their offices to the Bureau of Corrections, probably in the very very near future.

They have also developed a list of data that they felt that they needed for Offender Based Transaction Statistics Systems. We are ready now to circulate that to the agencies for their review.

Let me go through each agency, the Bureau of Corrections and the Board, collectively, and the State Police as well as the courts, just to give you some idea of the kinds of things that we are doing there.

Essentially, we have four programs, the county probation program, the state probation program, the Bureau of Corrections program, and we have the county institutions program. Each of these programs collect information about the identification of the individual, the location of the person in this system, and data.

The state system contributes information, in a manual fashion, to the criminal history file, as well as information to the Office of Criminal Justice Statistics. That is submitted in an automated fashion.



The county institutions data is still collected by the Office of Criminal Justice Statistics, and they obviously submit information for their own efforts.

The county probation program information is collected by the Board of Probation and Parole, which they submit to the Office of Criminal Justice Statistics.

All of the programs, essentially, are offender based. None of them have, in any way, shape or form, automated medical or psychological records, including ours, to the best of my knowledge.

Some of the problems that we are confronted with with the systems that we have now are that some of the data used for determining educational and vocational and dental requirements are not automated. There is virtually no way to conduct any kind of analysis without those statistics.

If you want information, you have to go through each of the manual files and start copying. And you are limited in what you can do with that information.

We still have, incidentally, individual agency identifiers, which we are trying to correct now.

Also, much of the data is reported from scratch. For example, I noted before that you have four separate programs. Three of these programs are maintained over at the Bureau of Corrections. The County Institutions program is out of the Commonwealth Information Center.

Essentially, you have the Board and the Bureau, both on the same computer. If the Bureau releases somebody from their custody into the jurisdiction of the Board of Probation and Parole, they send a piece of paper up to the Board. The Board takes that piece of paper, sends it back to the Bureau for processing, which is really kind of hideous, because they have that information system in the same building. All they would have to do is send that piece of paper initially down three flights of stairs, rather than back and forth.

Essentially, the point I am trying to make is there really is no system.

LEAA made available to the State of Pennsylvania \$250,000 to implement an Offender Based State Corrections Information System. We asked for \$30,000.

One of the things that we wanted to do, again, getting back to the planning thing, there is no need to go after money simply because it is available. Our whole initiative has been to get money to develop a plan, to identify the needs, and figure out what we need to do. Let's get the money to do that.

The money has been awarded through the LEAA, and it is somewhere. It has to be approved by the legislature.

This chart just gives you a feel for the kinds of flow of information in the courts. Essentially, right now, the

Office of Criminal Justice Statistics collects data, and they maintain it in an automated fashion on county Courts of Common Pleas. They do collect now through that docket transcript form information from the lowest courts. They don't use that information in the process in any way; they simply are not able to.

Essentially, what you have right now: there are five parts to that. Parts three and five are what we are concerned with. Part three is the form that is used to initiate the report of dispositions from the Common Pleas Court. Part five is the report that is used from the lower courts, the courts of initial jurisdiction.

Essentially, each of those two forms are sent whenever the appropriate disposition is made, to the Office of Criminal Justice Statistics. They take the information, extract what information they use from that for their statistical programs, and right now pass it on to the State Police for their criminal history files.

*who determines what is extracted*

That also has on there the Offense Tracking Number, which has been implemented.

Some of the problems that we had in the court systems essentially: information necessary to monitor timely disposition of cases is not available.

Some of the courts are automated; most of the courts are not. We have a multitude of forms that vary from

county to county. Even the forms that are proscribed by the State Court Administrator's Office vary from county to county.

Basically, what they have done is establish a minimum set of standards. This form here is really the first exception to that rule, I guess.

They normally establish minimum standards. Then each of the counties take those forms and embellish them with whatever information they want to see on the form, itself. So you have no standardization.

Any statistical reporting is grossly unorganized. Again, the only thing that the statistics people are processing is the most serious offense.

I might add that the State Court Administrator's Office recently got a grant from the LEAA in the amount of \$200,000 to implement a plan that they have developed, and I believe they are about to -- or hope to anyway -- begin testing in their system in about four or five counties. I think these included Beaver, Bucks, Chester and a couple of other counties.

Part of what they are trying to do with that money is to simplify the manual system. All of the counties are not large enough to warrant automation, so what they have tried to do is go through and systematically review the kinds of forms that they could make available to these people, and identify who should be getting that information and when, so that they could facilitate and be able to monitor the 180-day rule more

effectively.

Let me just spend another few minutes on the State Police information systems. Essentially, the State Police maintain a uniform crime reporting program that we discussed earlier, and I won't go into it anymore.

They do maintain a criminal history file in their central repository, and, obviously, the Task Force and the State Police have been concerned with providing a complete and accurate record for the criminal history program.

We are primarily concerned with getting court dispositions from the courts.

Some of the primary operations of the central repository in maintaining these criminal history records are fingerprint classifications, maintenance of the records, and dissemination of the records.

The State Police have required since 1970, by law, to record the identification of persons and to maintain pertinent arrest information about people who have been arrested.

Basically, the repository centralizes all these records and makes for less duplication of effort and provides more effective information to be maintained.

If you had the same records being maintained by a large number of police departments, there would be no way they could get a complete record. You would have each one knowing, perhaps, what occurred in his jurisdiction or in the

jurisdictions on his immediate periphery, but nothing comprehensive.

Essentially, the information there is used to identify fugitives, to identify persons who are considered dangerous or who have committed crimes, for example, with weapons; also for people who use aliases rather systematically.

Since you have one means of identification based on a fingerprint, someone could conceivably be arrested a half dozen times or 15 times and always have the same identification number.

The courts also use it, probably to a more limited degree -- or could use it perhaps for pre-sentence investigations, for setting bail, and also for pre and post trial disposition purposes.

The next sheet identifies all of the forms that are contained in the criminal history record file. Basically, the file is a manual file. It contains only forms that are used by the court, the material that appears on the rap sheet; there is no medical, psychological, intelligence or investigative data in the criminal history file.

Also, all of these records are initiated at the time of an arrest.

If you have a copy of the rap sheet, essentially, there is only identification data on the rap sheet. It reflects charges, dispositions where it appears, and the

sentence.

The rap sheet is initiated upon first arrest, and it is updated for the subsequent arrests.

Some of the problems that we are confronted with in maintaining these criminal history files: not all police departments fingerprint. They do not have to fingerprint. Basically, the law reads now that if they do fingerprint, then they are obligated to send it to the State Police. However, all of them do not fingerprint.

When they do fingerprint, they only fingerprint for certain types of offenses. They may fingerprint systematically for all felonies; no misdemeanors.

Also, an offender may be known to them before, then they do not fingerprint him. They know him, so why should anybody else have the information.

Basically, what we have now is somewhere in the neighborhood of 50 percent of all the people arrested for misdemeanors and felonies being fingerprinted and the information being submitted to the central repository. So you have a lot of missing information.

Essentially, if we don't get court dispositions -- and, again, 35 percent that was quoted before -- it is 35 percent of that 50 percent, which is a rather large distinction. Of the 50 percent who are fingerprinted, we only get 35 percent of the dispositions.

CHAIRMAN BERSON: We have been going for a couple of hours. Maybe this would be a good time to take a break.

We will come back at 1:00 and resume with your testimony, and finish up with the other people who are scheduled to testify.

We will resume at 1:00 with Mr. Riggione's testimony.

(Whereupon, at 12:00 noon, the hearing was adjourned to reconvene at 1:00 p.m. this same day.)



## AFTERNOON SESSION

(1:00 p.m.)

CHAIRMAN BERSON: The hour of 1:00 has arrived, and we will resume.

I assume the other members of the Committee will return soon.

Mr. Riggione, you were testifying when we broke for lunch; would you like to resume, please?

MR. RIGGIONE: I am on page 33 of the hand-out. This chart depicts the flow of information to the central repository. The existing flow of information, I should say.

What you see here is that the law enforcement agency still must provide fingerprints and court disposition, and State corrections provide information on status and disposition -- that would be admissions and releases there -- to the criminal history file.

You have no information going from the criminal history file for court dispositions, and you have no information being maintained in the criminal history file from the county corrections programs or agencies.

I have been repeating myself a good bit on the lack of court dispositions in the criminal history file, and the reason for that is clear. It is vital to the maintenance of these records.

We are talking about privacy, but one of the most

important considerations of the whole issue is simply the fact that these records have to be accurate, they have to reflect the court dispositions.

Obviously, there is a good bit of improvement to the manual file as it exists now. Essentially, what we have been talking about is a legislative package, which we are trying to develop now. We have been fooling around with drafting legislation on the issue of privacy; we are also looking at a couple of other bills that exist now in trying to determine how they might be revised to adequately meet some of the needs of the criminal history files.

Essentially, we want to provide for collection of court records for criminal histories, as well as statistics. Right now, Act 188, which was passed in 1970, suggested that information be made available through the Office of Criminal Justice Statistics and the Attorney General's office for statistical purposes.

Our contention is that we have the information, so why not use it for both files?

Also, we suggest revisions to Act 270, which was passed in 1927, for mandatory fingerprinting from all police departments for misdemeanors and felonies.

Essentially, the problem we have, again, is that all police departments do not have to fingerprint. It is suggested there that police departments in cities should; it

does not cover all local jurisdictions.

Also, it only suggests that if the fingerprint is taken, that fingerprint must be supplied to the State Police. It does not say that they must take a fingerprint.

Obviously, the other thing is to get the court dispositions in the criminal history file.

The chart on the next page depicts the present system very very generally. The only change you will see to this one, as opposed to one that was placed in the very very beginning -- in fact the first chart -- is, essentially, that the court docket transcript is being sent from the Office of Criminal Justice Statistics, once it processes or takes from it the information it needs, to the criminal history file.

So there are, to a limited degree now, some court dispositions being placed in the criminal history record.

Essentially, the only ones who are using it are the State Police -- I'm sorry; they are using it only on State Police arrests. Local police departments may or may not be using the OTN; we are not sure at this date.

The Offense Tracking Number is critical to this simply because the police have to have that number to make any sense out of the court dispositions. They can't go simply on names, because of the problem that the Lieutenant Governor pointed out earlier this morning, where you may have a common name.

A number of records could be used, potentially, to update a number of different files.

Some of the more significant achievements of the Task Force include the development of the privacy and security plan, to coordinate the requests for federal funding from both state and local agencies. Basically, what we do is review the grants to determine whether or not they are meeting at least some of the minimum standards that we have established some time ago for use in developing information systems at the local level.

We have also gotten two planning grants to support the efforts of the Task Force, as well as one for the Offender Based State Corrections Information System, and a nominal amount of money for the preparation of the privacy and security plan.

We have revised with the Court Administrator's Office the docket transcript. From the very outset, the Task Force staff, and I personally, was involved in the drafting and revising of the form to accommodate for the information that was necessary for statistics as well as the criminal history file; and also for the use of the Offense Tracking Number as part of that program.

Also, we have designed a standard commitment form, which has been implemented -- in fact, it has been implemented about a month now -- which is for use by state and county

corrections agencies.

We have also worked with the State Police on some very modest changes to the fingerprint card, also to accommodate the Offense Tracking Number.

The Task Force has also established that the State Identification Number would be used by each of the state agencies, which would, basically, discontinue -- or it should over a period of time -- discontinue the use of this multitude of numbers that I pointed out earlier.

They have also mandated the use of the Offense Tracking Number by these agencies as well.

We have identified some legislative needs, changes to 188 and also changes to 270, as I mentioned earlier.

Essentially, we are looking for fingerprinting from all police departments for misdemeanors and felonies. We want to provide for access and review on the part of the individual.

We want to provide security and privacy legislation which addresses the area of completeness and accuracy, audit and quality control, access to the review, limits on dissemination, establishing of a privacy and security council, and sanctions.

Some of the current projects the Task Force is involved in are implementation of the Privacy and Security Plan at the state level. As the Lieutenant Governor mentioned

earlier, we will be drafting in the very near future a series of Executive Orders and Management Directives necessary to implement the plan at the state level.

Also, we are in the process of preparing a five-year plan in terms of objectives for implementation of the OBTS System and the Criminal History program.

We are reviewing some of the offense codes that are maintained and used by information systems across the state, at both the state and county level; we would like to standardize these codes.

Right now, I would say we have in the neighborhood of somewhere around 12 or 15 different types of codes that we are using to classify offenses for data processing.

We are also reviewing some of the definitions that are used with regard to data elements, so that we are talking about the same thing when we talk about a court disposition.

We also have begun planning for the Offender Based State Corrections Information System; although we have not been able to spend of the money, we have begun some of our initial planning exercises.

We have begun discussion of an automated name index. We have begun to coordinate the systems development at the state and local level.

Essentially, some of the benefits to be established or obtained from the efforts that we have undertaken would be

increased criminal justice effectiveness; essentially to inform public and government officials on the nature of the crime problem, the magnitude and some of the needs of the criminal justice community; the major defects of prevention and deterrence programs, find out who commits crime in order to find out the focus of the crime prevention program; measure the work load effectiveness of the agencies of the criminal justice system individually as well as an integrated system; analyze factors contributing to the success and failure of probation, parole and other correctional alternatives for various kinds of offenders; and to provide the criminal justice agencies with some kind of comparative norm of performance so that they have got kind of an ideal measure with which to compare some of the standards, that they are meeting at the time, against; and to furnish statewide data for research.

One of the foremost concerns of the Task Force is to at least establish some kind of inter-agency cooperation. This is absolutely vital to everything that we have been talking about or we will be doing in the next couple of years.

I'm make just a couple of summary statements, and then I will be finished.

Despite the significant contributions made by the Task Force, little change has been made to the overall data needs of the criminal justice community of Pennsylvania. Much

more must be done.

The changes that were made or recommended were to improve what we have by working together in a coordinated effort to examine the problems, to make recommendations for improvements; developing procedures to improve the completeness and accuracy of the information; to develop standards for uniformity in the data collection and supporting methods; developing a mechanism that will enable us to monitor the status of individuals as they progress through the criminal justice system and accurately report the disposition of the transaction.

Our intent is to accurately collect information on crime and criminals, so that criminal justice agencies, planners, the legislators, and the decision-makers will all have the information to use in making informed decisions.

Much of what needs to be done, and how, will be addressed in the plans the Task Force staff is planning.

We hope to identify critical areas where policy must be generated and provide enough supporting documentation to enable the task force to make a well-informed decision.

This is why the Task Force requested money only to support a planning effort, to identify needs and identify how timely the information is necessary, and whether or not automated systems or manual systems are necessary to meet these needs.



We can then identify costs and assess the practicalities of the approach. Again, the Task Force has only gotten money to develop plans. No money has been applied for or received for implementation of any kind of systems.

Once Pennsylvania's needs are identified, federal money will be requested to meet these needs.

We at the State level do not have a massive criminal justice information system. On the contrary, we have several pools of data that can be related, but yet are not.

I earlier identified systems in the corrections area. They are systems that are separate, but yet could be related. There is no way of sharing the information.

This situation is not atypical at the state level. Even within one agency, there is no system. Essentially, it is a conglomeration of data in a computer, which are extracted from time to time for one report, or to meet one need or another.

