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

Friday, November 5, 1976

Met, pursuant to adjournment, at 10:05 a.m.

BEFORE:

For the Judiciary Committee:

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

For the Appropriations Committee:

THOMAS FEE
AMOS HUTCHINSON
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P R O C E E D I N G S

CHAIRMAN BERSON: This is the second day of public hearings, specifically directed to the Pennsylvania Plan for Privacy and Security of Criminal History Record Information developed by the Governor's Task Force on criminal justice information systems.

Our first witness, today, is Dean Peter J. Liacouras of Temple University Law School, who, of course, has distributed,already,copies of his statement.

Dean Liacouras, you may begin whenever you are ready.

DR. LIACOURAS:Thank you, Mr. Chairman.

First, I want to make it clear that I am speaking in my individual capacity.

First, I would like to thank the Chairman for this opportunity to meet with the Committee and to compliment the sponsors of House Resolution No. 297 for introducing that bill and thereby bringing the issue of criminal justice information and information systems before the General Assembly, where it belongs.

I Commend Lt. Governor Kline and all the members of his Task Force for referring all aspects of the Pennsylvania Plan to the General Assembly.

With this issue now before the General Assembly, you should not limit your consideration solely to "criminal

history record information" as narrowly defined by the State Plan, nor solely to manual systems which are, despite cosmetic references to computerized ststems, the sole target of the Pennsylvania Plan.

Instead, you should consider all criminal justice information and information systems. More particularly, you should consider the feasibility and legitimacy of regulating arrest record information, criminal history record information, non-conviction record information, correctional information, identification record information, missing persons information, modus operandi information, criminal justice investigative information, criminal incident information, criminal justice intelligence information, stolen property information and current offender information, personal history information, medical history information, educational history information, employment history information, bail information and cautionary indicator information.

That comprehends a much larger universe than, simply, criminal history record information. And you should turn your attention to this larger universe.

Any plan which does not consider all such types of information is incomplete. Consideration and regulation of only one segment of this larger criminal justice information universe is to invite an unbalanced, short-sighted and potentially dangerous regulatory regime.

In your deliberations, please do not feel wed to the scope and mandate of the LEAA regulations. Do not tie your legislative scheme to these LEAA regulations as did the State Plan. The LEAA regulations are a typical bureaucratic effort to expand jurisdiction. Indeed, the LEAA regulations are an invalid usurpation of authority because they reach manual systems despite the fact that the statuatory authority for these regulations, section 524(b) of the Safe Streets Act of 1968, as amended, deals only with "automated" systems.

The State Task Force used the LEAA regulations as a bootstrap to correct the problem of incomplete and inaccurate rap sheets --which is a very commendable objective-- rather than acting through the General Assembly.

Despite this point, please also bear in mind that inaction on your part by December 31, 1977, will result in the present State Plan, with all of its limitations, and strengths, taking effect. Accordingly, the General Assembly is obliged to act rather than simply to review and postpone action indefinitely.

Now, the major policies or interests to consider: in considering criminal justice information and information systems, the General Assembly must conscientiously seek to identify, support, and balance all of the following public interests -- not just one of them.

The first is a fair but efficient criminal justice

system; the second is the legitimate rights of privacy of our citizens; the third, halting the trend toward legalizing -- directly or indirectly -- the establishment of excessive governmental power through the operation of centralized data banks which contain, inter alia, personal dossiers on our citizens, imcompatible with the maintenance of limited government in a free and democratic society; fourth, the right of the public and the press to have unimpeded access to information concerning criminal offenders, as well as information concerning the criminal justice process, including all criminal justice agency officials and other public officials.

In your deliberations, you may want to remember that the policy of secrecy or privacy is the flip side of the policy of openness or freedom of information. One reason for confusion in Privacy and Freedom of Information Acts is because the legislature, particularly legislators, do not take up these complementary policies simultaneously.

Additionally, you may want to distinguish between the kind of information which may be collected and the retention and dissemination of such information.

Another useful distinction is among the various means of collecting, retaining and disseminating such information. In this connection, whether we like it or not, we are in the Computer Age. Based on the Philadelphia experience, you should turn your attention first to the issues of

computerized criminal justice information systems, leaving manual systems to the end.

This sequence is important, because you will undoubtedly conclude that the computer needs regulating. You will thus want to limit the type of information that may come into a computer; you will want to seal -- that means to restrict dissemination -- some computerized information; and you may even want to expunge -- erase -- other computerized information. But sealing or destruction of court records or manual systems of information would be a dangerous first step towards an unchecked and unregulated government.

The computer can and does make things run more efficiently. What was collected five times manually, stored and retrieved separately, can now be done just once via a computerized central data bank. What used to take several weeks of digging from manual records can be achieved in a matter of minutes with a computerized criminal information retrieval system.

Recall -- and I refer to recall of information, not of public officials -- recall is reaching a speed of a trillionth of a second, too small for us even to conceive. Short of outlawing the computer, as we did during Prohibition with liquor for some purposes, computers will increasingly replace manual systems in our society. Your challenge is to regulate computer use and thus avoid computer abuse in

in criminal justice information systems.

Now, as I indicated, speaking only as an individual, not representing the Philadelphia Regional Council nor the President Judge nor anybody else, but myself, I would like to describe the Philadelphia or PJIS Plan.

This is for your information. Three documents have been distributed -- four documents have been distributed. The first document is the outline of the statement I am now presenting. The second document is entitled "Final Report of the Confidentiality Committee." The third document contains the rules, the so-called Philadelphia Plan. And the fourth document I will get to in a moment; it is a systems design.

If you will turn to the "Final Report of the Confidentiality Committee" of the Philadelphia Regional Planning Council of the Governor's Justice Commission, dated April 15, 1976, and open to the Table of Contents, you will find that our major recommendations, under IV, deal with limiting data entry, maintaining public access to information, sealing and expungement of certain information -- on the computer, that is -- the individual's right of access and challenge to information that is in the computer, and finally, the creation of an Independent Security and Confidentiality Council.

You should now turn, if you do not mind, to page 6 of the "Final Report." When you have an opportunity to review the report, the major recommendations are explained

beginning with the language on page 6. Please, keep clearly in mind that the Philadelphia Plan deals only with a centralized, computerized data bank, which is in the process of being implemented in Philadelphia, not with satellite computer systems -- the police's own computer, for instance -- not with manual systems which remain untouched.

Please turn next to page 10. Page 10 of the "Final Report"identifies three options that are available to us and are available to you. One option is to have no rules relating to computerized criminal justice information systems. The second alternative or option is to emphasize sealing or restricting to whom the information may be disclosed.

The problem with the second view is that information that goes into our computer inevitably gets out if it is choice enough information. The problem with the first view is that, if you have no rules -- as I will get to in a moment to demonstrate -- we will have horrendous volumes of personalized information for very legitimate purposes in mind coming into these central data banks and, eventually, coming out to that community to destroy, not simply a person who was arrested as was mentioned yesterday in a questionable setting, but young persons who have been described by their teachers as unruly at an early age, which will live, because of the instantaneous recall and the unending memory of a computer, for the rest of the life of the individual.

The third alternative is the one that we finally focused primarily on. And that is that we would restrict what information may go into the computer.

Now, the discussion in our"Final Report"on pages 11-14 is self-explanatory. And I would hope that each of you has the opportunity to read that part of the"Final Report."

A mandatory injunction is required to prohibit certain data about anyone from entering such computers, and further requiring that whatever information does enter the PJIS computer be "public information...otherwise available to the public."

Our concern that soft, personal data will be entered is not ephemeral or illusory. Just look at the fourth print-out I have distributed. It is taken from a design by the IBM Corporation together with CJAC in the process of planning possible a data bank which eventually will become the PJIS System.