An effort to assess the data needs of each individual component of the criminal justice system must be undertaken, and their needs must be related to the needs of each of the other components.

We must develop a method to meet the legitimate data needs of the criminal justice community in such a way as to facilitate the sharing of appropriate information.

This need not be done in one computer. These data

pools may continue to exist. However, they must be developed in such a way as to allow their data to take meaning whenever applied to other data bases.

The thrust of our effort has been to identify the data needs of the criminal justice community, and work with each agency in developing its system to meet their operational needs, while at the same time incorporating the legitimate needs of other agencies into their plan.

Two general observations: there is no criminal justice information system at the state level; and the data that are automated do not include medical, psychological, investigative or intelligence data, nor do we plan to automate them.

Thank you very much, Mr. Chairman.

CHAIRMAN BERSON: Thank you, Mr. Riggione.

Are there any questions?

Representative O'Donnel.

REPRESENTATIVE O'DONNEL: Mr. Riggione, in Philadelphia, there were a couple of contacts that I had with the criminal justice system in terms of information. The Philadelphia police, for a substantial amount of time, collected information on dangerous liberals and what-not, and they had a fairly extensive intelligence file. I don't know where they got the money for that kind of activity, but I found it very very offensive.

Another contact I had was the Philadelphia Police Department accumulates data by police districts. The city is divided into police districts. The districts are then divided into sectors, and a patrol car is assigned to a sector and fills out incident reports coded to that sector.

Now, they accumulate the data by sector, and that makes possible an analysis of the crimes and the trends that are going on in each individual sector, which roughly corresponds with a neighborhood.

That information is just not available to me or to any other private citizen. They won't give us that information. They don't want anybody looking over their shoulders.

Now, the common group of those two problems is that the definition of the criminal justice system community excludes the public.

It was felt by the decision-makers in the criminal justice community that they needed information on dangerous dissidents, and so they accumulated the information. It was felt that the public had no right to the sector data; so, therefore, they didn't.

What I am concerned about here is, in your discussion of the criminal justice community, what is the data need of the criminal justice community, the public?

In other words, you talk about the need of data for the planners; you talk about the need for data of the

operational types; but what is absent in the 38 pages is any discussion of what the data need of the public is.

Could you tell us how that fits into this system?

MR. RIGGIONE: That is why we have an Advisory Council, because one of the things that we are trying to do -- I am not saying we are going to be able to meet the needs of all the general public -- but part of our concern was: let's get that kind of information from the members of our Advisory Council. We have private citizens and groups represented there.

Once we have identified what it is that we think the criminal justice community needs, then what we would do is take that information and review it with our Advisory Council and see what suggestions they have.

But, essentially, again, all we are talking about is only information that will -- very basic information, simply that an arrest has occurred, the name of the individual, his race, age, and sex, and type of disposition that takes place; the charges and so on.

REPRESENTATIVE O'DONNELL: What I am asking is, at the conclusion of your process, what was determined to be the data need of the public?

MR. RIGGIONE: We have not taken our plan, because we have not completed it -- we have not reviewed it at all with our Advisory Council. I think that what we have been doing,

possibly, is discounting that need. We are assuming that what we are doing is representing the criminal justice community and, possibly, have not adequately met the needs of the general public.

REPRESENTATIVE O'DONNEL: So at this point, the plan does not contain any component to reflect the data need of the public, as opposed to the planners and operational types.

MR. RIGGIONE: The thing is, the point I do want to make is that the plan has not been completed. The plan that we did have is set in a very very basic direction; essentially, just identifying with LEAA that this is the direction it is going to take.

We have really been caught up in this privacy issue. Once we have identified what it is we feel it is we need in the plan, then we will take that and review it with our Advisory Council, just as we took our privacy and security plan and reviewed it with our Advisory Council.

REPRESENTATIVE O'DONNEL: I am sure you have picked it up anyway, but I want to put you on the record notice that some of the assumptions that underly this plan are not shared by some of the members of the legislature.

MR. RIGGIONE: Which plan?

REPRESENTATIVE O'DONNEL: The Pennsylvania Plan.

MR. RIGGIONE: For privacy?

we have gotten money from LEAA to do.

REPRESENTATIVE O'DONNEL: At this point, you haven't identified the need of the public.

MR. RIGGIONE: We haven't identified our own; that is the point. Part of why we have asked for LEAA funds is to try to identify the need.

We haven't been able to do that because we spent a great deal of time on the issue -- virtually all our time -- on the issue of privacy.

REPRESENTATIVE O'DONNEL: If you have a proposal that would gather data, presumably you have to have a need first. Right?

MR. RIGGIONE: All we have done is we have asked LEAA for money to identify this need for the criminal justice community, the data needs of the criminal justice community.

Once we have gotten that, we have identified the needs, then it would go to our Advisory Council to discuss that.

REPRESENTATIVE O'DONNEL: On the second question, the assumption: there appear to be in your discussion an underlying assumption that there is some value in centralization and uniformity per se. At one point, your tone suggested it was a bad idea -- you were saying, "Each agency only collects the information that that agency needs." That seems to be so obviously a satisfactory procedure that I was wondering about that assumption.

MR. RIGGIONE: Okay, there are a couple of questions. The first one I would like to address is the one with regard to kind of marching to the drum of LEAA's drum, and I think that is the reason why what we tried to do in one of these charts was to depict the fact that we before 1970 -- LEAA announced their CDS concept in 1972 -- two years before they announced their concept we were doing this already.

We had already established that we wanted to collect offender statistics, and we had four programs. We had a UCR program, which was voluntary, not mandatory. We had criminal histories since 1927. We also had what they called a statistical analysis center; we called it Office of Criminal Justice Statistics.

The statistics was established by law in 1970, two years previous to the LEAA program.

REPRESENTATIVE O'DONNELL: Are you turning this data over to LEAA?

MR. RIGGIONE: No. The only data that is being sent at any level of federal government is the uniform crime report data. I think the people here from LEAA can tell you that they have known me for quite a few years, and there is just no way in hell that LEAA is going to dictate to Pennsylvania. Somebody is going to cover some of these points a little later, but we have taken LEAA on, we have taken the search group on -- Search Group, Incorporated.

REPRESENTATIVE O'DONNEL: The fundamental question becomes: how do you determine what is the appropriate level for planning for different functions in the criminal justice system?

MR. RIGGIONE: Part of the thing is you really can't. A good bit of it is this: you have to have some information that is uniform.

We took about uniformity and we talk about standardization, but if you don't have any kind of standards at all, what you are going to have is each agency, even at the local level, collecting information that is completely out of whack -- there is no way of comparing it with what is happening in Philadelphia, for example, and what is happening in New York City.

REPRESENTATIVE O'DONNEL: Is it necessary to do that? That is what I am asking.

MR. RIGGIONE: If someone has a good program; let's say Pittsburgh has a good program that Philadelphia wants to follow. If you are counting apples and oranges, how do you then compare the effectiveness of that program against what it is you want to do over here?

REPRESENTATIVE O'DONNEL: Who do you anticipate to be the counter?

MR. RIGGIONE: It would depend upon the initiative. All we are trying to do at our level is say, "We can give you -- if you report information to us in this way, we can give it



back to you in that way, but when we do you have 67 other counties that are counting it in essentially the same way. So if you like what somebody else is doing over here --"

REPRESENTATIVE O'DONNEL: If who likes?

MR. RIGGIONE: County A. Any one of the counties.

REPRESENTATIVE O'DONNEL: So you are anticipating a clearing house for information. You don't anticipate making plans. You don't anticipate being the decider that Pittsburgh's plan would be awfully good in Philadelphia?

MR. RIGGIONE: No.

Depending upon the plan, I am not sure --

REPRESENTATIVE O'DONNEL: I am not sure either, because we are talking about all the criminal justice agencies, I think. I am not sure what "the plan" is.

MR. RIGGIONE: There are so many levels of planning, planning at the municipal level; you have planning at the county level, and you have got planning at the state level; and the thing is some counties are much more sophisticated than others in terms of planning, in terms of direction, and in terms of analysis.

Some of the counties -- and I think part of the reason why the planning is insufficient in some of the counties is simply because they don't have the expertise available to them to work with them, to show them the kinds of things that you can do with data.

Frankly, I think even the legislature is becoming more aware that you can use information to either argue or dispute a given point. I think you are aware that you can use the same data to argue both sides.

REPRESENTATIVE O'DONNEL: I have just a couple more questions. The guidelines that would be promulgated at some point, I am wondering how many boxes on the chart -- by the chart, I think I mean the one on page 1 of your outline -- how many of those boxes would be guided by your guidelines?

In other words, you have the CH and the OCJS collecting basically different kinds of information, but if the guidelines are promulgated, would it not be just these agencies, but also, for instance, the courts and the law enforcement people and what-not that would be bound by these guidelines?

MR. RIGGIONE: What guidelines?

REPRESENTATIVE O'DONNEL: Maybe I have a more fundamental confusion than I thought.

The function of this is to promulgate guidelines for the collection, the protection -- no?

MR. RIGGIONE: No.

REPRESENTATIVE O'DONNEL: Go ahead.

MR. RIGGIONE: Could we hold off and talk about that in a minute? I am going to go through the whole plan in much much more detail, the privacy plan.

REPRESENTATIVE O'DONNEL: Mine is a threshold question. Maybe that is a question for counsel. What is the legal significance of this document?

In other words, it is anticipated that there is legislation necessary to implement this, and the term "guideline" has been used here. I assume the word "guidelines" means that somebody is going to say this is the way "we" ought to do things.

What I want to know is: who is the "we" who will be doing things this way?

In other words, you seek uniformity in the forms. You are talking about the police departments in a little town using the same kind of form as the police department in Philadelphia. It appears to me that the "we" that we were talking about was a very very large number of agencies.

MR. BEASER: Mr. Chairman, with your permission, if I might, I think I might answer the question in my statement, which I think is two from now on the agenda, and then Joe is going to come back to go through the plan in detail; because that is a fundamental threshold question as to what exactly the plan deals with. I tried to cover it comprehensively in my statement.

If you wouldn't mind doing that --

REPRESENTATIVE O'DONNEL: Fine; no problem.

One final question: what prevents the inter-agency

cooperation now? Is there any kind of legal impediment? I forget the bureaus you mentioned, but I think you were talking about corrections and other agencies, and you pointed out that the two agencies are collecting the exact same data, and the implication was that it was an awful waste here; is there any legal impediment now, other than tax information -- is there any legal impediment to agencies saying, "Let's use RCP number 33 for all purposes"?

MR. RIGGIONE: There is no legal impediment. The only thing is that there is an internal conflict. Part of the problem is that if you do that kind of thing at a staff level, you make a recommendation, it goes to the policy maker and the decision is his.

If he says, "No, I don't like it, " that is it. That is as far as it goes.

But when you have an effort at the Task Force level where you are dealing with top policy members -- my point is -- I don't want to use an agency in particular. But if, for example, you are dealing with the Board of Probation and Parole, the Chairman, Fred Jacobs, decides, "I don't like what you guys are suggesting; it is an ad hoc effort." That is it; that is as far as it goes as far as the Board of Probation and Parole.

But when you have the Task Force, who Fred works for saying, "Look, this is what you are going to do," it is a lot different.

REPRESENTATIVE O'DONNEL: He works for the Task Force?

MR. RIGGIONE: He doesn't work for the Task Force; he works for the Governor.

REPRESENTATIVE O'DONNEL: So the level of decision will then change from the individual department up to a higher level of planning?

MR. RIGGIONE: Yes.

REPRESENTATIVE O'DONNEL: That is what I anticipated; okay. I understand.

I will wait for the following speakers, but I have to admit at this point my confusion, because at one and the same time you are telling me that the locus of the decision in these matters is not changed; and when I asked why they can't just straighten these things out between themselves, you say: because the locus of the decision is at the department level.

MR. RIGGIONE: What I am saying is that unless you have -- part of the problem is simply this: there are basically two things we have gone through in here. One of them has been history, one of them is what we are doing at the present time.

What I have said is that presently we are planning to define what is necessary. Presently we are planning to. We haven't done that.

Part of why we couldn't have done -- or forced this

issue of cooperation earlier -- and what I mean by "earlier" is back a year ago or two years ago -- was the fact that the planning efforts that were taking place at that time were all voluntary. All voluntary.

So now the Task Force -- our position is simply that all of these people work for the Governor. The Task Force is speaking for the Governor on these matters.

If the Task Force feels that something should be implemented -- we are not going to go ask them if they like it, because their operational people have already cleared it; what we are going to do is tell them, and I am talking about state level agencies now.

This is what has got to be done; this is the way it is going to be implemented. It is as simple as that.

REPRESENTATIVE O'DONNEL: I am sure somewhere we will be told in that regard. Thank you.

CHAIRMAN BERSON: Are there any other questions from anyone else?

Mr. Itkin.

REPRESENTATIVE ITKIN: I would just like to know what this might do for the retention of records at the local level, among local agencies, since they would submit this information now to some centralized agency for storage, whether they would then feel a lack of responsibility for maintenance of their own record files.

MR. RIGGIONE: I don't think so. We have responded to any time when someone has asked us to delete or expunge information, even from our statistical files; we have responded.

REPRESENTATIVE ITKIN: Since there would be quick access if there is a computerized type of system, what would be the need for a local agency to retain large amounts of paper involving initial manual transcriptions?

MR. RIGGIONE: I think the issue there might be a legal one. Would they accept as evidence, for example, the facts that would be revealed from a computer, information from a computer, or verify that information as evidence in court; or would they only rely on the original docket itself?

REPRESENTATIVE ITKIN: Maybe counsel can answer that.

MR. BEASER: We are not proposing at the state level any sort of a computerized system. The system as it presently works is as follows: there is a manual file at Major Kwiatek level; there is presently a manual file at the State Police for the person's record.

When someone is arrested, fingerprint cards are sent to the State Police and either the present file is added to or a new file is created. But it is a manual file.

When the request comes in when somebody is arrested again, or there is a need by law enforcement agencies for a fingerprint, they send in the fingerprints -- they send a request to the State Police. The State Police will pull the

fingerprints and send out a manually prepared rap sheet.

The problem with computers in your question concerning whether it is good evidence or not is not relevant at the State level; it may be in Philadelphia where they are going for local records in a computer system.

But at the state level, we are still using the manually prepared records.

REPRESENTATIVE ITKIN: I am somewhat interested in knowing the advantages of the manual system to a computer system. What is the bugaboo about a computer system that a manual system has preference?

MR. BEASER: It is not that. The present existing system is a manual system; there are a couple of reasons why the Task Force decided not to go computerized. One is simply cost. I think Major Kwiatek can go into that in detail.

The second one is in terms of time. What you have got on the computer is certainly much faster. The question that you have to deal with whenever you are deciding whether to go to a computer system is to ask yourself if the turnaround time in getting information, the second or millisecond or whatever it is, is worth the cost to invest in the system.

The State Police have told us, and the Task Force has agreed, that "no, it isn't." They can turn around with a manually prepared rap sheet in sufficient enough time that it does not justify the cost of going through the computer.



REPRESENTATIVE ITKIN: Have you done such analysis? Is there a report out on the cost-benefit ratio of one system versus the other?

MR. BEASER: I don't know if we have done it.

I don't think we have done a formal report.

REPRESENTATIVE ITKIN: The reason I ask is that it seems that other businesses that are involved in the collection of data, when they are dealing with significant amounts of data, have seemed to come to the other conclusion. Look at our financial institutions. They find it much more convenient and, obviously, at a saving of cost to them to use the computer system with the turnaround time for retrieval.

MR. RIGGIONE: That would be part of what we would be doing in our planning. The whole problem is -- we have said we want to do this plan and do these kinds of things, and provide the Task Force with that kind of information so they could make a decision.

But we haven't had time to do all the things we were supposed to be doing in terms of that plan.

REPRESENTATIVE ITKIN: So, in other words, the rejection of a computer system rather than a manual one was not made on a cost analysis; at least not in detail.

MR. RIGGIONE: But the Lieutenant Governor did say that the decision at that time was made, but he did not dismiss out of hand the fact that there would not ever be a

information system. What he did say was that right now, temporarily, that decision has been made.

REPRESENTATIVE ITKIN: The interpretation I had was that there was something mischievous about a computer system. I had a feeling of more security and confidentiality in the manual system, which I can't comprehend. I don't see why one system would be superior to the other in that regard if the proper safeguards were taken.

In fact, perhaps, in the computer system there would be much more control than to have thousands of file cabinets with access by many many people.

MR. RIGGIONE: The only problem you may run into there is the fact the records right now, the records that we are dealing with in the rap sheets, historical records -- they are grossly inaccurate and incomplete.

If you started automated that information, then you would have those gross errors also in the machine. So possibly five or six or seven years from now, the question ought to be raised again: do we want to automate this information? This would be after the information is complete and accurate.

REPRESENTATIVE ITKIN: Maybe this is not the appropriate time. If it isn't and others will be speaking later on today on this subject, tell me.

This is about the uniformity, the amassing of all

the various types of data so that any one agency can have access to data which is relevant to their activities. In view of that, they would, from what I read and what I hear, also have access to information beyond what they need, just because it is available and in a uniform presentation.

MR. RIGGIONE: No, we constantly talk about the legitimate data needs. If, for example, the State Police want information on sentencing patterns of judges, if we did automate, there is no way in heck that they would have access to that information.

Why would they need it; that would be the question. We are consistently reminding ourselves that we are talking about the legitimate need of the criminal justice community.

REPRESENTATIVE ITKIN: Let me see if I understand that. This data is going to be acquired by one centralized agency on the basis of what they think the needs of all the agencies are, or the basic data that all the agencies think they may need now and in the future.

Then, the determination as to what they will receive is left up to some committee to make that determination as to what the data bank be used for and how it will be integrated.

In other words, the programming: if an agency wants a trend of some kind of statistics, obviously, the basic data is available, and certain types of arithmetic operations may have to be performed on that data in order to put it in the

form available for that agency to use it appropriately.

You are not going to give them the basic data. You are going to write a program or do some type of function on the basis of this, and then provide them information computed on that basis?

MR. RIGGIONE: Feasibly, yes.

But we are saying each agency maintains that information that they need for their own internal operations, so there is no need for them to go to somebody else for their own information.

Now, the statistical analysis center would have available to it information from each of these agencies, so if the Bureau of Corrections, for example, wanted to do something with the Board of Probation and Parole's data, it could conceivably call the statistical analysis center, tell them what it is they wanted, and either the analysis center would strip off the information that they needed and give it to their people to do an analysis, or the analysis center would do it themselves.

Part of their function is to do special reports, technical reports.

REPRESENTATIVE ITKIN: So there will be a need to know prior to being granted the information.

MR. RIGGIONE: Yes. Also, the statistical files will not have names to them, because we are talking about the

State Identification Number. You will have the number. No one need know who that individual is, so long as you are assured that that number is unique to this specific individual.

REPRESENTATIVE ITKIN: But the central data information system will contain the individual's name.

MR. RIGGIONE: We have not said anything about a central data system. We are still talking about the manual criminal history file.

REPRESENTATIVE ITKIN: Whether it is the manual or computerized, there will be the central record.

MR. RIGGIONE: But the difference is that unless that information is automated, it doesn't lend itself to any kind of analysis. Physically, you would have to go and pull the records.

If you wanted to do a study on recidivism of 100 people, you would have to go to that file, pull out 100 names and start tallying.

REPRESENTATIVE ITKIN: Would that be the function of such a central agency. Upon a request being made by some agency with a need to know about some data, that elements of this centralized agency would then go ahead and pull out the appropriate pieces of paper relevant to that statistic, and then do a compendium or do an analysis upon it, and provide them with this information?

MR. BEASER: With your permission, if I could, Mr.

Chairman, I think I can answer your question very succinctly.

First of all, at the present time, there is some confusion in terms of intent. We are talking about data that has been collected for the last 50 years, data on arrests, data on dispositions through the court system, presently existing in the central repository at the State Police and at a number of local localities around, also.

At present, the legislature has set down no guidelines -- nothing with regard to who is entitled to get access and under what conditions.

Mr. Garrity from the Justice Department and Mr. Riggione, I believe, are going to be discussing what the law is now in terms of who gets access to what. But you will see that though there is a number of statutes, there is no real guideline under which conditions people get access to what information.

Presently, a lot of it is at the discretion of the keeper of that data, so that the simple answer to your question is: it depends on who is running the show, in terms of who gets access to what and when.

CHAIRMAN BERSON: It is more than who is running the show. One of the purposes of this hearing is to make an informed determination by the legislature as to what the components of that system ought to be and who is going to have access to this.

MR. RIGGIONE: Yes, sir; precisely. As I understand, why you are here is those sorts of decisions, who gets access to what, under what circumstances, and even what ought to be collected; these are basic legislative decisions.

We have a system that is ongoing now that collects data on criminal history; criminal history record information, to use the formal term.

How that data is to be manipulated, how that data is to be distributed is a question that really is a void. There is a hole in the law in terms of what you want to do with it. It is basically your decision, as a legislature, as to what you want to do with it; a policy decision.

CHAIRMAN BERSON: Mr. Kisller, did you have a question?

REPRESENTATIVE KISLLER: I have a short question. What provision, if any, is there to put criminal information in the central state file on juveniles; that is to say, the information to which I refer is that which is presently kept under wraps by the county courts, and that is not now available to the press or the public by any means? Is there some provision to get this information?

MR. RIGGIONE: Major Kwiatek may be able to address that more specifically, but my understanding of the situation is that years ago they made a decision not to maintain information on juveniles.

REPRESENTATIVE KISLLER: Are you people aware that juveniles are killing people also?

MR. RIGGIONE: Yes.

REPRESENTATIVE KISLLER: Yet, in the face of that, you are not planning to do anything about putting that kind of information in the file?

MR. RIGGIONE: For a point of clarification, if the juvenile is incarcerated or processed as an adult in the court, tried in the court, then they do have prints on those people. But if a juvenile is processed only as a juvenile, there is no record kept.

MR. BEASER: I think I can answer that question for you, sir. The Juvenile Act specifically provides that "Law enforcement records and files concerning a child shall be kept separate from the records and files of arrests of adults.

REPRESENTATIVE KISLLER: What is a juvenile; under 18?

MR. BEASER: Yes, this is the Juvenile Act of 1972. Mr. Garrity from the Justice Department will be dealing with this in just a few minutes, but that is a simple answer to your question. The statute provides for law enforcement records of juveniles to be kept separate.

REPRESENTATIVE KISLLER: I have a final question. In the event, in your judgment, that the Juvenile Act is deficient in that regard, would you have recommendations to



make to the General Assembly?

MR. BEASER: I think, sir, that the basic policy decision, the basic one that goes not just to maintaining of records but one that is being questioned now throughout the country, is whether the juvenile system is working.

The question is: we have now, for the last number of years, treated juveniles in a separate category. It was a very great change when it happened.

My own feeling -- and it is just a judgment -- is that the system has a lot of problems, but the basic idea makes sense. The question is: is it working now and is it workable?

That, frankly, is a legislative decision. In terms of planning for the state plan on privacy and security, how we hold the information -- we are bound by the statute passed by the General Assembly of the Commonwealth which says: thou shalt not keep records of children together with records of adults.

We do have a problem that way. A number of the rap sheets that I will discuss in my presentation, when the rap sheets come through from many years ago, despite the Juvenile Law, there are rap sheets on a number of juvenile offenses from 20 and 30 years ago before this law was passed, so there is a real policy divergence.

This gets into the whole area of: are rap sheets

complete; are criminal history records accurate; and the answer to that, as the Lieutenant Governor and Mr. Riggione have said today, is no.

REPRESENTATIVE KISLLER: Notwithstanding what the juvenile law is, when we are spending all this money and doing all of this study, and you find indicators of shortcomings in the juvenile law, it would seem to me only common logic to send that up to the General Assembly, which, in the final analysis, is the policy making body.

I would hope that the agency, because it thought, itself, that it was not adequate, would not hesitate to point out to the General Assembly that here is something that you ought to examine.

MR. BEASER: You say this: the Governor certainly would not hesitate, if that were the case. The problem is that that decision has not been made. I am not at all sure that the section of the Juvenile Act of 1972 is not presently still a valid policy judgment. It certainly is possible that there are -- there has been a lot of discussion both ways as to whether the Juvenile Act, as we have it now in effect, is working and operative.

But I think that really that is a problem that could lend itself and blend into this area. But until we get the whole subject of adult statistics corrected, and make them accurate, and have a system for that, if you then decide

that you at the General Assembly want to have juvenile records as part of the system of adult record-keeping, so a juvenile record will follow a person throughout his life, at that point, once we have the adult system set up, it is easy just to begin to move them in.

At present, the policy decision of the General Assembly is that you do not want that to be the case.

REPRESENTATIVE KISLLER: Finally, it would be my judgment that the urgency of this thing is such that it ought to be done simultaneously.

Thank you.

CHAIRMAN BERSON: Representative Scirica.

REPRESENTATIVE SCIRICA: I have got a few questions that I will save for later, but I have an information problem first, Joe. Maybe you can help me out here.

The statute on which LEAA relies to set forth the regulations which started this whole thing -- not the whole thing; the latest chapter of it -- talks about criminal history record information. I believe your Task Force proposal deals with the question of criminal history record information.

But it makes no distinction between non-conviction data and conviction data. Now, the LEAA regs really don't speak to conviction data; they leave it up to the states, and you do your proposal. You recommend that we impose some restriction on the dissemination of, at least what I would

define as, conviction data; as you would define criminal history information.

The first question is: what is the distinction between non-conviction data and conviction data? Is it merely the rap sheet that has the disposition on it; does that make it conviction data?

MR. RIGGIONE: The finding of guilt is the difference.

REPRESENTATIVE SCIRICA: So dealing in the context of the rap sheet, non-conviction data is everything that does not include the final disposition; and if it does include the final disposition then it would be called conviction data; is that right?

MR. RIGGIONE: Please say that again.

REPRESENTATIVE SCIRICA: The reason why I am saying this is because I am confused by the LEAA regulations and the distinction that they make between conviction data and non-conviction data. What I am asking you is: is non-conviction data solely that information in a rap sheet that includes arrest and so forth and so on, up to the point of disposition, but has no dispositional record; but where it crosses that point and includes the fact that a person was found guilty or acquitted, or found guilty and sentenced for two to five years, then it becomes conviction data. Is that your understanding?

MR. RIGGIONE: I would go one step beyond that. Non-conviction does not include a record of an arrest or the disposition. A non-conviction, in my opinion, is simply a finding of not guilty.

REPRESENTATIVE SCIRICA: I see. That confuses me even more.

Am I right in saying that while the LEAA regulations require the state to implement a proposal that you prepared before December 1977, that really only speaks to the question of non-conviction data, restrictions on dissemination of non-conviction data?

Your proposal speaks to the dissemination of conviction data.

MR. RIGGIONE: And non-conviction data.

MR. BEASER: Everything has to be accurate and complete. That is a very very important element that we don't have now in terms of dissemination. It is my understanding -- Joe, correct me if I am wrong -- that the revised LEAA regulations give the states the opportunity as to what they can do, who they can disseminate conviction data to.

Non-conviction data still must be maintained accurately and completely, and not disseminated except to criminal justice agencies.

REPRESENTATIVE SCIRICA: We would be in compliance with the LEAA regs if we only passed a statute that restricted

the dissemination of non-conviction data. If we said nothing at all about the dissemination of conviction data, we would not be in violation of the LEAA regulations; is that correct?

MR. RIGGIONE: That is correct.

REPRESENTATIVE SCIRICA: There are people from LEAA here today?

MR. RIGGIONE: Yes.

REPRESENTATIVE SCIRICA: Is Joe's definition of the distinction between conviction and non-conviction data correct?

LEAA REPRESENTATIVE: Conviction data includes the record of the finding of guilt or them being convicted. Non-conviction data would be anything else, where either the charge was dropped or he was found innocent, or at this time the disposition is not known, it isn't shown in the data.

REPRESENTATIVE SCIRICA: Acquittal or dropped charges would be in the classification of non-conviction.

MR. RIGGIONE: Yes.

REPRESENTATIVE SCIRICA: I have nothing further.  
Thank you.

CHAIRMAN BERSON: Are there any further questions?

REPRESENTATIVE AMOS HUTCHINSON: What if the information was never made; the fellow was taken to a Magistrate's office, where it is in his office. Would that information be kept?

A young fellow was taken to the Magistrate's office, and the information was never made; would that information be kept?

MR. RIGGIONE: Only if the individual was fingerprinted, and that fingerprint was sent to the State Police. If an arrest was made, and that information was not recorded in the State Police file, there would be no way that we could reflect that.

The problem is that right now they do not have to report that. If they don't fingerprint somebody, they don't have to report it to the State Police.

That is what we want; uniform fingerprinting, so that everyone that is arrested for felonies and misdemeanors must be fingerprinted.

REPRESENTATIVE AMOS HUTCHINSON: What if they found that they didn't have enough on them to make an information, and then years later they use it against the person?

MR. RIGGIONE: That is part of the issue of privacy that we will be going into in a little while; as to when that information is disseminated, who gets it.

That is a topic we will be getting into this afternoon.

MR. BEASER: Mr. Chairman, if I might. The present system, the way things work in practice, is that a person could be picked up, fingerprinted; the fingerprints could

be sent to State Police. The person later could be brought before the District Justice of the Peace and charges thrown out, and there is just a bad arrest.

It was the wrong person, misidentification, whatever; and nothing further was reported to the State Police because no one has the requirement now, under the law, to report. The person could have a record showing the committing agency, the name of the charge, the date of the charge, and no disposition for the rest of that person's life, and there was nothing, up until this present time, that we did the plan, a person could do to get access to see if he or she had a record.

REPRESENTATIVE AMOS HUTCHINSON: I know a young boy that happened to, and he went to the Army and came back and went to the State Police and applied for a job, and they said he had never been arrested.

He went to Uniontown, his picture was in the Greensberg paper; somebody reported it and said, "How can you have a thief on the State Police?"

He was fired for not saying that he was arrested.

Now, that haunted him, because the next job he took he had to say that he was fired from the State Police, because he said he signed a release. He wasn't actually fired; he signed a resignation. Then he lost another job after two years.



This is the part that bothers me. Actually, if you don't go through the making of the information, I don't see how that can be in the arrest record.