This document is a 1974 document of the Philadelphia Justice Information System. It is several volumes. And Phase III of the joint study of IBM and CJAC, Volume II, System Designs, section four, dealing with the data base -- and I would hope that you would open that document at this point -- contains the following types of information: date of naturalization, religion, militant, mental -- I am reading from page 4-9 -- homosexual, racial hatred, aggressive,

relationship person-to-person, addict, addict type, reason for leaving school, union affiliation,social activities, date observation, name of gang, psychiatric, financial, medical, criminal tendencies, recidivist, high visibility, history family, ex-spouse, sibling.

Now, every piece of such information is potentially relevant and useful in handling problems that individuals may have with the criminal justice system. But to place this type of information into a never-forgetting, never, never-forgetting --unless it is erased -- centralized government data bank is too invite, not only massive invasions of all of ours privacy, because it does not deal simply with criminals, but it also deals with those who are accused, those who are the victims of crimes, those who are witnesses to crimes, those who are jurors and eventually those who are prospective jurors; we not only invite massive invasions of our privacy, but, more importantly, we invite a consolidation of power in the hands of government which is incompatible with limited government in a free and democratic society.

Now, well-intentioned, rational, but overly-efficient technicians,who eventually may rule the world, will include everything about everyone.

Minorties in the large cities, especially black citizens, will be the first and heaviest subjects of "personal dossiers," because they, for whatever reasons, are the ones

who have proportionally the highest contact with the law. But the majority will not have long to wait.

This would lead not only to massive invasions of privacy, as I have indicated, but concentrated power in government. Information is power. Efficiency is not the chief or even one of the most important goals of the democratic society.

It is, therefore, absolutely essential that the General Assembly include an explicit prohibition -- which the State Plan does not contain for reasons indicated yesterday -- on the collection by a criminal justice agency of certain types of information.

Remember, that which is not prohibited is permitted. And without a statewide prohibition, Philadelphia could permit entry of such data and Pittsburgh not -- there is a line missing from page 6 I am sorry to say -- Philadelphia could prohibit, on the other hand, the entry of this data. And Pittsburgh, by doing nothing, could permit it to come in. So, you need a statewide plan, a statewide rule.

Now, the next feature -- and I am going to conclude in just a minute, Mr. Chairman -- the next provision I would like you to look at from the Philadelphia Plan deals with sealing and expungement of information in PJIS computers. This is on pages 7 and 8 of the "Final Report."

The rationale for restricting dissemination of

information in a computer and the rationale for erasing information from a computer is, not that we should not have this kind of information available, but that it should not be more damaging to an individual because of the computer than before the computer.

We have a very delicate balance in this country among all of these policies that I have tried to set forth earlier. The computer introduces an entirely new threat; a threat not only to individual privacy but to governmental excessive power.

The rationale is that the PJIS coputer shall not make it more difficult or less difficult for a person, following a brush with the law, so long as it is not a major felony, to be reintegrated into society. It should not be more difficult or less difficult; it should be about the same, if we can work it out that way.

Under the Philadelphia Plan, there would be no sealing of information, however, concerning a criminal justice agency official or employee; an elected, public official; formal candidate for office; and would have information, as to that person, unsealed, if the person became a candidate or became a public official.

But, as for other citizens, there would be sealing after a certain lapse of time from a minor offense, never if it is a first degree felony. And with respect to acquittals,

there would be an erasure of that record from the computer.

Additionally, the sentencing patterns of judges, including the type of offense, the verdict, the sentence, who represents defendants of certain types of cases before certain judges, would be available without additional legislation under the Philadelphia Plan, unlike in the Pennsylvania Plan.

One of the most disturbing features of the Pennsylvania Plan is the restriction on the flow of information to the public about criminals and officials. The computer should be be used to keep the public informed, not just to move cases through the system, which is its primary function -- at least it was when it first got started.

It is up to the public, not a paternalistic government, to decide what information is required for popular control. Access to rap sheets and sentencing patterns is just as much an inherent right of the public and the press as is access to the bill of indictment.

The subtle technique of reversing that right through a new requirement of legislative authorization is an unfortunate development which must not be permitted to become operational.

I brought with me, Mr. Chairman, two copies of individual's rap sheets. I have obliterated the individual's name. One is a rap sheet, computerized; the other is a rap sheet,manually.

The information on the computerized rap sheet includes the name of the judge, the name of the defense attorney, the charge, the guilty plea, or the plea not guilty, whether it was nolle prosed, and the sentence.

Now, almost immediately, this type of information, which is public information, which is done openly, for which the taxpayers are paying their officials, could be retrieved and made available to the public for the purpose of the public's assessing the behavior of the jurists.

Now, the argument that we should not let the public decide matters on the basis of only two or three elements -- does somebody give probation in rape cases too often -- is not a matter for you or me to decide; that is a matter for the public to decide.

If someone says that Peter Liacouras, who is Dean of Temple Law School, is treating admissions by looking at only three factors and constantly is doing the wrong thing, I do not like that. I would want to look at the other eight factors which can explain those three. But the public has an absolute right, in my view, to pick and select and choose this type of information to be used in assessing the criminal justice system.

Now, manual criminal justice information files, including rap sheets and indices, however, in the Philadelphia Plan would in no way be affected by the sealing and expungement

provisions dealing with computers. Such continued access to the manual files makes possible the sealing or expungement of certain types of computerized data.

That is why I say the last issue to be decided is manual systems. The very inefficiency of our manual criminal justice information system is, on balance -- perhaps, as an afterthought -- a protection of individual privacy and unwarranted governmental intrusion into our lives.

Now, I would like to commend the State Plan for the individual's right of access and challenge to information, which is quite comparable to the final Philadelphia Plan; Pages 8 and 9 of the Final Report.

And we established an independent Security and Confidentiality Council. That is an independent body composed, primarily, of persons who are not members of the criminal justice agencies who are using this information.

I would like to reiterate, in conclusion, my respect and admiration for the good intentions and very hard work of the State Task Force chaired by our distinguished Lieutenant Governor, Mr. Kline; also, Mr. Beaser who has been very helpful, and Mr. Riggione.

The sensitivity and concern of Messrs. Scirica and O'Donnel -- if I am permitted a personal conclusion statement, Mr. Chairman -- have, also, been a source of considerable pride to me, especially because they are,

respectively, my legislator and one of my finest former students.

Finally, I would like to offer the Committee the assistance of Temple Law School students in whatever future arrangement we might make in helping you meet this important challenge.

Thank you very much, Mr. Chairman.

CHAIRMAN BERSON: Thank you.

Do you have questions;Representative O'Donnel?

REPRESENTATIVE O'DONNEL: I waited six years to put you on the spot.

DR. LIACOURAS:I have anticipated this moment.

REPRESENTATIVE O'DONNEL: Unfortunately, I am afraid I agree with most of the things that you have said. It is very disturbing to me to have that happen at this point.

DR. LIACOURAS:Of course, Socrates had the problem of Crito who got him into a lot of trouble.

REPRESENTATIVE O'DONNEL: On page seven of your presentation, it indicated that the Pennsylvania Plan has a very disturbing feature in that it restricts the flow of information to the public about criminals and officials.

Yesterday's testimony -- contrary to my reading of the Plan -- yesterday's testimony seemed to indicate that there would be no restriction on the flow, that none of the alphabetical indices would be closed, and that a chronological

index would, of course, be available. And, therefore, the implication was -- if I understood it correctly -- that the flow of information to the public would not be in any way restricted under the Pennsylvania Plan, as compared with present practice in Philadelphia.

On page seven, you said the Plan would restrict flow. Would you tell me, specifically, in what regard that would occur?

DR. LIACOURAS:The alphabetical indices would not be available under the State Plan -- under all interpretations of the State Plan, except one statement, yesterday, by Mr. Riggione. And I understand that Mr. Beaser may not have set the record straight, but he set me straight later.