Would this protect that boy?

MR. BEASER: It would not protect him certainly, if he were not to tell the truth on an employment application.

REPRESENTATIVE AMOS HUTCHINSON: Was he arrested or wasn't he? You were talking about being fingerprinted and never going through the due process.

MR. BEASER: On the State application form for employment -- I cannot speak for the State Police because they have different standards -- but on the general State employment application -- it was changed at the beginning of this administration -- it now reads, "Were you ever convicted?"

I feel very strongly in terms of the presumption of innocence in this case. If you are arrested, but not convicted, you should not have that coming back and haunting you later in life.

To that extent, I agree with you. The problem is that at present, the way we keep the records, you're not sure that even the fact that you were later exonerated at a trial or at the JP level is ever reflected on your rap sheet.

We are talking to some extent about different things, but the technical question of arrest -- and an arrest is made when somebody is taken into custody and an arrest is recorded.

I think I am correct; if an arrest is recorded and the fingerprints are taken and sent to the State Police, the fact that somebody has been arrested, that he has been physically restrained -- if it was a false and not justified situation, then he could sue for false arrest -- that that person might have been arrested -- in fact, if he wasn't fingerprinted, the State Police would never know; they would have no way of knowing about it.

We have a discretionary, as Mr. Riggione has said, fingerprinting established. The question is: do you want it mandatory for someone who is arrested for a felony or misdemeanor? We have no reporting statute at all, so there is no requirement that that be reported.

In fact, 30 percent of the cases that are fingerprinted, we don't get disposition of. We really do have a record-keeping problem. That is one of the things we need to do something about.

REPRESENTATIVE AMOS HUTCHINSON: We already keep too many records.

MR. BEASER: On the other hand, the records that we do keep, we want to make sure that they are accurate.

REPRESENTATIVE KISTLER: In pursuit of that question, I would like to set for you an example. There was a young fellow apprehended one night on the way home about 2:00 in the morning, a high school student. He took a short-cut

through the yard. The police were looking for someone else and they grabbed this kid and took him down to the police station and fingerprinted him, and put his fingerprint records up in the file. No charges were brought in the course of events, and today he is one of the top marine biologists.

He had to answer some questions that pertained to some super-secret business of the government or the FBI, and the Secret Service looked into his record. This problem came up; they found out. He mentioned this to them, that there was such a record although there never was a case brought against him. This was all dropped, but it was over there in the State Police files. That's where it was.

What provision is there to expunge this sort of thing? It doesn't seem right that where no charge was ever brought and nothing other than maybe an over-zealous policeman, who had an IQ of not too high had got him fingerprinted at that time, and there that thing stands. There was no prosecution or anything else.

Are you going to do anything about that kind of thing?

MR. BEASER: Under the present law, a Court of Common Pleas in the appropriate jurisdiction has the ability to order the expungement of records. I know, of my experience in Philadelphia, it happens all the time. The

State Police have informed me that the FBI will honor such an expungement order, and, of course, our plan under the Security and Privacy Plan, we would, in a sense, have to honor such a request.

At present there is no expungement right. The only way if the State is willing to expunge is through an order of the Court. So at present, the person that you mentioned could have his record expunged if a Court of Common Pleas in the appropriate jurisdiction would so order.

REPRESENTATIVE KISTLER: This has been done, but I have no assurance by the Courts -- I have no assurance that it happened over there. By "over there," I mean the State Police.

MR. BEASER: One of the things that the plan that we are talking about, the plan for security and privacy, calls for, that we will get into in a little while, is that a record will be expunged in any case where a police agency is going to drop charges. This would take care of the case that you are talking about.

That, however, cannot go into effect until legislation is passed implementing it.

REPRESENTATIVE KISTLER: There is some plan here to put that into practice?

MR. BEASER: Yes, sir; the plan that we are discussing today also has a provision in the case that you mentioned

before where it would require expungement of the record.

REPRESENTATIVE KISTLER: Do you recommend that to the General Assembly?

MR. BEASER: Yes, sir; we do.

CHAIRMAN BERSON: Mr. Riggione, would you step aside for a while and let us move on; but don't leave because I believe we are going to need you back later to supplement Mr. Beaser's testimony.

The next witness is Michael Garrity, Deputy Attorney General in the Department of Justice.

Mr. Garrity.

You may proceed whenever you are ready, Mr. Garrity.

MR. GARRITY: Thank you, Mr. Chairman.

The Attorney General has asked me to represent him here today. He is performing his constitutional duty with the Board of Pardons.

I would like to thank you for giving me this opportunity to testify. I would like to talk briefly about currently existing Pennsylvania laws on the criminal justice issue with which this hearing is concerned.

Most of these statutes have been mentioned earlier today in passing; and, therefore, my presentation will be rather brief on some of these statutes.

The first one I would like to deal with is found at 71 Purdon's, Section 250. Do all of you have the packet

of statutes that I prepared?

This is a section of the Administrative Code that sets forth the duties of the Pennsylvania State Police. Briefly, the ones we are concerned with here are (b) to assist the Governor with law enforcement functions, (c) to assist other agencies of the government with law enforcement functions, (d) to cooperate with counties and municipalities in the detection of crime and in the apprehension of criminals, and (f) to collect and classify and keep information available, that type of information useful for the detection of crime and for the identification and apprehension of criminals.

The next statute is also found in the Administrative Code; actually, it is two statutes. Section 307-8 and 307-9; these deal with the Attorney General's duties in the collection of criminal justice information.

Section 307-8 requires the Attorney General to collect the data, to interpret data, and to annually present a report to the Governor and the Legislature on criminal statistics.

Section 307-9 states that it is the duty of nearly every public official in the state -- all these are law-enforcement officials -- to collect data and maintain records as the Attorney General directs, and to report to the Attorney General as he directs.

I believe under the reorganization plan -- this is the next statute, 71 Purdon's Section 755-7, the collection of police department data was transferred to the Pennsylvania State Police and was made their responsibility rather than the Attorney General's.

As was mentioned earlier today, there is a problem with this statute. There are no specific sanctions for failure to report data; and the experience, I am told, has been that some agencies have failed to report, others report sporadically, and it has hampered the Attorney General and the State Police in planning and the coordination of law enforcement efforts.

The next statute is found at 17 Purdon's, Section 416. This section states that the prothonotary and clerks of court in each county must prepare an annual report and submit it to the Justice Department. In these reports, they are basically to set forth all the criminal business that the courts conducted in the year; grand jury actions, number of trials and so on.

This statute, by the way, dates from 1847.

A companion statute to it is that of 61 Purdon's, Section 31. This provision states that it is the duty of all persons having responsibilities for jails and correctional institutions at the state and local levels to submit an annual report to the Justice Department. Covered within this

statute are a wide range of topics such as conditions of the jail, number of prisoners housed in there, number of prisoners released during the year, the convictions for which they are currently imprisoned and so on and so forth.

Next we have perhaps the most important act of the legislature for our purposes here, and that is Act 270 of 1927, which is found at 19 Purdon's, Sections 1401 through 1407. Section 1401 states that photographs and fingerprints of all persons convicted of crime are to be collected by the Pennsylvania State Police.

Section 1402 requires correctional institutions and jails to furnish fingerprint information and photographs to the Pennsylvania State Police.

Section 1403 gives the authority to Pennsylvania State Police, police officers throughout the Commonwealth, jail officials and others to take fingerprints and photographs of any person charged with crime, any fugitive, or any habitual criminal.

It further states that it is the duty of chiefs of police bureaus in cities to furnish such information daily to the Pennsylvania State Police.

Section 1404 requires the Pennsylvania State Police to cooperate with all other agencies of government, United States and state agencies, and to furnish any information that it has, that the State Police has, to courts, district



attorneys and police officials.

Section 1405 basically provides district attorneys with authority to take fingerprints and to hire fingerprint experts.

Section 1406, finally, has criminal penalties for improper destruction of records and improper use.

There are several problems with this statute in terms of the Pennsylvania Plan for Privacy and Security, and most of these problems were brought out quite well this morning by Mr. Riggione and the Lieutenant Governor.

I would just like to briefly mention them here.

There are no mandatory fingerprinting provisions in Act 270.

Incomplete disposition reporting is the result of Act 270.

Access and review by an individual to check his records for accuracy is not provided by Act 270. In fact, Act 270 does not make it clear at all who is entitled to receive Pennsylvania State Police records.

It does say that courts, district attorneys and police officials shall be furnished with such information, but, on the other hand, it leaves open the question of who else might get these records.

Since 1956 -- and Major Kwiatek can correct me if I am wrong -- the State Police have been operating on the basis of an informal Attorney General's opinion from then Deputy Attorney General Frank Lawlor, who I believe now is

{ in the Auditor General's office, which stated that the State Police could only furnish records to courts, district attorneys, and police officials.

I have not included one set of statutes within the packet, but I would like to mention it briefly now. We have several statutes -- upwards of 40 or 50 -- which deal with licensing provisions, barbers, beauticians and the like. Many of these statutes condition the granting of a license to the lack of a conviction of a crime of moral turpitude, or many say that you must have good moral character.

I believe in some instances, the State Police have been assisting the licensing boards in the application process and the revocation process, but, here again, Act 270 is rather vague, and it does not provide the proper guidelines which the Plan suggests should be implemented by the legislature as to exactly who can and who cannot get the criminal history record information maintained by the State Police.

One other problem with Act 270 is that it does not address itself to the important issue of secondary dissemination. In other words, once the State Police provide their information to an agency, be it court or district attorney or police official, Act 270 does not then state what the agency that has received the information can do with it; whether they can tack it to a telephone pole or provide it to any member of the public or what.

I believe the Plan addresses this issue in detail.

I would like to go on to the so-called right to know law, found at 65 Purdon's, Section 66.1 to 66.4.

We have concluded informally -- and we have been operating on this assumption -- that the State Police rap sheet is not a public record as defined in the right to know law, for the reason it is not an account, voucher or contract, obviously, nor is it a minute, order or decision fixing personal or property rights or obligations.

We also feel it falls within the exception relating to documents which might operate to the prejudice or impairment of a person's reputation or personal security.

Now, the definition in the next to the last line of Section 2 and 66.1 excepts from the definition the record of any conviction for any criminal act.

I am quite certain that this refers to original court dockets and court records, rather than secondary compilations such as a rap sheet. Therefore, we have concluded that the rap sheet is not a public record.

REPRESENTATIVE SCIRICA: What if the rap sheet is made part of the court record, as it is in Philadelphia?

MR. GARRITY: If the rap sheet is made part of it?

REPRESENTATIVE SCIRICA: Would be fall into the exception?

MR. GARRITY: Under the right to know law, the fact

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that something is a public record does not mean that it must be shielded from public view; it only means that at the agency's discretion it can be shielded

So, this is not a problem in terms of dissemination of the rap sheet.

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Finally, there is the last statute I want to talk about is the part of the Juvenile Act also referred to earlier; Title 11, Purdon's, Section 50-334 and 50-335. As was mentioned earlier, these provide for the separation of juvenile and adult records.

It also specifically limits who can receive -- or rather who can use juvenile records; for example, courts in the proceedings, parties to the proceedings, institutions charged with the care of the juvenile, and certain law enforcement officials.

That concludes my presentation. I would be happy to take any questions.

I would also like to say at this time that the Justice Department will be more than willing to cooperate with the legislature in addressing these issues. I know that a consultant has been hired by the Task Force to prepare some draft legislation, but I would like to emphasize that it is the Attorney General's view that the Justice Department would like to become involved and work closely with the legislature on this matter.

Thank you, Mr. Chairman.

CHAIRMAN BERSON: Thank you very much, Mr. Garrity.  
Representative Kistler.

REPRESENTATIVE KISTLER: Under Section 1402, I note that the authorities and penal institution shall furnish

information, and I noticed that the statute provides that information shall be furnished to Pennsylvania State Police upon request. That is the fingerprints, photographs, and description of the person obtained in the jailhouse or workhouse by the persons in charge of that penal institution.

Does that mean that under this system that you are talking about that they could have information in the penal institution that would not necessarily be requested by the State Police, and, therefore, would not be in a central file? Is that correct?

MR. GARRITY: That is possible. I believe, however, that it has not been a problem in reporting information from correctional institutions to the State Police. The problem has been with getting information from local police departments because of the provisions of Section 1403.

But I think there is a pretty close working relationship in terms of criminal history record information between the Bureau of Corrections and the State Police.

REPRESENTATIVE KISTLER: Unless something is done to negate the necessity of keeping records over there, wouldn't it constitute a duplication of record? Then it seems to me it ought to be eliminated at some point or after some years.

MR. GARRITY: I can't really speak for the Bureau of Corrections. I am not sure how they process what comes

into an institution, whether they fingerprint at that point, or whether they have a set of fingerprints available that have been taken, perhaps, at the initial state of the criminal prosecution.

I really don't know if they have a set of files separate over there with fingerprints.

REPRESENTATIVE KISTLER: Doesn't it just seem to you that, irrespective of what their policy is, what you are trying to work toward is an overall policy where the various sub-agencies of the government should not be making policy; the files should be complete and they should all be under the umbrella.

MR. GARRITY: I think that is a good description of what the Task Force is working toward.

REPRESENTATIVE KISTLER: Do you think at the ultimate that would be handled?

MR. GARRITY: That is in the plan. Of course, it would require the legislative action. I think it is a goal, to eliminate some of these duplications of effort.

REPRESENTATIVE KISTLER: Thank you.

CHAIRMAN BERSON: Does anyone else have any questions?

Representative Scirica.

REPRESENTATIVE SCIRICA: I take it, Mr. Garrity, your position is that there is nothing in the present law

that would restrict dissemination or access to rap sheets that are presently held by the Pennsylvania State Police despite the informal Attorney General's opinion.

MR. GARRITY: There is no specific statute that sets forth in detail who can and who cannot receive it; yes, I will agree with that.

REPRESENTATIVE SCIRICA: I think you are right on that.

In reference to the right to know law and the definition of "public record," is it your position that a summary or a compilation of an order or a decision that fixes personal or property rights is not included within that term, "public record"?

MR. BEASER: If I may; it is my understanding that -- we don't have that part of the statute here -- but having litigated with the right to know act, I believe -- we have it.

"Agency is any department, board or commission of the executive branch of the Commonwealth, any political subdivision of the Commonwealth, the Pennsylvania Turnpike Commission, or any state or municipal authority or similar organization" et cetera, et cetera.

The legislative and executive branches are exempted from the right to know law. That causes some dislocation sometimes, but it really, in terms of a judicial order, there



might be some problems, considering the power of the Supreme Court to set procedural rules for the courts to handle their own business, if the legislature were to even put them under that. I am not talking about that.

The present record-keeping of the courts is open to the public, but it is not covered by the right to know law, by the definition contained in the right to know law.

MR. GARRITY: I might also add that the right to know law, itself, is complicated and confusing, and it has created a lot of problems, and it really does not help us very much with criminal justice.

CHAIRMAN BERSON: Are there any further questions?  
Representative Itkin.

REPRESENTATIVE ITKIN: Perhaps you can answer this question. In matters in which expungement has been ordered, what physically happens to the records that are expunged?

MR. GARRITY: It appears to me that the court maintains those records. The court maintains the records at the physical location of the court. Each individual county courthouse would be responsible for finding some place or some way to deal with those records.

REPRESENTATIVE ITKIN: Are they just removed from the central files? Suppose they are in a file for housing a given set of criminal records, and an order of the court says to expunge such records. What does that physically mean

to the records that have been ordered to be expunged?

MR. BEASER: I think Major Kwiatek, who I believe is the next witness, will tell you exactly how that happens. The State Police are the central repository. They are the ones who physically destroy the record; he can describe that.

REPRESENTATIVE ITKIN: That is the records at the State Police, but what about local ones and the courts?

MR. GARRITY: I am personally not able to say how each local court segregates its records once they are expunged. I would imagine the procedure might differ physically from one court to another.

REPRESENTATIVE ITKIN: So there is no uniformity, so each court, each jurisdiction, is required a certain procedure; it uses its own interpretation to carry that out, is that correct?

MR. GARRITY: That is possible.

CHAIRMAN BERSON: Tomorrow we are having witnesses from the City of Harrisburg, the Director of Public Safety, a former President Judge in Philadelphia, and the Director of the Philadelphia Justice Information System; I think maybe they can shed some light on how the expungement order is handled at the local level.

REPRESENTATIVE ITKIN: I usually notice, also, sometimes it says "expunged and destroyed," which therefore makes it quite clear what is to be done with that expunged

record.

MR. GARRITY: I have found also in working in this area that there are several different ways to interpret that term "expungement" and "sealing" and "destruction." There are many people with different views on the subject.

The Lieutenant Governor mentioned that this morning.

CHAIRMAN BERSON: Are there any further questions?

(No response.)

CHAIRMAN BERSON: Thank you, Mr. Garrity.

MR. GARRITY: Thank you.

CHAIRMAN BERSON: Major Albert Kwiatek, Pennsylvania State Police.

Major Kwiatek.

MAJOR KWIA TEK: Mr. Chairman, members of the Committee, we appreciate the invitation and opportunity to contribute to this Committee's efforts in the study of a complex subject.

Almost 50 years ago, the Pennsylvania General Assembly enacted legislation to provide for the collection, maintenance and dissemination of criminal record information by the Pennsylvania State Police.

This legislative mandate to our Department succeeded by three years the formal congressional approval for establishment of such a function in the Federal Bureau of Investigation. In effect, the legislature established

the Pennsylvania State Police as the state's central repository for the processing of criminal identification and record information.

Act 270, approved April 27, 1927, was, at the time of passage, a major step forward in the establishment of criminal justice record-keeping. Unfortunately, during the subsequent years, there have been no significant changes to Act 270.

The act, as originally approved, did not envision or recognize some of the areas that are of concern today. Because of this, we are pleased that this Committee will address some of these present day issues.

At this point, without undue repetition of previous speakers, it would be proper to address and define exactly what type of record is maintained by the Pennsylvania State Police. Our information is and must be the result of an accurate means of identification of an individual charged with a crime.

The fingerprint provides the basis for accurate identification and is the present and continuing key to all of our criminal record data. On the basis of the fingerprint card submitted by the arresting agency, we initiate a record or information sheet commonly known as a rap sheet in the law enforcement community.

The rap sheet is a record of specific data given on

an individual who is the subject of an arrest. This data is, or should be, updated as the individual is processed through the criminal justice system.

The data recorded is fingerprint classification, State Identification Number, FBI record number, agency contributing the fingerprints, name of the individual, date arrested, charge against the individual, and disposition of such charges.

In addition to recording the data described, which constitutes the State Police criminal history record, we have established a system of audit procedures on the completeness and accuracy of data received as well as a record of dissemination of these records indicating the name of the requestor, agency, purpose of inquiry, and other related items.

My intention in providing you this information is two-fold; first, to make you aware of what has been our scope of definition of what constitutes a criminal history record.

Second, to suggest that the Pennsylvania State Police has been providing a criminal history record-keeping service pursuant to Act 270 for almost 50 years, in the most efficient manner possible with available resources.

In regard to the latter, our almost 50 years of effort to maintain accuracy of records, as well as file integrity, is a tribute to the many sincere and dedicated

State Police employees classifying fingerprints and processing our records.

Since fingerprint and subsequent disposition reporting are essentially voluntary functions performed by law enforcement agencies, there is an inevitable shortcoming in our capability to maintain a truly complete criminal record in all cases.

It is conceivable that a person could be arrested for the commission of a felony or misdemeanor and there would be no record in the State Police files.

The arresting agency simply might not submit a fingerprint card for classification, identification and record. Approximately 30 percent of over 1,000 police departments in Pennsylvania presently submit fingerprints to the State Police records and Identification Division.

Also, only a disturbing 34 percent of the prints submitted are followed up with a report of case disposition. We hope that part of the disposition-reporting problem will be overcome through the use of a recently instituted docket transcript in the court system by the Pennsylvania Supreme Court Administrator.

A major item of interest to this Committee on disposition reporting, however, is the fact that prior to the dissemination of a criminal history record, or rap sheet, our staff does expend considerable effort to obtain

dispositions on recorded charges prior to record dissemination

It might also be proper to note here that recently publicized comments concerning the content or the allegedly "notorious inaccuracy" of Pennsylvania's criminal records should be viewed by this Committee with circumspection. The content of our Pennsylvania state level record is as described earlier; and the accuracy of information in the record is based upon fingerprint classification and data furnished with the fingerprint card.

We support our records as being extremely accurate; however, we do confirm that they are not complete. Additionally, the rap sheet record we disseminate contains no information regarding investigations, intelligence, or personal medical-psychiatric history. It is not and never has been our intent to include such information as part of our criminal history record.

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Another matter of concern to this Committee is the recognition that the present record-keeping function of the State Police is manual and not computerized. Although our Department has advanced technologically in computerized communications for the Commonwealth's criminal justice agencies, we have taken the position that a totally computerized criminal history program is presently an economic impossibility and that much work remains to be accomplished on improving the records-keeping programs of the courts,

prosecutors, corrections and police disciplines of the Commonwealth. It is a tremendous task in need of a well-staffed, coordinated effort by qualified persons.

Our own State Police trial program of computerization of criminal history records was discontinued several years ago due to a variety of factors, one of which was cost.

We believe that eventually computerization will provide the most efficient criminal justice record processing to effectively administer all facets of the criminal justice system; but we also suspect that the ready availability of federal funding for such programs has caused a precipitous and costly entry into these programs by ill-prepared segments of the criminal justice field.

The Commissioner of the Pennsylvania State Police, as the official keeper of our records, and as a member of the Governor's Criminal Justice Information Systems Task Force, has a vital interest in the proper administration of criminal record-keeping and the attendant security and privacy considerations.

He has assigned staff members to assist the Task Force's working group in the development of its plan for the Commonwealth, and he supports the concepts endorsed in the plan approved by LEAA on August 26, 1976.

It is important to recognize that the endorsed plan prescribes nothing less than has already been the State



Police policy and procedure from almost 50 years in regard to state level criminal record-keeping and dissemination.

Regardless of LEAA regulation requirements for federally funded records-keeping systems, we subscribe to the need for legislation to build upon the original intent of the General Assembly of 1927, when it enacted Act 270.

House Resolution 297 appears to be a step in the right direction, and the Pennsylvania State Police is prepared to assist this Committee and the General Assembly in any way possible to provide the Commonwealth with the most effective criminal record-keeping program in the nation.

We trust that our assistance will enable you to strike the proper balance between an individual's reasonable expectation to privacy and the needs or rights of society.

We regret the need to have confronted the Committee with detail in this statement, but the program being reviewed cannot be lightly dismissed.

Any questions by the Committee members are welcome.

CHAIRMAN BERSON: Thank you, Major Kwiatek.

Representative Kistler.

REPRESENTATIVE KISTLER: May I suggest an editorial correction. I would like to suggest, if the Major would accept them, you used the word "succeeded;" you should have used the word "preceded."

MAJOR KWIATEK: No, sir; the FBI -- I verified this

before this was made up -- the FBI instituted theirs in 1924, and we succeeded them by three years. They preceded us by three years.

REPRESENTATIVE KISTLER: They preceded you?

MAJOR KWIATEK: Yes, sir.

REPRESENTATIVE KISTLER: Then they were ahead of you, so you did come after.

MAJOR KWIATEK: Yes, sir; about three years.

REPRESENTATIVE KISTLER: The question that I want to ask hinges upon a question asked earlier about the records handled in institutions, which are available to the State Police on request. My concern is that if you don't have occasion to request them, that they would not necessarily be part of your file, which seems to me to be essential to any well-systemetized effort of criminal identification.

MAJOR KWIATEK: I believe you were referring to the statutory statement that says "upon State Police request."

REPRESENTATIVE KISTLER: Yes.

MAJOR KWIATEK: At the present time, we really have no need in what I have defined earlier as the basic criminal history record for the type of information that correctional institutions of the Board of Probation and Parole would furnish to us.

We have received these types of records in previous years; we are still receiving certain types of information

that go into the master file in the criminal history file. These are not considered by us to be part of what we have defined as the criminal history record. These are supporting documents, and I believe I can speak from our own experience in our Bureau, that I can't recall in the last ten years, for instance, when someone has asked for any information from the file that pertains to a Bureau of Corrections or classification records summary, or whatever.

REPRESENTATIVE KISTLER: Are you suggesting, Major, that you have in your files records on people who are housed in the criminal institutions?

MAJOR KWIATEK: Yes, sir.

REPRESENTATIVE KISTLER: So you already have a file?

MAJOR KWIATEK: Yes, sir.

REPRESENTATIVE KISTLER: In your judgment, it is adequate?

MAJOR KWIATEK: In my judgment, I would not say that it is adequate. I would not even say that it is complete. These records, I believe, probably began coming to our Department perhaps 30 or 40 years ago. I know it wasn't in writing, because we have found no documentation on this; but I would say that probably somebody just decided they ought to send them to the State Police, so we started getting them.

To my knowledge, we don't use them. We don't

dispute whether we should have them in a central repository or not. Correctional institution records, I would assume, should be established for the benefit of the institutional people in their use, and not necessarily for law-enforcement use.

REPRESENTATIVE KISTLER: Are you presently getting in your records the juvenile records that are held by the courts?

MAJOR KWIATEK: Only those who were treated as adults. We are conforming with the Juvenile Act.

REPRESENTATIVE KISTLER: Thank you. I have no further questions.

CHAIRMAN BERSON: Mr. Itkin.

REPRESENTATIVE ITKIN: In your testimony, you listed a number of things that you record in your files.

MAJOR KWIATEK: Yes, sir.

REPRESENTATIVE ITKIN: Is that complete?

MAJOR KWIATEK: There is one item omitted, and that is date of birth.

REPRESENTATIVE ITKIN: Date of birth; is that the only one?

MAJOR KWIATEK: Yes, sir. That is right; that is what we define as the rap sheet.

I have a sample here if you would like one.

REPRESENTATIVE ITKIN: There is a standardization;

when the incoming reports are made, are they made on the standardized form, or do you convert that to a standardized form?

MAJOR KWIATEK: On the rap sheet; yes, sir. The rap sheet is our criminal history record document. The information that is put on that comes from other documents such as I indicated, the fingerprint card. This is actually the record of arrest, as far as we are concerned, that proves that the persons designated on that card by fingerprint classification is that person.

We, on occasion get arrested persons having fingerprint cards submitted on them that have three different names or four different names, but the fingerprint classification brings them all back to the same person.

REPRESENTATIVE ITKIN: The fingerprint card is separate from what you call the rap sheet.

MAJOR KWIATEK: Yes, sir.

REPRESENTATIVE ITKIN: Is it physically attached in some way?

MAJOR KWIATEK: No, it is placed in the master fingerprint file.

REPRESENTATIVE ITKIN: And is there a fingerprint classification number on the rap sheet so you can make a cross-index and get to the fingerprints?

MAJOR KWIATEK: Yes.

REPRESENTATIVE ITKIN: How many of these rap sheets do you have now?

MAJOR KWIATEK: My last estimate was probably about a million and a quarter.

REPRESENTATIVE ITKIN: A million and a quarter rap sheets.

How many, roughly, do you receive daily?

MAJOR KWIATEK: If I may answer on a weekly basis, for the last nine months of this year we received 2,133 on the average per week.

REPRESENTATIVE ITKIN: And 2,000 transcriptions are made onto rap sheets, your forms, and then stored in what?

MAJOR KWIATEK: Not necessarily 2,000, because, based upon our own statistical study, we have found that an average of approximately 68 percent of the people having cards submitted on them, are repeaters; repeat offenders.

What happens in a case like this is that when the card first comes in, we institute a name check to see if there is a possibility of a previous record. If there is a match that comes close enough on the name check, then we go into a primary classification of fingerprints to see if it matches a master card of one of the people on the name check.

If it doesn't quite, then we go into a full classification to make sure that it is accurate. Then it

goes into the master file, and the rap sheet is taken out of that file and it is updated with merely that entry that came in on the fingerprint card.

REPRESENTATIVE ITKIN: In other words, of the 2,000 you get every week, the number of additional sheets that you may have will not increase to that extent because so many are repeat offenders.

MAJOR KWIATEK: Perhaps 500 would be new sheets; 1500 would be entries onto old records.

REPRESENTATIVE ITKIN: How many employees does that require?

MAJOR KWIATEK: At the present time, it requires more than we have; I will say that.

REPRESENTATIVE ITKIN: Why does it require more than you have? Are you up to date?

MAJOR KWIATEK: No, sir; we are behind all the time. We have about 70 employees in the records and identification division that concern themselves with fingerprint classification, records writing -- that is updating these records -- and expungement.

On the expungement process, because of recent legislation, we are probably 20,000 expungement records behind. We can't keep up with it.

REPRESENTATIVE ITKIN: You mentioned in your testimony about that on a trial basis you have been unable to

computerize this type of system. You haven't given any specifics in your testimony. I am wondering if you would share with the Committee some of the reasons why you have been unable to make a transformation.

MAJOR KWIATEK: We have a considerable amount of in-house documentation on the project, and on July 1, 1972 we initiated a feasibility trial or study or program to see just what would be necessary for the State Police to go into a conversion of the type of document, the rap sheet, the conversion of the type of document that we consider a criminal history record.

We could not obtain additional employees for the project, so I diverted nine people from our regular staff to this assignment, plus an additional enlisted supervisor. We operated the program for 22 months, and I discontinued it in May of 1974 because at the time we were not able to convince anyone, apparently, that we could use the funds or get additional funds to continue the program. We failed in that respect.

In addition, the key concern on our part was the fact that balancing out the costs of the entire program -- we had converted 10,739 records in 22 months with nine people.

That balanced out, with the equipment costs of our computer, our lines, our terminals, personnel salaries and



such, to \$16.33 per record.

To be quite frank, I personally couldn't see the dollar value of return for that kind of an investment, because at the same time, we, with the manual system that we currently have, can receive an inquiry by computer terminal at our records and identification division unit that asks for a criminal history record check, a person can go into the file, check manually -- eyeball the record -- to see if that matches up with the inquiry, come back, prepare a message to be returned to the terminal of inquiry, in probably about 15 minutes.

REPRESENTATIVE ITKIN: How many such inquiries do you get?