If you will look at the State Plan on . XI,"any index accessible by name, so long as index contains no other information than a cross-reference to the original records, including information such as docket or file number, date of offense, file date, name, charge, offense."

If your interpretation of the State Plan is correct, then the whole discussion about rap sheets being unaccessible is redundant, because the index would then be a rap sheet, if the index were a cumulative index; that is what a rap sheet is.

I take it that what is still prohibited by the State Plan is an alphabetical index,which will let you get

substantially the same as a rap sheet.

The second interpretation, which was my earlier one and your earlier one, Mr. O'Donnel, as I read it, is the proper one. But it is for those who wrote the State Plan, and, now, for the legislature, more importantly, to decide these issues.

If the rap sheet is made unavailable in Philadelphia on the first of January, 1978, as it has been the opposite, available till memory runneth over, then that will be a serious restriction on the public's right to know.

There is a lot of concern about hurting an employment opportunity for an individual because of a transgression of the law. The simplest way to handle that is the way Connecticut handles it. It is to have a State law which bars prior conviction as the sole reason for denying employment; putting teeth into a law. That is the way to handle abuse, not to stop the flow of information from being available.

Yesterday, for instance, an example was given of an individual who was arrested, technically, on a very bad charge it turns out. How do we know the charge for anybody is bad unless we know there was a charge, and we can investigate, if necessary, why the case was dropped or why the person was arrested in the first place?

Civilization is not supposed to destroy its records of its activity. It is supposed to regulate the

activities consistent with the overriding policies. And if we are concerned about employment discrimination because of conviction, because of arrest, then we should have a State law which forbids, under the penalty of law or the penalty of sanctions, such discrimination.

REPRESENTATIVE O'DONNEL: I have one more question. There seems to be a difference of opinion in your presentation and the testimony yesterday, as to the legal significance of the Pennsylvania Plan. You indicated that it will go into effect unless action is taken by the legislature before the end of 1977.

And yesterday's testimony seemed to indicate that the plan has no legal impact, but rather is merely a following-up of LEAA regulations; the only sanction for which is the withdraw of LEAA funds; and the application of which is only to recipients of LEAA money.

So, it would appear from the testimony yesterday that the only risk is (a) for those people who are receiving LEAA funds and (b) that they would not get their funds anymore. The Plan has no further legal significance.

DR. LIACOURAS: Unless the State seeks to change practices inside the Commonwealth of Pennsylvania by bootstrapping the authority for those changes on the LEAA regulations. And that is exactly what is going to happen with rap sheets in Philadelphia.

That is one of the features, I understand, of requiring a reporting from local criminal justice agencies with respect to dispositions of cases to the central repository. The authority for that, I understand, will be the LEAA, the ultimate authority.

I do not quarrel at all; in fact, I commend the State Task Force for moving in this area. We should have complete and accurate records. That does not mean, though, that we should change our practices on the basis of the LEAA regulations.

I would really invite you to look at a cited citation for this; 524 (b) is 42 U.S.C.A., 37.71, Section B. The title is "Automated Systems." The language is automated system. The rationale for reaching manual systems is unless you are dealing with manual systems you can have parallel systems.

REPRESENTATIVE O'DONNEL: To get funding to change from manual to automated, that would bring it within the scope of the law.

DR. LIACOURAS: It seems to me that an aggressive policy by the Commonwealth would be to challenge LEAA regulations which seek to affect manual systems. I do not think LEAA has thought this through at all in terms of the delicate balances and the public's right to know, privacy, et cetera.

The last group of issues to face are the manual

systems, because that is where we probably are going to end up protecting the public's right to know; not in the areas of the computerized information which has to be limited because of its potential for abuse.

REPRESENTATIVE O'DONNEL: Thank you.

CHAIRMAN BERSON: Representative Scirica.

REPRESENTATIVE SCIRICA: Dean Liacouras, by way of information on the passage of a bill that would allow people who have been convicted of crimes; to have employment without having that conviction be a determining factor for denying their employment, last session in the House passed a bill that would do that. But our colleagues in the Senate decided otherwise.

In session, the bill was reintroduced and went to the Professional Licensure Committee, which decided not to deal with it.

Hopefully, any movement by the legislature in this area would also consider the adoption of the kind of legislature that you have just proposed.

In view of your comments on, perhaps, the legality if not the propriety of the LEAA regulations, would you care to comment on the statute, itself, it terms of its possible constitutionality?

The federal statute says that LEAA shall ensure that the security and privacy of all information is adequately

provided for. And that the information shall only be used for law enforcement and criminal justice and other lawful purposes.

Even given the fact that lawful purposes is kind of a "fudge" word, you would think that Congress might have been overstepping its bounds in terms of the First Amendment freedoms in this area. And I quite agree that we should not be enacting any legislation here solely with an eye toward the LEAA regs.

DR. LIACOURAS: Mr. Scirica, I would answer the question "yes" if it were not for the language "and other lawful purposes," which you, yourself, referred to. That would include the concerns that I have and you have with respect to freedom of the press, et cetera.

The question of whether the Federal Government should get into criminal justice within states, and information systems within states, raises a separation of powers; a federalist issue. I have not addressed myself to that.

I suppose I have been an administrator long enough to begin getting fairly provincial and parochial and conservative about my views. I am a little bit suspicious about the Federal Government intervening in many of these traditionally State matters.

It is certainly an afterthought-- if it is an afterthought, I should say--and "other lawful purposes" is an

afterthought, it is an unfortunate situation. The person who knows the most about this area that I know of in the Commonwealth, who happens to be a visiting Professor at Temple Law School, now, who was the consultant of the Confidentiality Committee, and who was the drafter of the Connecticut Statute and the Connecticut Bill, dealing with all the criminal justice information, is Professor David Weinstein, who happens, I think, to be here today.

And it may be that the Committee may want to consult with Mr. Weinstein. I cannot give you any better answer than I have.

REPRESENTATIVE SCIRICA: It strikes me that we might turn the argument around and really hang our hat on the clause "other lawful purposes," which may mean that Congress really has not restricted what we can do in this area at all, and that the regs might have been overreaching the statute by saying that we had to control dissemination of certain kinds of data, especially non-conviction data.

DR. LIACOURAS: I agree with that. I am not sure they have any jurisdiction at all to come in and state what to do with respect to this criminal justice information.

REPRESENTATIVE SCIRICA: In terms of your Philadelphia Plan, you used the term "public record," and you say those matters --

DR. LIACOURAS: Public information.

REPRESENTATIVE SCIRICA: -- public information should continue to be available, accessible, to the public. How is that term "public information" defined? Is that up to the legislature?

DR. LIACOURAS: That is up to the legislature. We avoided the term "public record" because of all the ambiguities involved in that. There is also the question of whether a public record deals with court records, because of the separation of powers argument; that the legislature has no jurisdiction over the judiciary, et cetera.

Mr. Beaser referred to this very important issue yesterday. And we selected public information otherwise available to the public, deliberately maintaining a certain amount of ambiguity, which we, as a Committee and as a Council, would not decide. But we would invite a decision by a higher authority.

You can call it a cop-out, but it was certainly not, in our view, a cop-out. It is the only way to deal with an ambiguity; you either resolve the ambiguity through a new definition -- and we could not with public record -- or you invent a new expression, which, with legislative history, would be defined and be self-executing by those who have to administer such a system.

I am not sure that public information otherwise available to the public is the best of the terms that you can

come up with. What we did in Philadelphia was to deal with this for three years--not for a couple of months, but for three years -- subject to public hearings and the police going one way and the press another way; citizen groups demanding sentencing patterns of judges a third way; ACLU arguing for privacy, for individual liberty. In order to reach an accommodation, we came out with a very delicately balanced plan. I would hope and I would certainly expect that the legislature will come out with even a better plan than we were able to develop.