MAJOR KWIATEK: Captain Jones, our division director, advised me the other day that at this stage of the game, we are running about 3,000 a month.

REPRESENTATIVE ITKIN: That is about roughly 100 per day.

Does the Federal Bureau of Investigation use a computerized system?

MAJOR KWIATEK: Yes, sir. By the way, this trial program that we initiated was not just in-house. This was in connection with the national crime information center, CCH project; and we connected with them on line after we had our initial batch of records converted; and we received some

commendations from that group because we had less than two percent edit error in the records fed into the system.

The FBI does maintain a computerized criminal history records system; the bulk of it is funded under LEAA provisions.

At the present time, I believe there are seven states in the system. When we joined it, there were six states in the system, counting us. The largest volume of records from any state is from California. California has ten times more fingerprint records on file than we have, in the history file.

I am a member of the NJC policy board, and we had a meeting a week ago, and there is a very strong problem occurring presently because of the dispute between the FBI, LEAA and others in the federal government concerning message-switching of criminal history records and who shall control them and things like this.

As a result, many states are presently developing in-house their own computerization at different levels or scales, but they are not going all out to tie in with the federal programs. They would like to because LEAA is pressing them to.

REPRESENTATIVE ITKIN: From the tone of a statement that you made earlier, it indicated to me that you have made a decision not to go in the computerization direction, but

to maintain a system as you now presently have it.

I question that in view of LEAA pushing the states to go to a computerized system and the fact that other criminal justice data collection agencies have made a decision to do that. I am wondering why Pennsylvania differ in that here we find it too costly to do, and we are a large state, where other states don't find that a problem -- or a major problem that they can't surmount.

Is it just because we don't have the sufficient funds available immediately to make the change-over; in other words, initialization costs to make the transcription? Or is it something that once we had that available we could maintain it fairly easily?

MAJOR KWIATEK: I don't want to mislead you. I am not opposed to computerization of criminal history record

REPRESENTATIVE ITKIN: But you just don't have the money to do it.

MAJOR KWIATEK: Exactly; because when we institute this trial program, we had approached the state planning agency here for funds, and we had provided cost data based on our experience that indicated that they would have to look for probably a five year projection of about \$11 million for us to convert these records.

The cost figures that we presented were questioned at the time, and, by the way, this was based only on the

recidivist record rate of 70 percent, not on our one and a quarter million records.

So at that time we apparently had a stalemate, and, to be quite honest with you, as far as the availability of LEAA funds are concerned, I myself am suspect of this type of approach because I know of no community that ever took LEAA funds yet that didn't have to end up supporting the program later. This will include Pittsburgh, Philadelphia and anywhere else.

REPRESENTATIVE ITKIN: Suppose it wasn't LEAA funds; suppose there was an appropriation for this. I want to know what your feeling is, from having some working knowledge with attempting to process this -- if you had the money, would this be a superior system?

MAJOR KWIATEK: If I had the money, I would say that we would engage in attempting to develop this program, but not at the rate at which it has been demanded -- really demanded -- by the federal people, because they have placed deadlines on all of the states. They have placed deadlines on all of the cities, the metropolitan areas, to do certain things by certain times because of budgetary limits, because if the funds are not expended by this date they will lose them.

So there is always that; communities go into these programs helter-skelter and they really have not been

prepared.

I think Governor Kline mentioned this morning that our position was that we have got to reorganize what is being done presently on the manual basis to make it all coordinated and compatible so that, as someone else mentioned earlier here, we don't have GI-GO, Garbage in and Garbage out.

REPRESENTATIVE ITKIN: Let me ask you another question. Do you share this information with the Federal Bureau of Investigation?

MAJOR KWIATEK: Our manual records information?

REPRESENTATIVE ITKIN: Yes.

MAJOR KWIATEK: Yes, sir; every fingerprint card that is submitted to our department by a municipal police department has a FBI fingerprint card that goes along with it, and that is sent to the FBI by the local department.

REPRESENTATIVE ITKIN: What about your rap sheet, or the information contained in the rap sheet? Is such information also provided to the Federal Bureau of Investigation?

MAJOR KWIATEK: When the fingerprint card goes into the FBI, the FBI ties it in with their identification division records, and then they send us a copy of their rap sheet, which may also include arrests from other states that we don't have.

REPRESENTATIVE ITKIN: The obvious question then:

why are we doing it if some other governmental agency has the same information, and, in fact, a more comprehensible set of information?

MAJOR KWIATEK: Do you mean the FBI?

REPRESENTATIVE ITKIN: Yes.

MAJOR KWIATEK: Because they are going to quit doing it.

They have already given notice three years ago that they are going to discontinue handling on a national scale the central records identification function, as soon as any state gets the capability of doing it itself.

REPRESENTATIVE ITKIN: How is the state going to keep up with the dispositions which occur elsewhere?

MAJOR KWIATEK: That is a situation then that has to be resolved on a national level of interchange between the states. The FBI, hopefully, will provide an index as a tool to accomplish this.

REPRESENTATIVE ITKIN: But for years, if I understand you correctly, we have been carrying out a redundant system in that we have been filing records which have been filed in another location, which we have access to.

MAJOR KWIATEK: We are interested in felons or criminals within the borders of Pennsylvania. If we get information from the FBI, for instance, as a result of an arrest in Pennsylvania, that this person was also arrested

in Texas, Arizona and New Mexico, we add this information to our rap sheet documentation; then, hopefully, when the courts ask us for pre-sentence information, as was mentioned earlier here today, this information is updated and complete enough so that we can furnish this for the court's benefit.

As far as the duplication of information, it is duplicated at certain levels only, to a certain degree; not completely.

The FBI does not have every record. Neither do we really. In fact, we have local police departments in Pennsylvania that submit a card to the FBI and don't send one to us. This is one of the reasons Mr. Riggione mentioned earlier in his presentation, that we need some legislative mandate for fingerprinting, because this is the incompleteness.

REPRESENTATIVE ITKIN: It seems to me if there is one place that is easily accessible in which there is a high degree of cooperation, and retrieval can occur very rapidly, why would it be necessary to do the same thing when you are involving 70 personnel, where that work could be done at another place by another agency?

MAJOR KWIATEK: I am not sure I understand the question. Who would you like to have do it?

REPRESENTATIVE ITKIN: I am not suggesting that the Federal Bureau of Investigation do it, but if they are using you for record-keeping; you are putting a substantial number

of personnel to maintain records, and the Federal Bureau has a staff of personnel maintaining the same records, and the police departments in the Commonwealth find it easily accessible for them to deal directly with the Federal Bureau of Investigation to get information, then I think the question arises that perhaps there may be a redundancy. I don't know that there is.

Then the whole need as to whether there should be two and not one becomes a point of contention.

MAJOR KWIATEK: I think to go back to your statement that a local police department finds it easier to deal with the FBI, I would not say that this is true -- or false either.

REPRESENTATIVE ITKIN: I understand, just by your own statements, that there have been occasions -- I don't know how frequently; you haven't said -- where local police jurisdictions in Pennsylvania have sent information to the Federal Bureau of Investigation --

MAJOR KWIATEK: They send fingerprint cards, and the FBI has notified us every time they have sent a card and asked us to contact the department and ask us not to do it.

There is really a very serious need for closer cooperation and, as was mentioned earlier, in the last four or five years it has been recognized more and there is more



effort in this direction.

Philadelphia is a tremendous example. Prior to about three or four years ago, between the state level of operation and the Philadelphia City Police Department operation, there seemed to be some distance as far as exchange, working of information, updating of records, and things like that.

What we have done is work very closely with the Philadelphia Police Department on this problem, and we resolved it, I think, very excellently, both with our computerized program, as far as the information that they produce, and put in and get out, and with their capability to update our records.

Unfortunately, because of their computerization, they can spit out perhaps 1,000 dispositions in a week, that our manual system cannot handle.

If were computerized at the state level, we could handle their dispositions on a tape exchange basis, or on lines; but we can't do it.

REPRESENTATIVE ITKIN: The question I have is: if Philadelphia can do things so efficiently in this regard, why isn't the state doing some type of contractual arrangement with the agency in Philadelphia to do it statewide?

MAJOR KWIATEK: Let me make another comment. You said that Philadelphia can do it efficiently.

They are doing it; they are doing it under a project they invested several million dollars in, I understand, a few years ago, called COJINT, and from COJINT it went to another acronym-named project. Now it is under PJIS. I think, frankly, they probably need it very badly because of the court calendars and things like this.

But I am not sure of the accuracy or the completeness of their records either. So I can't attest to that. As far as the quality of what they are doing is concerned, I could never testify to that.

But I do know that if we had the resources, the dollars and cents resources capability to procure equipment, to hire people to do the job, we could intermesh with them very easily and handle all of their work as well as ours.

In fact, let me go a step further. We had a meeting in Philadelphia a few years ago in the Deputy Court Administrator's office, I and one of my staff people and a representative of the police department; and I was asked by the Deputy Court Administrator why was I there. Why was I trying to work with them to help coordinate the record-keeping function, because he felt that this should be some other agency at the state level, the Justice Commission or someone like that.

I just replied that I thought it was necessary; we had to work closer together. This is what we were doing.

At that time some comment was made that they are aware of critical problems in their own records-keeping function, and they were computerized already.

So we can't, I don't think, evaluate one is good and one is bad. I think it is a case of trying to understand what we have, how we can improve on it, and how fast or how slow we can do it, and how much.

REPRESENTATIVE ITKIN: The only reason I bring it up is that you bring up Philadelphia, and it probably has an initial place where information can be obtained of a conviction rendered or what-have-you -- roughly one-third of our judges are based in the Philadelphia Court of Common Pleas. I assume that most of the dispositions come out of Philadelphia, that if you examined your rap sheets and looked at all cases, you would probably find -- and I am just guessing now -- 35 or 40 percent cases from Philadelphia.

The question is: Philadelphia is attempting to do the job; you are attempting to do the job; and we are doing the job twice, but not as well as perhaps we could do it if we did it only once.

MAJOR KWIATEK: We are not really doing the job twice. That is the thing.

REPRESENTATIVE ITKIN: What is the difference?

MAJOR KWIATEK: The difference is the same as if you lived in Podunk Township and Podunk Township made an

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arrest and submitted a fingerprint card and kept a copy of that card. They would send the card to us, we would classify it; they couldn't. We would develop the record.

The only difference between Philadelphia and Podunk Township is volume.

REPRESENTATIVE ITKIN: Why is Philadelphia doing it?

MAJOR KWIATEK: You will have to ask them.

REPRESENTATIVE ITKIN: Somehow, the state taxpayers are paying for the Philadelphia system and they are paying for the Pennsylvania State Police system.

The question to me is whether both systems are necessary.

MAJOR KWIATEK: That is a good question.

REPRESENTATIVE AMOS HUTCHINSON: Pittsburgh does the same thing.

CHAIRMAN BERSON: There is a lot of scheduling of cases for trial and the allocation of courtroom space, things like that. There is a large element of just shear management built into the Philadelphia system, that is totally unnecessary on the state level.

It is not complete duplication, one by the other; at least some components of the Philadelphia system.

MAJOR KWIATEK: It is very very slightly a duplication, because what we are talking about here, I believe,

is criminal history record-keeping, and what we are talking about in the Philadelphia system, I believe, covers considerably more than that.

It was really, I believe, from my talk to Irv Chasen, who I think is still is Project Director down there, it was conceived some years back merely to be a court-oriented system.

CHAIRMAN BERSON: It was also conceived to be a management of police personnel, and scheduling of police as witnesses in courtrooms, and scheduling the district attorneys and prosecutors and so forth in courtrooms; public defenders, as I said before.

I think this was largely court management and personnel management that was built into that system, and not just criminal rap sheet information, although that is an element of the system.

MAJOR KWIATEK: If I may, in line with this computerization bit, I would like to mention also that we are working very well with Philadelphia police, and we just developed in recent months a computer interface between the City Police and the State Police computer system; and, hopefully, this is going to reach the stage where we will be processing probably all of their NCIC material, stolen property, stolen cars, wanted persons and such, into the Federal Bureau NCIC files through our system.

The only reason it was not done before was because before we had the terminal configuration in Philadelphia, we provided them with eight or ten clean terminals from our State Police network.

With the direct on-line interface between computers, we have taken the computer terminals out, which they had located at strategic places in the department's offices, and now they can use their own city police computer terminal set up in the precincts and districts to feed right in through the Philadelphia computer, into the State Police clean computer at Hershey, and on into Washington, or to Arizona with the inlet system to go anyplace in the United States.

So we have had an excellent rapport with Philadelphia for many years now.

REPRESENTATIVE ITKIN: Do you have uniformed and non-uniformed personnel in your division?

MAJOR KWIATEK: Both, sir.

REPRESENTATIVE ITKIN: How many in uniform?

MAJOR KWIATEK: In the records and identification division, actually, that division handles more than just criminal history records. It also handles the total state gun registration and gun permit files, and it also handles our own correspondence records, traffic arrests, accident data, and things like that.

We have about 105 employees in that division, and I think there are 113 enlisted men and 100 civilian employees.

CHAIRMAN BERSON: Are there any further questions?

REPRESENTATIVE AMOS HUTCHINSON: The LEAA is trying to get the Justice Department to take over the system that the FBI has. I think there is a bill in Congress now to take identification from the criminal record division out of the FBI and into the Justice Department.

MAJOR KWIATEK: I hear rumors to that effect, that there is some squabbling in Washington. That may change in January; I don't know.

CHAIRMAN BERSON: Thank you.

The next witness is Lawrence Beaser.

MR. BEASER: Mr. Chairman and members of the Appropriations and Judiciary Committees, my name is Lawrence Beaser. I am counsel to the Governor and a member of the Governor's Task Force on Criminal Justice Information Systems.

I very much appreciate this opportunity to testify here today concerning the maintenance of criminal history records.

At the outset, let me say that this is a very complex subject, as we have heard today, and I think it would be a mistake to discuss the collection and dissemination of criminal history records in a vacuum. Questions about data

maintained by the criminal justice system must be understood in the context of the mushrooming ability of our society to collect and disseminate information about people.

In the last few years, the ability to collect, collate and disseminate data has so increased as to make George Orwell's "1984" a possibility which we must now squarely face.

The public's perception of this issue has also grown in recent years. I believe and hope that this situation in the United States has changed since George Bernard Shaw stated, "An American has no sense of privacy; there is no such thing in this country."

With all the talk generated in the last few years about privacy in many facets of our lives, if we do not now have a sense of privacy, at least I think we are finally beginning to debate the limits of the right of privacy.

With regard to criminal history record information, that debate centers on two rights, the right of privacy and public's right to know. We have seen in the last two months much debate about these two rights as they apply to the collection and dissemination of criminal history record information.

Most of the discussion has centered around the Pennsylvania Plan for Privacy and Security of Criminal History Record Information. In order to understand the provisions of



of this plan, one must look at it in context.

Where did it come from?

How did the Shapp Administration come to promulgate it?

The Plan originates in part from Governor Shapp's deep concern for the right of privacy. This is not a new concern, but one that he has had to face in many practical ways throughout his term of office as Governor.

For example, early in 1973 his administration became involved in one challenge to the constitutional guarantee of an individual's right of privacy.

At that time it came to our attention that the federal government, through an office located in the Nixon White House, was instituting a data collection system called CODAP, Client Oriented Data Acquisition Process.

Under CODAP, all drug programs in the United States would have been forced to supply for the federal government's computers enough information to construct something called a "unique identifier" of each patient.

As the name implies, this unique identifier is a means by which data from an individual may be identified as coming from that person. The name of the person would not be used, but the various data elements, we were told by our computer experts, could identify a person as indelibly as a fingerprint.

Governor Shapp was very concerned about this system. The Governor, personally, and members of his administration were even more troubled when we learned about another program which was simultaneously being put into effect.

This was called DAWN, Drug Abuse Warning Network. Using the same unique identifier as CODAP, this program would have resulted in surveillance from birth to death of persons with drug problems. DAWN was to be put into effect in all hospital emergency rooms, for all hospital inpatients at crisis intervention centers, and even at medical examiners' and coroners' offices.

Any patient who showed any signs of drug abuse, or admitted to drug abuse, would find himself or herself with a lifetime federal drug abuse record.

We became increasingly alarmed, especially when we found that the federal government was going to establish a national registry to trace drug abusers anywhere in the United States. Governor Shapp's administration strongly opposed these programs.

As a result of action by Pennsylvania, together with the Commonwealth of Massachusetts, both of us risking losses of substantial amounts of federal funds, we forced the Nixon White House to back down.

The right of privacy in this case was preserved.

The CODAP-DAWN problem was one instance where issues

involving the right of privacy were squarely faced. As you can see from this issue, this is one of the reasons why, Mr. Itkin, that we are very skeptical of the federal government's computerized criminal history. Frankly, my personal opinion is that the value of the new computerized systems must be established by clear, convincing evidence.

Also before it goes into effect, standards of access and review and also a clear knowledge of which systems that new computer system will interface must be clearly set forth by law, so that we can't have a new nationwide data bank and dossier system created.

That is one of the things that I am personally concerned about, and I think the Governor is committed to avoid.

REPRESENTATIVE ITKIN: Mr. Beaser, just a comment on that. It seems to me foolish and very foolhardy to spend the taxpayers' money in meeting the system in such a way that it prevents the use of the system. Either you are going to decide that you are going to have a system; it is either right and proper to have one; or you don't have one at all.

To generate a system which has self-contained restraints because the access of the information is not easily materialized doesn't satisfy the expenditure of the taxpayers' money. I would rather have no system at all.

MR. BEASER: I think there are two answers to that

and I think, first of all, the present system we have, which has worked effectively for the last 50 years, is one that with a number of improvements can and does work.

We have got two systems in this state; the Philadelphia one you were discussing with Major Kwiatek before is the other main one besides the State Police system.

One of the questions that I suggested is that in making your decision as a member of the legislature, making a policy decision, you are going to have to, for example, look at the Philadelphia Plan for Privacy and Security in terms of limiting the use of the system, as compared with our plan.

And you will also have to look at the cost benefit in terms of ease of access, and whether or not his present system that we have, which does work and seems to work effectively, except for the fact -- as I will get into in a few minutes -- that we don't have dispositions.

The basic question is: do we really need an automated system; and the answer that we have come up with at this time is in concurrence with the State Police; it seems that at the present moment we do not.

If and when we go to the two-way computerized system, the question which I think the General Assembly has to address before it goes to the computerized system is: what sort of safeguards are going to be built into that system.

REPRESENTATIVE ITKIN: How does the legislature know whether it is a built-in bias by yourself and others who are dealing with this to make that type of declaration that it doesn't seem to be worthwhile? In other words, was there any substantial cost analysis done in comparing the mechanics of the systems?

I am not talking how the systems should be used, but just in the mechanics of the system.

MR. BEASER: I think you have got two elements there. First, I think that Major Kwiatek indicated that there was a 22 month study.

The other question is the prime virtue of the computer, to me, is really the speed with which you can get data. You can certainly go and get the same data as you are going to get in the other system. Hopefully, you are going to get the same results, and that, again, is the Garbage in-Garbage out question.

CHAIRMAN BERSON: Let me suggest that we hold the questions until Mr. Beaser is finished. I think that would be more orderly.

MR. BEASER: I am sorry; I diverted; I will continue.

I just had mentioned the CODAP-DAWN problem. Another area that we have been involved in involving the right of privacy involved child abuse. In the winter of 1974, as you will remember, Governor Shapp, despite

considerable opposition, vetoes an anti-child-abuse bill, in part on the ground that it did not adequately protect the family's right to privacy.

The Governor recognized the tremendous problems in the field and pledged to work for legislation that would protect the interest of abused children without unnecessarily intruding into the privacy of family life.

As a result of this commitment, and with tremendous cooperation from members of the General Assembly, the bill was redrafted. It was introduced and finally enacted into law, and is now the Child Protective Services Law.

Governor Shapp's concern for the uses and abuses of information about people collected by governments has carried over to information maintained by criminal justice agencies.

Governor Shapp personally becomes aware of information collected by criminal justice agencies when he is called upon to make decisions as to whether or not he will issue a pardon or commute a sentence.

As you know, Article IV, Section 9 of the Pennsylvania Constitution gives the Governor the power to "remit fines and forfeitures, to grant reprieves, commutation of sentences and pardons," but only if the Board of Pardons recommends it by a majority vote.

One of my duties, as counsel to the Governor, is to

review the recommendations of the Board of Pardons when they are submitted to Governor Shapp. In this capacity, both Governor Shapp and I see many criminal history records; these are the so-called rap sheets that Major Kwiatek and Mr. Riggione were talking about.

A rap sheet is attached as part of the file sent to the Governor by the Board of Pardons. For many years we have been very concerned with the lack of completeness and accuracy of these criminal records; and I think after Major Kwiatek's statement I had better stand corrected on the word "accuracy." "Completeness" is obviously the word of art that we are using.

This concern has existed long before LEAA ever issued security and privacy regulations. The problem has been that most of these rap sheets contain really incomplete information. In many, charges are lifted without dispositions so that it can appear that a person stands accused of a crime where in reality the charges were dismissed years ago.

Sometimes the rap sheet contains notations of a person's record of offenses committed years ago while a juvenile, even though the Juvenile Act now states, "Law enforcement records and files concerning a child shall be kept separate from records and files of arrests of adults."

Parenthetically, this is a result of the fact that the Juvenile Act was enacted in 1972, and most of these

records are from a long time ago, and it is a matter of updating the records.

Rap sheets do though routinely contain notations of charges which were dismissed and where the person was found not guilty.

With regard to the pardon process, Governor Shapp is very careful to insure that a pardon or commutation is not denied on the basis of an inaccurate record; but the level of inaccuracies makes it very difficult to be confident using rap sheets in the decision-making process with regard to the issuance of a pardon or commutation of sentence.

These concerns with regard to the pardoning process can be generalized into a concern that no one be denied a job or a license or anything else on the basis of inaccurate information. Certainly, inaccurate data must not be used to adversely affect anyone's rights.

The public's right to know is, of course, extremely important; and any information given to the public must be accurate and complete. Dissemination of inaccurate or incomplete information is as gross an abuse of a public right as it is of a private right.

These concerns for the use and abuse of information maintained about people were present when the LEAA set requirements for each state to develop a comprehensive data system; this is the CDS system that Mr. Riggione discussed



earlier for criminal history record information.

With regard to this issue, the Administration moved thoroughly, thoughtfully and carefully to review the presently existing components of the criminal justice system before complying with LEAA regulations. Even in approving the Pennsylvania Comprehensive Data System Plan, Governor Shapp withheld approval for the computerized criminal history, so-called CCH, component.

A few weeks after the Governor wrote to the Law Enforcement Assistance Administration withholding approval of the CCH component of the CDS plan, in May 1975 that is, LEAA promulgated their first set of regulations concerning protecting privacy and security of criminal history record information.

After a thorough review of these regulations by the staff, and after a consultation with members of his administration, including the Lieutenant Governor and the Attorney General, the Governor decided to form a high level task force by Executive order. The result was the Governor's Task Force on Criminal Justice Information Systems, of which I have the honor to be a member.

This morning the Lieutenant Governor outlined four major functions of the Task Force. I would like to briefly reiterate these functions.

The Task Force was established not only to comply

with LEAA regulations and to promulgate a state plan for the protection of security and privacy of criminal history record information; but, in addition, the Task Force was created to adopt policy positions on issues concerning criminal justice data systems, to plan for and oversee the the implementation of the Pennsylvania Criminal Justice Information System, and to recommend to the Governor and the General Assembly needed legislation especially in the area of security and privacy.

Thus, the Task Force originated from the Governor's concern for privacy as well as the recognition of a practical and urgent need for complete and accurate criminal history record information.

The work of the Task Force this far has mainly focused on the issues presented in developing a Pennsylvania Plan. In discussing that Plan and the interesting and important policy issues which it presents, I think it is very important to first discuss exactly what the plan covers.

First of all, the Pennsylvania Plan only applies to criminal history record information. I believe that much of the criticism concerning the plan has resulted from misunderstanding the plan's scope.

The Plan explicitly defines criminal history record information as follows, "Information collected by criminal justice agencies of individuals consisting of identifiable

descriptions and notations of arrests, detentions, indictments, information, or other formal criminal charges, and any dispositions arising therefrom. The term does not include other information contained in criminal justice agency records or reports such as intelligence information, investigative information, or treatment information."

The scope of the Plan is thus extremely limited. As you can see from this definition, the Plan simply does not address what information, other than criminal history record information, may be kept or disseminated by state or local governments.

Let me emphasize; the collection and dissemination of other information is not important. The contrary is the case. The problem we face in terms of promulgating and adopting a state plan was to define a manageable and important piece of information which potentially could be collected by the criminal justice system, and deal mainly with that.

Again, criminal history record information, that information which is found on the rap sheet -- that we have been talking about all day -- was seen as an initial target for the Task Force to work with. This was chosen as a manageable target and one which the government of the Commonwealth is required to handle by LEAA regulations, and that requires the state to establish uniform guidelines for the collection and dissemination of this information.

More importantly, the rap sheet is the most commonly used criminal history record.

So in writing a plan which provides for privacy and security of criminal history record information, the Task Force started with a number of policy decisions and assumptions.

First -- and Lieutenant Governor Kline spoke of this and repeated it a number of times -- public access to original court records of criminal proceedings or police blotters chronologically maintained would not be restricted in any way. The public and the media should continue to have access to original court records; these are the records that have been traditionally open, and nothing in the Plan in any way affects access to these records.

Also, at the State level, criminal histories have been maintained by the Pennsylvania State Police in manual, not computerized, files.

As we have discussed, a decision was made that these files would not be automated and that no centralized statewide computer-run data bank for criminal histories or anything else would be created by the Plan.

The Governor's action regarding the CDS plan clearly establishes this position. The actions of the Task Force reiterate these policies.

With these basic policy issues in mind, the Task

Force, with input from a very qualified advisory council, some of whom I understand will be testifying here tomorrow, adopted a plan divided into five major areas, as required by the federal regulations.

A number of these areas have not been the subject of public debate. Though not controversial, they are important especially when one considers the state of present day criminal history record keeping.

For example, no objections have been raised about the provisions of the Plan dealing with the procedures and related policies to be followed to insure the physical safety and confidentiality of criminal history record information. Physical safety and physical security includes such hazards as fire, flood and theft.

So, too, the section on audits and quality control have not engendered adverse comments. If we are going to have accurate data, someone must check to make sure that the data is actually being properly maintained in a complete and accurate manner.

For the first time in Pennsylvania, under this plan individuals will have a right to review their own criminal records and challenge inaccurate information. Despite the fact that this is a new program, the individual right of access and review sections of the Pennsylvania Plan have not engendered much discussion or comment. However, in

judgment, this is an important principle which has not received the attention it deserves.

The most important sections of the Plan and the ones that have engendered the most public comment are contained in the first two sections concerning completeness and accuracy of information, and limits on dissemination.

No objection has been raised concerning the requirements for complete and accurate information. I don't think anybody is going to come out opposed to having accurate information.

As I have discussed, this is an area of key concern for the Governor and the members of the Task Force, simply because our present system of criminal history does not provide us with complete and accurate records.

Much of the reason, as we have seen today, can be attributed to a lack of disposition reporting requirement, but the fact is that we simply do not have complete records.

Though the issue of completeness and accuracy is not controversial, I believe it is critical to a discussion of who is entitled to access to criminal history record information. It makes little sense to debate who should receive what information and under what conditions when we know that the information we have is neither complete nor accurate.

In the public debate over the limits of dissemination

people have been assuming that the data is complete and accurate. This is not presently a valid assumption, and this situation must be corrected.

In making policy decisions with regard to this area, the degree of completeness and accuracy of criminal history record information should be carefully considered.

Until we can be sure that any criminal history record information which is disseminated is complete and accurate, the danger of hurting innocent persons is high.

Much of the debate concerning the Pennsylvania Plan has focused on to whom and under what conditions criminal history record information may be disseminated.

Joe Riggione, who testified before -- and if time permits will continue and outline exactly what the Pennsylvania Plan does with regard to limits on dissemination.

We do have a handout which Joe will pass out which does detail the Plan. We will be happy at this time or at any future time to answer questions concerning it.

I would, however, for the moment like to discuss the policy options facing the General Assembly as it approaches this difficult area. The first policy issue concerns whether a distinction should exist between public record information and information compiled secondarily from these public records.

As I stated previously, the Pennsylvania Plan

provides for continued access to original court records and indices. However, it defines, and in some instances clearly limits, who can have access to criminal history record information in the form of rap sheets.

George B. Trubo of the John Marshall School of Law has defined this problem as involving what he calls, "the matter of aggregated data."

Professor Trubo stated, "The question is, does the mere fact of collecting information and marshalling it into a profile or 'dossier' change the nature of the information itself?"

"It has been argued that since the ordinary criminal record is merely a compendium of separate public records established over a period of time, the mere fact of compilation makes no difference, and the compilation should be accessible as were any of the entries at their respective point in time.

"That argument begs the question. Policy analysis is needed to clarify what, if any, impact arises from the action of government or anyone else in gathering into one place a series of possibly related but disjointed public happenings or events."

In the past, the General Assembly -- and here fairly silently, as we have seen from a discussion of the law -- and the State Police have taken the position that



compilations of criminal history record information should not, without explicit authorization, be disseminated to the general public.

But, frankly, this policy has never before been subject to close scrutiny. As Professor Turbo suggests, the legislature and the executive branch can no longer beg the question. It is a very important question that I think we must ask and really try to arrive at policy decisions concerning it.

In developing policies involving the scope of dissemination of criminal history record information, one must clearly balance the right of privacy with the public's right to know.

Professor Turbo put it this way, "Whether one's records of past conduct ought to be accessibly will depend upon how public policy balances the interest of society's responsibility as against the individual's personal accountability. Until that balance is agreed upon or articulated, it is useless to argue about rules of access to criminal history."

"The public discussion should be in policy terms -- balance the interest in allocating risks -- rather than in arguments about whether a criminal conviction record should be accessible. To whom and under what circumstances such a record would be available can be determined once we

have articulated the balance of interests and the allocation of risks."