REPRESENTATIVE SCIRICA: One final question, and maybe an unfair question in view of your position as Dean of the Temple Law School.

DR. LIACOURAS: I brought admissions applications.

REPRESENTATIVE SCIRICA: It strikes me that one of the most difficult problems in this area is determining, especially in the court section, what areas will be left to the determination of the legislature and what areas the Supreme Court held out to itself under their constitutional procedural rule-making power.

In your deliberations with the Philadelphia Plan, did you wrestle with this problem? Did you give any indication as to what areas they may feel are outside of legislative authority or legislative control, and would you like to make recommendations to us in this regard?

DR. LIACOURAS: We used alternative language almost invariably; "court order,""rule," or legislation. We did not resolve that. As you know, the admission to the Bar in the Commonwealth of Pennsylvania is, historically, a court decision In California, it is a legislative decision.

There are differences of authority, differences of viewpoint with respect to almost all of the major issues as to how far the legislature may go and how far the Court may go. In terms of deliberating any further on that issue, we did not. We simply used Salami tactics a little bit for a little bit of each authority for each, and leaving that issue unresolved.

We did not think it was our function to settle all the problems in Pennsylvania, or even most of them. We had a very narrow, computerized, centralized government data bank that we sought to place under control, without losing its potential for very efficient utilization in the criminal justice system.

REPRESENTATIVE SCIRICA: Thank you very much.

CHAIRMAN BERSON: Representative Itkin.

REPRESENTATIVE ITKIN: Dean, I view this whole suject matter with severe trepidation. I see the conflicting values on each side of the issue, the right of privacy and protecting privacy, which you consider the public's right to know.

I go further than that. I try to place a value

on the Government's rights to afford the public protection.

With respect to the legislation that you had discussed about barring use of convictions from employment records, I would like to ask your feeling on two specific areas of employment,just as examples, so that we can share the values you have in this regard.

For example, do you believe that a school bus operator -- a person who runs a school bus company, a school bus employer -- has the right to examine the driving habits of potential school bus drivers before making a decision as to whether that person should be employed as a driver for one of his school buses?

DR. LIACOURAS: Habits or abilities?

REPRESENTATIVE ITKIN: Well, habits by examining his records to see whether he has any convictions for being a careless driver, for violating the laws that could have put the occupants of the school bus in jeopardy.

DR. LIACOURAS: Do you want my personal response to that?

REPRESENTATIVE ITKIN: Yes.

DR. LIACOURAS: My answer is yes. It should not be determinative, but it should be available to the bus company.

REPRESENTATIVE ITKIN: Suppose the school bus company says, "I refuse to hire the individual, because I have examined his past driving convictions. I found him to be -- I

do not like to take a chance and to jeopardize my reponsibility to provide protection for the school children who are riding my buses."

DR. LIACOURAS: My answer to that would be that there are two additional factors to consider. One, how long ago was the last offense? Secondly, what, if anything, has been done to rehabilitate this individual?

When I say it should not be the sole basis for loss of employment, denial of employment, I mean that. It may turn out that we will have difference of opinion as to whether or not a conviction five years ago for reckless driving, is contemperaneous enough to the application for employment today to bar the person, because there could be no rehabilitation in five years.

I think,if it were five months, the answer is simple. Five years is a little bit more difficult. Twenty years, I would not pay attention to that last conviction. I would pay attention, but I would not give it much weight.

The kind of employment discrimination based on conviction statute that would have to be drawn, would have to include--or should include--the rehabilitation time between the conviction;is it related to the particular employment, as in your hypothetical, it would be.

If the question is whether or not this person who has a conviction for narcotics use should be taken into account,

the question then would be: what is the relevance of narcotics use to driving a school bus? Your hypothetical is clearly job related, and that is why I said, "Yes. It should be consultable by the employer, so long as it is reasonably contemporaneous; not so stale as to be 20, 25 years old, 15 years old, if it the only brush with the law. But your hypothetical had, apparently, several convictions,if I remember right.

REPRESENTATIVE ITKIN: Yes. The second thing I was going to use was another one. The question of a person,who has been convicted of child molestation, seeking employment at a day-care center. And I think your answer would be similar.

I guess what I am saying is that it is not very easy for persons in our positions.And it would be foolish for us to make black and white choices. You know, "I am for the privacy of the individual" or "I am for public's right to know." Because, in my personal judgment, there are very severe problems that get impounded upon. And Ithink that sometimes we may have to pry into the person's privacy when the right to secure the protection of the public is a very paramount issue.

For example, the two examples that I mentioned. I do not know how we, as legislators, have the intellectual capacity to examine every facet that borders on this complex issue, so that we can draft the legislation that will serve

to be fair, and at the same time, guard and protect the public's rights.

I do not know how my colleagues feel about it, but I was very disturbed last night when I had to leave this hearing and started to reflect upon just what my role as an individual is to make these judgments. I can tell you that I do not feel very happy in a position,with the responsiblity that I will have to take.

DR. LIACOURAS: This is one of the most difficult issues facing any public official. I have great confidence in the General Assembly and in your ability and your sensitivity to the nuances among these issues to be able to come out with a very fair result. It may turn out that you do not want much regulation in some of these areas,and in others that you do. I would suspect that you will want to regulate the computer, though.

REPRESENTATIVE ITKIN: Why the computer?

DR. LIACOURAS: Because it has such a tremendous ability to affect persons. It would take, for instance -- suppose somebody wanted to do a records check on me through a manual system. I am a bad example. But take somebody who has a criminal record -- arrest, whatever it is--to go through 50 jurisdictions in this country -- 51 -- is to require, without automation,physically going to each of these jurisdictions. And it takes quite a while to do that.

Then, you have to compile the data; you have to have some idea of when one of these offenses arose, because many of the states do not have cumulative indexes by name. With the computer, you can get this information in a matter of seconds. If there is a national network, you can get it in a matter of seconds;or within a state, if there is a statewide network, in a matter of seconds; maybe minutes in the former, seconds in the latter.

There is an expression for a trillionth of a second, now. It boggles my mind, and I am sure it does yours, to even try to conceive of how much time a trillionth of a second is. But the recall of certain information is possible at that rate of speed.

File Clerks misfile items; File Clerks, not intentionally, usually--after all,are human. There is very little misfiling in a computer. The programmer, the human being might make errors and from time to time computers blow fuses, et cetera. But by and large, the computer never forgets; a computer never lets you forget.

And what happens with the computer is that you can encapsulize an entire life in two or three words;"an unruly child;"an aggressive colleague," "a racist,""an x or y religionist." Those types of encapsulations, personal subjective evaluations, going into a manual file may not create much of a problem. They should not be there, but they might not

create that much of a problem.

In a computer, whoever has access to that computer is going to have access,instantaneously, to this information. And it has to be remembered that our first generation or so with computers indicates clearly -- the history is clear that, if you put in something, it is going to eventually work its way out, especially if it is the juicy kind of data.

I have seen print-outs -- I am sure you have -- two, three feet high in offices dealing with personal information about citizens who are looked at a little differently as a result, who do not even know that the information has been compiled about them, and who, if given the opportunity to explain away this information, should legitimately object to being placed in this position of having to explain something.

This is information that because of the print-outs ability -- I will show you the typewritten print-out. It can be disseminated widely from a screen; it can be disseminated even more rapidly and just as widely, depending on how many terminals there are.

The orginal PJIS Plan in Philadelphia was to have a terminal in every courtroom. And it is understandable -- at least in every courtroom; over 100 terminals. And there would be certain restrictions on judges having some information,on the prisons having certain information, and the courts

not having prison information, and the police not having certain other information.