You will note that Professor Trubo talks in terms of conviction records. I think that the close scrutiny that is needed becomes even stronger when one is dealing with non-conviction records, with cases where someone has been accused, and then either the charges have been dropped or he has been acquitted.

It is apparant from the reaction to the Pennsylvania Plan that it at least establishes a framework for public discussion of an important policy issue.

The decision of the Governor's Task Force was that the General Assembly is the appropriate body to make such policy decisions. That is why the Pennsylvania Plan provides any person or agency which is expressly authorized by federal or state statute to have access to criminal history record information, may have such access.

The policy decisions which the Governor's Task Force have made may or may not stand the test of time and the legislative process. They are, in our judgment, based upon practices which in the past have worked with regard to our incomplete and inaccurate criminal history data. They seem to us to be reasonable policy judgments made in an attempt to balance the public's right to know and an individual's right to privacy.

The last word, of course, will be by you, the General Assembly, because you are the final policy deciders in this government.

With your permission, Mr. Chairman, in the time remaining, I would at this time like to ask Mr. Riggione to review quickly the details of the plan, and then we will be prepared either today or tomorrow to answer questions concerning this.

CHAIRMAN BERSON: Mr. Riggione.

MR. RIGGIONE: The principles that we tried to apply in developing our plan are reflected in the report published by HEW a couple of years ago. They are reflected in the Federal Privacy Act of 1974.

Essentially, what they say is that there shall be no secret personal information information systems, whose existence is concealed.

We should gather only information needed for lawful and authorized purposes. We should keep information accurate, complete, relevant and timely. Also, the data subject should have access to files about himself; and to use information only for the purpose for which it was collected, and to provide possible safeguards for the information which is basically security safeguards.

Essentially, what we are trying to do is to strike a balance between the public's right to know, the individual's

right to privacy, and the legitimate data needs of the criminal justice community. The Pennsylvania Plan addresses only rap sheets and criminal histories.

As of today, the federal regulations deal with this only also.

Other areas such as medical, psychological, intelligence and investigative information need to be addressed, but that is not within the scope of these regulations or the state plan.

Frankly, we thought it prudent to deal with one issue at a time, since the area of criminal justice information is so complex and broad.

Areas the plan covers; definitions now: data compiled by criminal justice agencies which contains both identification and charges, as well as disposition of these charges; and it covers both manual and automated records.

The issue of manual and automated records is another area that ought to be addressed as well, because you can't deal with one without dealing with the other, or essentially you would be developing a set of standards for automated records and other set of standards for manual records, possibly; so when you do deal with the issue of privacy, I think it is obvious that you have to deal with both areas.

The Plan applies to agencies which have received

LEAA money for record-keeping systems since July of 1973. There are essentially 47 agencies; there are somewhere around 2,400 criminal justice agencies.

So the whole area has to be legislated before any statewide implementation.

Areas not covered by the plan are original records of entries such as police blotters which are maintained chronologically, and court records.

Court records of public proceedings including alphabetized indexes, and I think that is one of the first paragraphs in the provisions of the plan.

They do not cover case in progress, so that conceivably you could find out whether a person has been arrested, has been detained, the charges that he has been arrested for, where he is being detained, the fact that he has been sentenced to an institution, the institution, the length of sentence, the whole ball of wax.

It does not cover medical, psychological records, intelligence; wanted persons lists or posters; records of traffic offenses such as the ones maintained by PennDOT; announcements of clemency; or juvenile records.

Basically, the plan covers five areas: completeness and accuracy; limits of dissemination; security; audit and quality control; and individual right of access and review.

Completeness and accuracy insures that an arrest

record contains subsequent disposition and the data is correct.

Limits on dissemination defines to whom and under what circumstances the information may be disseminated.

Security provides for protecting the physical facilities, as well as the selection, training and supervision of employees involved in the maintenance of these records.

Audit and quality control insure that agencies maintaining these criminal history records are complying with any statutes or regulations for privacy.

Individual right of access and review enables an individual to review his records, and challenge the information as to its accuracy and completeness.

With regard to completeness and accuracy, I went through this whole thing this morning about no disposition and no fingerprints and all that; and unless somebody wants to hear all that again, I will pass over it.

One point I do want to make about the completeness and accuracy is what is prescribed there is not an automated system. What is prescribed is merely a process to update a file, be it automated or manual. All it says is that you have got to have this information, it has got to be found there, it has to be put there.

Security, again, deals with the physical security of the plant itself. It deals with the issue of dedicated

versus non-dedicated hardware, which is a fight which we have been having with LEAA, I guess, for the last year and one-half.

CHAIRMAN BERSON: Would you indicate what "dedicated" and "non-dedicated" mean?

MR. RIGGIONE: I am sorry. Dedicated hardware means that the information that is maintained on that computer is only criminal justice information; no other information is maintained on that hardware.

MR. BEASER: For example, if Montgomery County wants to maintain criminal history record information, they would have to have their own computer set aside for that. They couldn't have a computer used for doing county checks or anything else; just criminal history records.

MR. RIGGIONE: We took violent opposition with LEAA on that particular issue because, for example, some of the counties maintain county court systems on computers, and they utilized county data processing equipment.

This would have required them to have dedicated hardware; and then the cost is just overwhelming to the state, and I can't imagine what it would be at the national level.

Incidentally, LEAA backed down on that issue.

The plan also provides for an audit function. The audit and quality control provisions entail monitoring for

compliance to the laws and the regulations, and also provides a mechanism to insure that the material is complete and accurate.

What we have done in this area is: there are two basic audits. You have the systematic audit, which is basically an internal audit. Each agency that maintains these rap sheets must review systematically by sampling or otherwise the kinds of information they keep, if they make an arrest, court disposition, to make sure it has the right sentence. They go back and check the information with the police department and the courts.

There is also an annual audit, which deals specifically with the provisions of the regulations -- with compliance with the provisions of the regulations or the federal or state law.

Obviously, you can't audit 2,400 criminal justice agencies in the course of a year, so we have proposed that some kind of very very -- an audit for essentially areas like State Police, Philadelphia and Pittsburg, some of the larger jurisdictions, using a self-audit technique, using a questionnaire form; a certified questionnaire to be used by some of the local police departments. And we may set up some kind of a surprise visit procedure or something like that.

Limits of dissemination: this essentially defines



who gets what, and under what circumstances. It provides for non-criminal justice agencies getting access to the information; for purposes of criminal justice administration, as well as for purposes of employment.

Criminal justice agencies also have to establish a need for the information, and only authorized employees of that agency can get it.

Non-criminal justice agencies may have access to it in order to implement a statute that specifically denies licensing, employment, or other civil rights of persons convicted of a crime, or requires an investigation to determine employment suitability or eligibility for security clearance; to provide access to research groups, bona fide research groups; to the executive of any unit of government; and any confirming body.

It does require the written consent of the individual, and the fingerprint is required.

To provide access to the individual for review, to provide access to defense counsel; right now, the defense, normally public and private -- more so your private -- usually go to the district attorney to get the information, and they are subject to the whims of the district attorney.

What we have tried to do is keep out of the issue of discovery procedures and all that. We have tried to make some kind of a balance here between what is available for

the defense, as well as what is available to the prosecution. What we did is suggest that the counsel had to go to the court, and the court will determine whether he can get the information on his client, or potential witnesses.

REPRESENTATIVE WILLIAM HUTCHINSON: Why do you separate that out by court order?

MR. RIGGIONE: It is not by court order.

REPRESENTATIVE WILLIAM HUTCHINSON: No, but you have two categories. You say the defense counsel through the court, which relates to one type of situation; and then you have by court order. Why do you need the two? If you don't want to address the argument about discovery in the criminal area -- wouldn't it be sufficient just to say you can get it by court order?

Haven't you taken yourself out of the neutral position by putting it there?

MR. RIGGIONE: All we are trying to do there is just to be sure that there not any kind of frivolous inquiries; by establishing it through the court, they could conceivably have the court administrator, for example, screening those inquiries from the defense counsel.

REPRESENTATIVE WILLIAM HUTCHINSON: Then you are not neutral on the issue though. You are, in effect, making some change, because the process of criminal discovery is one that is being developed, both by rule and adjudicated

case; and you are putting defense counsel in a separate category. You have effected -- I am not saying it is wrong -- but you have made it easier for the defense counsel to get it, because it is not by court order necessarily.

MR. RIGGIONE: This gets into the definition now of the criminal justice agency versus a non-criminal justice agency. The prosecution is a criminal justice agency, by definition; whereas public defenders or defense counsel are not.

REPRESENTATIVE WILLIAM HUTCHINSON: I understand now.

MR. RIGGIONE: The conditions on dissemination -- validation of the recipient is essentially -- all we want to do here is insure that the person making the inquiry is someone who is authorized to have that information, and also to determine what the purpose for that inquiry is.

Chronological logs are maintained for audit trails, which would enable us to correct errors at all places where the data exists.

Individual record logs are not part of the rap sheet; this only entails recording on the jacket file the names of the agencies that have gotten the information, so that if there is an error in the file, and the individual challenges that record and would like the criminal justice -- the State Police to go back and notify these people that the

record has been corrected and they want to correct the rap sheet, they can do so.

It provides for user agreements, which are basically a contract between a non-criminal justice agency who has access to the files, that they are also subject to the same procedures outlined in this plan.

Non-criminal justice agencies must submit fingerprints. This assures dissemination of a proper record.

Governor Kline mentioned this just briefly earlier. He had a record of an individual who was not necessarily the individual who was in front of him.

This merely assures -- or insures -- that you have the right record for the right person.

We also provide for return of data after it has been used, so if an agency gets a rap sheet, it may not take that information and put it in their file, or duplicate it and put it in their file. What we are concerned with here is that someone will take that rap sheet, use it at a trial, and then someone asking that criminal justice agency, "What have you got on Riggione," he pulls out that rap sheet, which may well be two years old. It is not updated; it is not current.

We do not allow secondary dissemination. The problem we have, right now anyway, is at the local level. The local police department may make inquiries of the

Pennsylvania State Police for a rap sheet. Once the rap sheet is given to them, provided to them or to any local agency, they are free to do with it as they please. The policy that the State Police has been operating under for 50 years is that non-criminal justice agencies do not get it.

They will give it to the law enforcement people. The law enforcement people at the local level can sell it, or give it away to anybody they want to. Some of them have been doing just that.

So one of the provisions that we have outlined here is that once they get it, they cannot disseminate it secondarily, unless it is a correctional official who may orally represent the general substance of the record to a prospective employer if it may be beneficial to that individual in securing employment.

We seal only rap sheets on individuals who have received a pardon; not the recipient of clemency. Access to these rap sheets -- I think some of you raised a question before -- access to the rap sheets is for the individual's access, for the audit function, also internal management of the records.

Other requests for the information would simply be responded to with a comment that says, "The individual has received a pardon, and his record is sealed."

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The primary thrust of the expungement provision is to expunge records that are incomplete by virtue of no disposition or obsolete; maybe they are old or the individual has died.

We expunge records when the police chose to drop charges. We get a good bit of this at the local level where somebody comes in and beats his wife up, and she runs to the police and swears out a complaint, and then the next day she says, "I'm sorry; I don't want to do that," and they may have printed the guy and sent the card in to the State Police. The State Police right now cannot expunge that record; they have to keep it.

Also, if no disposition is received after 18 months and a check shows that no action is pending; also if the individual is not a fugitive.

Outdated records; there are provisions here for a person who reaches a certain age, if he is 100 years or has been known to be dead for a period of seven years. These records will be expunged.

MR. BEASER: Mr. Chairman, I think we are out of time. Can we have about three more minutes so we can wrap it up?

CHAIRMAN BERSON: Five more minutes.

MR. BEASER: Let me just take over here for one minute and say that the additional plan for the right of

access and review, and the privacy and security counsel on the sanction sections of the plan have been reviewed to some extent before and are somewhat self-explanatory.

I think there are obviously in terms of sealing and expungement and dissemination a number of very critical policy decisions here that you are going to have to pass on. Others have passed on it differently.

The Philadelphia Plan is somewhat different in questions and answers, the question of who gets what and when.

I would like to end our presentation, if I might, be having passed out one additional chart -- I am sorry to burden you with so much paper -- but I think that this clearly shows what sorts of action the General Assembly must take before this plan is to be implemented, if at all.

It goes through what Joe has just finished reviewing. I think that, from the chart, the basically six areas of the plan that are there, including the privacy and security council -- and I would just like to spend one minute to say that as to the local criminal justice agencies, which is the first column, anything we do with the exception of those 47 out of 2,400 criminal justice agencies, the 47 are receiving LEAA and are, of course, bound by the state plan; They don't have to be implemented before 1977, but, of course, anything they do, any requirement, is dependent upon

what action the General Assembly takes.

But in terms of sanctions, in terms of requirements that are, as a practical matter, enforceable, as to local criminal justice agencies, it is up to the legislature. .

If you don't act, we are going to have the same system that we have. I think that is pretty clear.

REPRESENTATIVE SCIRICA: Are those 47 municipalities bound by the state plan if the legislature doesn't enact any legislation?

MR. BEASER: Yes. The sanctions for not complying with the state plan, of course, are what LEAA says they are. The Executive in this government has no power but what the constitution and the General Assembly give us, so we haven't acted on it. It is the LEAA power, which is really the power of the purse, which is the power to cut off funds; and that is what their threat is, and that is the threat pursuant to which this plan was written, in addition to our concerns for privacy and security.

In terms of the others, I think it is fairly self-explanatory, but I wanted you to have this simply because you will note that there is a tremendous amount of -- most of the plan, frankly, can only be implemented by legislation; and that is the key concept, and that is why I assume that the hearings are being held today, to review this and to make the policy decisions that are going to be



necessary, either up or down.

Whether the policy decision or the policy recommendations that the Governor has made in this plan stay or whether they don't, clearly some action is necessary. We certainly, again, will say that we will -- on behalf of the Governor, the Lieutenant Governor, the Attorney General and the Task Force and the staff -- we stand ready to help the General Assembly in any way we can to work with you to face these difficult policy decisions.

REPRESENTATIVE O'DONNEL: These 47 agencies include the Philadelphia court system, don't they?

MR. RIGGIONE: To the extent that it applies to the courts, yes.

MR. BEASER: Philadelphia is one of the 47.

REPRESENTATIVE O'DONNEL: The Philadelphia police department would be one of the 47?

MR. BEASER: Philadelphia police.

MR. RIGGIONE: Philadelphia, generally, is one of the 47. Philadelphia PJIS; they have got the PJIS thing under the court.

MR. BEASER: Philadelphia Judicial Information System, PJIS, is one of the 47, so that includes the court component and the police department.

REPRESENTATIVE O'DONNEL: And probation department under the courts and so on.

CHAIRMAN BERSON: That will conclude today's testimony.

Thank you, gentlemen.

Both of you are invited to be here tomorrow, if you can; and questions may arise.

We will convene at 10:00 tomorrow morning.

(Whereupon, at 4:05 p.m., the hearing was adjourned to reconvene at 10:00 a.m. on Friday, November 5, 1976 in Harrisburg, Pennsylvania.)

## CERTIFICATE OF REPORTER

I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me, and thereafter reduced to typewriting by me or under my direction; and that this transcript is a true and accurate record to the best of my ability.

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