But 19-year old general Liberal Arts majors just taking one course in information science have been able to break all of the protect codes at some of the major universities in this country. The protect code is a way of protecting the key as to how to get in. You may have a key and you may have some words, type something in there. They are able to break all of these.

Look at all the millions of dollars that private corporations lose, Bell Telephone, others have lost, through the ingenuity of just average citizens, maybe with a pretty good inclination towards math. But there is very little protection from dissemination. And the computer creates all this new group of issues before us.

Now, there are some who say, "Let's get rid of the computer." "Let's do to the computer what happened to the nuclear bombs." Notice that they are now being proliferated in nuclear capabilities around the world.

But that does not seem likely, certainly not at a state level. We would have a hard time at the state level stopping computers from being used. And if it is only government computers, then what is to stop these firms from coming into town, as was recently reported in the "New York Times" about California, collecting all this information about

prospective jurors; that is you and me.

REPRESENTATIVE ITKIN: In essence, what you do with it, what you are saying is, as I interpret it -- you are suggesting that you do not feel comfortable in allowing the right to access. But you feel there is an inherent right upon people to have a right to access. So, what you do is create an inefficient system so that you can be right on both sides.

DR. LIACOURAS: That is right.

REPRESENTATIVE ITKIN: Well, you have the right to access, but, on the other hand, we have such a sloppy system, that you will never be able to find the information that you would like to have.

DR. LIACOURAS: Well, people do find it if they really dig for it. But it takes a long time.

REPRESENTATIVE ITKIN: What I am saying is: that is avoiding the problem in coming to a clear declaration of what ought to be done. That is like having it both ways.

And I suggest that we try to approach it in a very objective and direct manner, and see what we can come up with, rather than playing this type of intellectual game with ourselves in trying to satisfy both rights and really not having any of them satisfied extremely well.

DR. LIACOURAS: I think you put your finger on it. You may not be able to satisfy any of them perfectly well or

extremely well. But I think the history of this country, a pluralistic society, with so many different backgrounds of persons and interests, is a history of accommodating, not of picking one side or the other, but trying to pick a little bit of both.

And it may turn out that the manual system disappears unless there is a strong policy interest, a public interest, perceived in keeping it, in maintaining it. Not simply all the $8,000 a year jobs that will be involved in doing things by hand, which will certainly be a factor to consider, but insofar as maintaining access. An enterprising reporter can get access to certain court documents, et cetera, through the manual system. So can I, as an employer.

The question always is: how much of the new technology should be used to help the public, to help the employers, to help citizens, and how much of this new technology should be used to withhold information, the flip side to the same issue?

Now, by putting less information in the computer, you make wider dissemination possible, because it does not hurt you as much. If it is public information, why does it hurt me for someone to know what I did publicly 30 years ago?

Well, it certainly does hurt me, if it was a small transgression; if by and large,no one is going to find out about it, if it is a matter of 30 years ago with a manual

system. But it will be recalled instantaneously on a computerized system. So you try to either erase or restrict computerized access. But if you erase the only record that we have of that, then how do we know -- how can we record our own history for posterity; how can we check on official potential abuse, and why the case was resolved?

I am ordered, for instance, to destroy certain documents from time to time by my faculty. What I do is I take them totally out of my control and give them to a third fiduciary party, an attorney, in case we are sued.

And lo and behold, we were sued one time. And it was a good thing that we did not destroy the only transcript of a student disciplinary proceeding. The point of that is you should not destroy the only record you have. And a computer permits you to erase effectively, for all times, if there has not been a hard copy print-out of a particular issue. This all argues for a second system.

REPRESENTATIVE ITKIN: That is not true. Normally, in a secure computer system, more than one magnetic tape is made; there are duplicate copies or triplicate copies provided just for the cases that you point out.

In my judgment, far less security is involved with paper files than it is with computer files, principally because -- looking at the flood we had, Luzerne County and Wilkes-Barre was flooded. And they lost their records. They

were stored in the basement as in so many of our county courthouses. And they were never retrieved; they were lost for posterity. They are no longer available. That information could have been retained had it been on computer tape. They could have been removed quite easily. They do not require the storage. And it is a fact that the security of computer information, in my judgment, is far superior, because it does not require the volume of space to maintain them. And, therefore, they can be put in very secure facilities.

So many times we have found out that information that has been placed in the records are missing, because they are in file cabinets and are easilty accessible to employees or other persons in and around the facility, who can,from time to time, get entrance and remove them.

So, it depends on whether you want to make this information secure or not. If you do not care --if you are using it, and you are concerned about acquiring it -- if you are concerned about the government acquiring too much information, then obviously you really are not too concerned about government losing information.

I do not wish to belabor this, Mr. Chairman.

Thank you very much. I appreciate that.

CHAIRMAN BERSON: Are there any other questions for Dean Liacouras?

DR. LIACOURAS: Mr. Chairman, may I say one last

word? It may be that in the past we did not have enough information with which to make rational decisions. We always moaned for more information. We may be reaching the point where we have so much information, that we will be approximately in the same position where we used to be,with no information. And I am sorry to have given you four documents to make that point.

Thank you.

CHAIRMAN BERSON: Thank you.

(Witness excused.)

CHAIRMAN BERSON: The next witness will be Robert Morrison, Administrative Assistant to the Director of Public Safety in the City of Harrisburg.

Mr. Morrison.

REPRESENTATIVE KOWALYSHYN: Mr. Chairman, may I raise a point of order?

At this point, the only way I think I can present the question is: Dean Liacouras has pointed out the task of the legislature in having to balance the public's right to know with the individual's right to privacy. Having in mind the legitimate data needs of the criminal justice system, each of us has received a letter about these hearings which came from the two chairmen of the two committees. And I note that the agenda that is given here has the name of the House Judiciary Committee.

Concerning the public's right to know, I would like to ask whether the people dealing with the right to know, the newspaper people, were invited to participate in these hearings, specifically whether an invitation was sent to the Pennsylvania Newspaper Publishers' Association?

CHAIRMAN BERSON: It most certainly was. Mr. Dew of the Newspaper Publisher's Association was invited; Mr. Kotzbauer was invited from the "Philadelphia Bulletin;" Mr. Black the editor of the "Philadelphia Inquirer;" and one of the editorial writers. And they were particularly invited, these people, because they had written editorials on this subject. The editorial writer from the "Pittsburgh Post Gazette" was invited.

But the newspaper people generally took the attitude that they wanted to reserve their right to comment on the subject free from their active participation as witnesses to that.

But Chief Robert Dew, the General Manager of the Pennsylvania Newspaper Publishers' Association was invited. Robert Kotzbauer of the "Philadelphia Bulletin" was invited. Mike McDough, editorial page writer for the "Pittsburgh Post Gazette" was invited.

All of these people were invited. But all declined, I believe, except Michael Packenham, who is here and will testify later; who is the Chairman of the Freedom of

Information Committee of the Philadelphia Chapter of the Society of Professional Journalists.

But all the other media people declined to actively participate. And I believe the reason is they wanted to reserve their independence and freedom to comment about these proceedings and on this subject in general.

REPRESENTATIVE AMOS HUTCHINSON: Did they have any input at all?

CHAIRMAN BERSON: Well, there are numerous articles and editorials --

REPRESENTATIVE AMOS HUTCHINSON: They did not have any input at all?

CHAIRMAN BERSON: No. As usual with the press, they have reserved their right to comment in the press. I suppose that is as it should be, except that we will hear later today from Mr. Packenham, but not so much in his capacity as an editorial writer as with the Society of Professional Journalists.

Mr. Morrison.

MR. MORRISON: Mr. Chairman and the members of the House Subcommittee, first I would like to say that the Harrisburg Police Department appreciates the opportunity to appear at this hearing so that a local law enforcement view can be expressed.

Harrisburg is quite fortunate in having a Mayor,

Public Safety Director, and staff who recognized in 1972 the importance of a modern records system,and through the assistance of the legislature and Governor's Justice Commission over the past three years, was able to receive over $200,000 in Federal and State funds, along with approximately $50,000 in City matching funds, to achieve what we feel is one of the most modern Records Centers in Pennsylvania today.

For this reason, many of the requirements under the Plan are not that burdensome to us as compared to a department of similar size, which lacks computer capability.

The main controversy, in our estimation, seems to center around who should have access to an individual's Criminal History Record. It is our feeling that it is just as unfortunate to allow unlimited access as it is to be too restrictive.

I say this because I do not feel that an employer should deny a person a job because he was arrested for a summary offens such as "Underage Drinking" or "Disorderly Conduct" in 1966, at age 18, and ten years later, at age 28, this summary offense still is a "black cloud" over his head.

Another example is a request received from an inquisitive neighbor. Again, we do not think it is quite fair that a person who made a mistake perhaps ten years ago should face being "shunned" by an entire neighborhood.

Conversely, we believe an employer should have

the right to know if a person in recent years committed a crime and was subsequently convicted, that might have an adverse effect upon the quality of a job he could render.

For example, a school district should be able to determine if a potential teacher was convicted of any sex offense or other crimes which would affect his or her performance in that particular field.

A bank, as a second example, should be able to ascertain if a potential employee was convicted of theft, embezzlement, or other charges, which would have a definite bearing on that employee's ability to work within an institution of this nature.

Legally, it might also be necessary to have the potential employee sign a waiver to have the investigation conducted.

What I would recommend is that certain Non-Criminal Justice Agencies be able to query a repository, but only for those types of crime which would have a bearing on the employment being sought.

I would recommend another limit and that is one of time for Non-Criminal Justice Agencies. Perhaps a person convicted of a felony would have his or her record available for ten years for a Non-Criminal Justice Agency after being placed on probation or released from a correctional institution.

A person convicted of a misdemeanor would have his or her record available for five or seven years after being placed on probation or released from a correctional institution.

Summary offenses are not mentioned here due to the fact that the Harrisburg Police Department, under Rule 51 of the Pennsylvania Rules of Criminal Procedure, seldom place summary violations on adult arrest records due to the increased use of "walking citations."

As a further safeguard, any individual arrested and convicted during the above time periods for any offense, including ummaries, would have his entire record remain open for an additional ten year period beyond the minimum period stated above.

This would mean that the person who truly made a mistake in life would not be penalized forever, but the person who leaned toward making crime a way of life would always have his record made known.

An example of this would be a person arrested for burglary, which is a felony of the first degree, and is later sentenced to five years in prison in the year 1977. This individual is paroled in 1980. For ten years, until 1990, this person's record would be open to employers or other institutions having a need to know. Should this individual again be arrested and convicted anytime between 1980 and 1990, his

record would remain open for ten more years, until the year 2000.

These time frames are only suggested and perhaps after careful study, they could be changed.

Another problem which the Harrisburg Police Department faces is the failure to receive current dispositions from the Courts as the Central Repository, which is the Pennsylvania State Police in this Commonwealth, does in a timely fashion.

The Offense Tracking Number on the Docket Transcript Form is now used for this purpose, and in my estimation, is a good system.

At present, the Harrisburg Police Department, as most other local law enforcement agencies are required to do, depends upon their officers to bring back the disposition from Court.

Should a pre-sentence investigation be required, it may be months until the disposition is received and this could be long enough to have the case "lost in the mill." By having so many "hands in the pot," our disposition efficiency is nowhere near what it should be.

Local law enforcement records can only be valuable if accurate dispositions are received for each charge placed against an individual.

Perhaps a system could be established by the

Administrative branch of the Supreme Court to either add an extra copy to the Docket Transcript Form for local police or to place a routing number on the present form to have their office or the Central Repository forward dispositions to the local police agency originating the charges. Either of these systems would be extremely helpful to a local police department the size of Harrisburg.

The last point I would like to make clear is that of dissemination to the media. I believe a misunderstanding might exist as to a local police department's ability to disseminate arrest information to a local newspaper, radio station, television station, et cetera.

The Docket Book, which contains arrests by chronological order, has always been and will continue to be open to the public. This is where all the information for the "Harrisburg Patriot News' 'Police Log" is received with regard to Harrisburg arrests.

It would be a tremendous administrative burden for a city such as Harrisburg, which makes over 400 arrests each month, to supply the media with a complete rap sheet on each individual arrested.

Additionally, a recent Supreme Court ruling discourages the use of making known a person's Criminal History due to the fact that it could prejudice jurors when the defendant comes to trial. This could then result in a

conviction being dismissed.

In conclusion, I again want to thank all members of the House Judiciary and Appropriation Committees for the opportunity to express our viewpoints.

We have spent many hours thinking of the problems inherent in a plan of this nature and have tried to be cognizant of the rights of the individuals arrested.

In connection with this, we also feel strongly that certain individuals and institutions also have a valid right to review a person's Criminal Record in order to make proper decisions for the employment of people who they can trust and depend upon for the viable operations of their businesses.

CHAIRMAN BERSON: Thank you very much.

Do any of the members of the Committee have questions?

(No response.)

CHAIRMAN BERSON: All right. Thank you.

(Witness excused.)

CHAIRMAN BERSON: The next witness is Ian H. Lennox of the Citizens Crime Commission of Philadelphia.

Mr. Lennox, you may proceed whenever you are ready.

MR. LENNOX: Unfortunately, our president, D. Donald Jamieson wanted to be here but could not. He has prepared this testimony and authorized me to give it.

I would like to move to the second page and begin there.

The Citizens Crime Commission's testimony reflects its concern with the need for balancing the citizen's right to privacy, the public's need to know, and the operation of an efficient criminal justice system.

It is dangerous to resort to oversimplification, especially in an area so technically complex as the Pennsylvania Plan for privacy and security of criminal records, and the Philadelphia Plan for the Philadelphia criminal justice information system.

Nevertheless, we believe it a fair statement that if one compares both sets of regulations, one concludes that the Philadelphia Plan has a limited amount of information going into the computer with a more liberalized plan of distribution of that data to outside individuals and agencies, as compared to the Pennsylvania Plan which attempts to maximize the amount of information going into the computer,yet limits the degree to which this information may be accessible to other individuals outside of the criminal justice system.

With this as an operating guideline, it is the position of the Citizens Crime Commission of Philadelphia that this Committee view with favor the overall thrust of the Philadelphia Plan and its workability toward implementing such administrative rules in the Pennsylvania Plan.

The Philadelphia Plan sepcifically recommends that no information not publicly available be fed into computerized

data banks and that except in rare cases, a criminal suspects or convict's electronic dossier ought to contain only criminal records and not personal information.

The Philadelphia Plan also indicates that the criminal history record information of convicted individuals be accessible generally to outsiders such as non-governmental citizen agencies and the press, as opposed to the state plan, which prohibits indiscriminate access to criminal history record information that has been compiled on both convicted as well as non-convicted individuals. The state plan would only permit access to law enforcement officials with an absolute need to know.

As a citizens organization, funded largely by private and corporate contributions, with its base of support lying in the private sector of our community, the Citizens Crime Commission must strongly object to such narrow computer accessibility.

In addition, we point to the crucial need of an employer to know the conviction history of an individual who is being considered for employment in a sensitive position.

The Philadelphia Plan would permit access to computerized records by banks, school districts, insurance companies, private security firms and others regarding potential employees to be hired for sensitive positions vis-a-vis either relationships to other individuals or contact with appreciable

amounts of money.

We believe that such employers ought to have the opportunity to determine whether or not a prospective employee has been convicted within the last several years of a serious crime that would cast doubt upon the individual's ability to perform adequately in such a sensitive position.

It is our opinion that this Committee should look with disfavor upon the Pennsylvania Plan which would prohibit access to computerized criminal justice information except by authorized criminal justice agancies.

In effect, then, the Pennsylvania Plan would prevent public access to traditionally open criminal history files which now would be placed in the computer.

The response of the administration that the Pennsylvania Plan does not limit access to "court records of public criminal proceedings, orgainized and accessible by name, docket or file number, to which the public traditionally has had access" begs the real question of availability and accessibility to advanced technology.

It is easy to hypothesize the situation of criminal conviction records being manually available in Allegheny County and an individual applying for a sensitive position in Philadelphia.

Following this logic, the material would be available but would be inaccessible to the employer or the press, unless

they physically travelled to Pittsburgh and had a docket or file number for the individual under question.

Utilizing the Philadelphia Plan which permits public access as a statewide guide, such information not only would be available, but through the use of computer technology be readily accessible.

In effect, we urge the same kinds of considerations that the Confidentiality Committee of the Philadelphia Regional Planning Council adhered to when it permitted a liberalized access policy to a computer storing limited information on individuals coming through the criminal justice system.

We recognize and generally favor the stipulations that were given in the Philadelphia Plan for the retention of information within the computer for various periods of time.

For example, we can appreciate the sealing of non-conviction information after six months following a criminal justice proceeding.

We recognize the various categories of felonies that determine the length of time for which conviction information shall be available to what is being classified as the "idle curious."

We further understand and support the concept to expunge any criminal justice history with the rules and regulations as stated in the final report accompanying the final recommended rules on standards and safeguards for the

privacy, confidentiality and security of information in the Philadelphia justice information system, dated April 15, 1976.

At the same time, we cannot support, and strongly urge change in the rules of the Pennsylvania Plan for privacy and security of criminal history record information submitted to the Law Enforcement Assistance Administration which, in effect, provides no access by the "idle curious," which would include the press, citizen watchdog groups such as the Citizens Crime Commission, and prospective emplcyers to efficiently receive such information stored in hightly sophisticated and technical apparatus.

In the Pennsylvania Plan the spectre of Big Brotherism looms large.

We urge care be taken that the concept of personal privacy, acquisition of data, and the public's right to know are carefully balanced in the attempt to achieve fairness for all. Your charge is a serious one; your job ahead is a difficult one; and the results must be exceptional.

I would like to add, Mr. Chairman, a future caution or,at least,awareness of things that are moving ahead. As you may know, the Law Enforcement Assistance Administration has been funding the development of standards for the various aspects of the criminal justice system this past year.

One of these sets of standards, which I have been fortunate to have had a chance to participate in, has been

dealing with the private security industry. And we are planning here in the near future, through hearings or, in essence, an institute for security people from around the State be scheduled in Philadelphia in two weeks, to consider these standards and their applicability to the Commonwealth.

Inherent here or implied in these standards is the need for registration, licensing, and greater control over the security industry, which in Pennsylvania and in other states around the country, the total number of individuals involved in private security far exceeds that of public law enforcement.

And one of the crucial things that we are talking about here in the development of this private security is the need to know the background of individuals being hired for rather sensitive positions.

It seems to me crucial to this which is coming down the line, and which you legislators are going to be faced with, is the need to at least permit the access to this computerized data in determining the conviction records of individuals to either be permitted to form private security companies; and, secondly, those who want to work, to be licensed to be private security guards.

So there is something down the road yet, because I think we all recognize the need for improvements in the private security industry. And it is going to be necessary to have

access to criminal records if we are going to have a good program.

Thank you.

CHAIRMAN BERSON: Couldn't the problem be dealt with if a prospective employee was required, in effect, to sign a statement authorizing his employer to check into his record; and if the plan, then, would make such records available to a prospective employer, providing the employee had signed such a statement authorizing this?

It seems to me that if we developed a plan of legislation which would allow access to rap sheets and what-have-you,based on the statement signed by the employee that it was okay for his employer to get them, we could deal with the problem very speedily.

A bank teller will simply not be employed if the bank teller is not going to allow the bank to obtain those records. It is as simple as that.

Do any members of the Committee have questions?

REPRESENTATIVE AMOS HUTCHINSON: I was going to ask you how you fund. You acquire funds by means of industry and citizens. Where does the rest of the money come from?

MR. LENNOX: Well, I would say about 99 percent of it comes from that source. We do accept an occasional federal grant for a specific project. But none of these funds are used for administrative purposes. So I would say 99 percent

of our --

REPRESENTATIVE AMOS HUTCHINSON: Are you a paid administrator?

MR. LENNOX: Yes. I am a paid executive head, yes.

REPRESENTATIVE AMOS HUTCHINSON: Do you know that we already have a security guard licensing code?

MR. LENNOX: Yes. Lethal Weapons Act, yes. The standards that we are talking about go beyond the armed guard. It would apply to the unarmed guard, the alarm industry, a whole host of things. It is rather comprehensive.

I am not saying that all of it would have to be provided in Pennsylvania. But I certainly think there is a great deal there that we will want to carefully consider.

CHAIRMAN BERSON: Any other questions.

Representative Kistler.

REPRESENTATIVE KISTLER: We heard a lot here today about the right of corporations or other bodies to make inquiry as to what is in the computer or in the record in the file about people whom they would employ.

I have heard nothing, utterly nothing, of a concern about what might be in the file that an individual would have no knowledge of.

Now, what is your opinion with respect to the individual having access to their own private file in order to determine whether or not the content of it was correct; and,

thus, to enable the individual to have the record corrected, if necessary, through judicial proceedings where,in his judgment, the record is in error?

MR. LENNOX: We have no negative feeling about the individual having access to his records. The only thing that I would point out -- and this would not be a roadblock, but merely that the legislature should be aware of it -- is that these rights to privacy laws at the federal level-- we had a session the other day with Fred Hess from the U.S. Department of Justice, who has responsibility for the Justice Department program of disseminating to people,who inquire, criminal records and whatever information the Justice Department has on them, the tremendous cost that is involved in this.

Now, I do not say that we should not pay that cost. I think an individual should have a right to know what information is collected about him by a government agency.

But I think in going into this we ought to realize, as you are appropriating money for all purposes with a limited dollar, there is going to be a considerable amount of money required here for the tracking down of this data.

REPRESENTATIVE KISTLER: Isn't this paramount in our government which purports to stand forth in the interests of liberty;we are transcending commercial transactions, I might suggest?

MR. LENNOX: I have no objection with that. I

would agree wholeheartedly with your position, but I am just pointing out that our experience in the Federal Government has indicated that there will be a considerable expenditure of money. How much it will be, I have no idea.

But I just want to go on the record as saying that this is going to be a rather costly process if the Federal program is any measure. But can we provide it for people, provide the rights? Certainly, I think that is inherent.

REPRESENTATIVE KISTLER: I would just want to say for the record and for the General Assembly, subsequently considering this, that the cost is immeasurable if some provision is not made that individuals can check their records and, in due process, to correct the record where that is in error.

It seems to me far more fundamental that the rights of individuals be protected than that corporate rights be protected. I am not against corporate protection. But I, certainly, am against computers compiling erroneous information about individuals and, particularly, disseminating this without the individual's opportunity to have it corrected.

MR. LENNOX: I sympathize with Representative Itkin's statement to an earlier individual testifying that you have a very, very difficult job ahead of you to walk this delicate line, balanced between the right to privacy and society's right to know.

I do not envy you your task. I agree, maybe it

cannot really be done. But I think a step has to be taken. And all we would say is to make your job as easy as possible by limiting the data that does go into the computer.

All of this personal information, intelligence information on an individual that may or may not be substantiated in fact, this sort of thing should be kept out of the computer, which deals specifically with the person's general criminal record, not a whole host of background information.

I think that then would simplify your task somewhat.

REPRESENTATIVE KISTLER: Does it not logically follow that even more fundamental is the right of the individual to check his own record?

MR. LEMNOX: I would say -- I do not know whether I would weigh one more than the other. It is certainly equally as important as society's right to know other areas of information.

But I would certainly say that the individual has every right to know what the government has collected about him. So, I have no argument with that point.

REPRESENTATIVE ITKIN: I want to know whether in terms of reaching some middle ground--which, in my judgment, probably would not be very possible -- would be whenever anyone's record would be requested from another party, that the individual whose record is being requested would be notified

that his record is being requested and that a copy of whatever is being provided to that other party be provided to the individual whose name appears on the record.

There, in that regard, you do not have millions of people requesting records that are not even called for or used. Then,at that point, you can have any erroneous information corrected from that time forward.

MR. LENNOX: . In this, if I may comment on that, I am concerned with far-reaching aspects of not only the data that is in the computer; but, if the federal government would pass -- if legislation were resubmitted and passed as was in Congress last year,requiring the state governments to let individuals know what information is in manual files; that an individual has the right to know what the government has collected about him not only in the computer, which is readily accessible -- what we are talking about today -- but in all manual files.

You can see how tremendous this would be to try, for the Attorney General's office in Pennsylvania, if they were determined or the State Police -- that would be the agency that would request this -- getting information from all of the multitude of police departments in Pennsylvania.

Now, this is the thing that is causing so much difficulty in Washington, because when Congress passed this legislation, the right to privacy, they assumed that most of

the information was on computers and readily accessible. It turned out in the Justice Department, very little of it is in computers.

In the FBI, I do not know how many people they had to hire to go through these manual records. Now, that is not in your concern here today. But I am just saying that looking down the road, I am a little concerned here about where we are going.

CHAIRMAN BERSON: Are there any other questions?

(No response.)

CHAIRMAN BERSON: Thank you very much, Mr. Lennox. We appreciate your coming.

(Witness excused.)

CHAIRMAN BERSON: The next witness is Irving Chasen, Director of the Philadelphia Justice Information System.

Mr. Chasen, you may proceed whenever you are ready.

MR. CHASEN: Mr. Berson, I did not prepare a formal statement.

I am the Director of the Philadelphia Justice Information System, the LEAA funded project which is charged with automating the information system for the City of Philadelphia.

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CHAIRMAN BERSON: Are there any other questions?

(No response.)

CHAIRMAN BERSON: Thank you very much, Mr. Lennox. We appreciate your coming.

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I am the Director of the Philadelphia Justice Information System, the LEAA funded project which is charged with automating the information system for the City of Philadelphia.

I have brought with me a scope of effort of the

project in a fairly succinct form, which will be available to members of committees and the press.

My function here today is not to take issue or offer opinion on the State Plan or Dean Liacouras' Philadelphia Plan. But I am prepared to discuss in response to questions the current status of the Philadelphia Justice Information System, which has been widely discussed here, and compare it to the State Criminal Justice History System, if there are any questions.

CHAIRMAN BERSON: Representative Kowalyshyn.

REPRESENTATIVE KOWALYSHYN: Are you in a position to tell us what kind of a budget you have each year?

MR. CHASEN: We are federally funded through LEAA by a discretionary grant. Currently, we are in our second year of funding, and in the current year of funding, the Justice System is funded at a level of $400,000.

REPRESENTATIVE KOWALYSHYN: Would you please tell us what is the size of your personnel?

MR. CHASEN: We have, I believe, 12 people that are solely programmers and analysts; technicians who are implementing on two different computer systems--one installed at the Philadelphia Court of Common Pleas, and one at the Philadelphia Police Department--a Criminal Justice Information System, a collection of the information required for the various steps in the justice process that take place.

We are, at this point, working on a common denominator, if you will, of the guidelines that are being suggested both at the State level and the local level by Dean Liacouras' committee.

We are dealing in factual, current public information type data that we are attempting to collect, automate, and distribute solely for the purpose of facilitating the administration of justice in Philadelphia.

REPRESENTATIVE KOWALYSHYN: Could you tell us whether your operations are up-to-date?

MR. CHASEN: The current status of the complements of the project are that we have an automated prisoner inventory system of factual information on whether an individual is incarcerated, when he was incarcerated, the committment that held him there, or,if he was released, what was the method of release and the date, factual public informationavailable to the justice agencies and the public.

We have developed a system called "on-line booking" in automated criminal history information where individuals are arrested and processed. The processing of the information is fed into a computer system. And we do have the capability of automated criminal history information. I guess, it is the bottom line of what is being discussed here today.

This information is being duplicated in manual form. And it is the manual system that is promulgating and

distributing criminal history information. What we have developed is the capability and -- I do not know if I am entitled to have an opinion -- I feel that the Police Department, at this point,have the capability and they are holding back on cut-over, full implementation of it, until they see what the direction of the policy and law is going to be, both statewide and national.

REPRESENTATIVE KOWALYSHYN: Could you give us an idea -- in other words,you work with the Police Department, which has their own manually operated system.

MR. CHASEN: Our project is worked with the Police Department, the Court, the prisons, all the agencies, in automating various subsystems, the sum total of which will be the PJIS Project.

In the "on-line booking," the arrest processing in automated criminal history system, we worked, for a period of the last three years, to automate their arrest processing and criminal history procedures. And this task has been accomplished and is in place now.

REPRESENTATIVE KOWALYSHYN: You say it has been accomplished?

MR. CHASEN: It has been accomplished and is in place now. It has not replaced the manual arrest processing system or the manual preparation of rap sheets.

The Police Department,I think, I feel, in my

dedication

opinion, is holding off on full implementation until it is determined exactly what law, policy or guidelines will be in existence that will determine how this information will be disseminated and who will have access to it. I think they are actively awaiting the results of this Committee's activities.

REPRESENTATIVE KOWALYSHYN: Thank you.

CHAIRMAN BERSON: Mr. Chasen, are these computers dedicated computers that we heard about yesterday or not dedicated?

MR. CHASEN: The two computers in question that are presently installed for criminal justice purposes are dedicated to the operation of the individual agencies, the Police Department and the Courts,respectively.

They are not dedicated solely to criminal justice activities to the extent that there are administrative functions on them. The Court's computer, for example, does personnel processing. We do not do a payroll or a budget. That is handled by the finance department, in the City of Philadelphia, under a separate system.

The Police Department's computer system,in addition to doing criminally related processing, handles scheduling of police overtime,and maintainence of police vehicles. They are dedicated within the agency, but to the full scope of the agency's activites.

CHAIRMAN BERSON: Would you be prepared to tell us the principal points of difference between the Philadelphia Plan and the State Plan?

MR. CHASEN: I have looked into that area. And for the people in Philadelphia, I have prepared a succinct document.

CHAIRMAN BERSON: As succinctly as you can.

MR. CHASEN: Very briefly, the ~~Pennsylvania~~ Philadelphia Plan, the applicability as to automated information only as Dean Liacouras specified. Data entry into the system is limited to public information only. It excludes intelligence investigative, personal, medical, educational, employment, behavioral type information.

The disclosure of the automated information on current case information is widely accessible; everything that goes into the system, in the Philadelphia Plan that Dean Liacouras discussed, is public information; that includes unsealed criminal history information. It would be available to anyone.

Statistical information in aggregated form would be available; statistical information in non-aggregated form would be available only if the requesting individual would be willing to pay for its preparation.

Information would be available on criminal justice employees, officials, or agencies to anyone that requested it.

And sealed information -- sealed means restricted -- would be limitedly available by definition.

The ~~Pennsylvania~~ Philadelphia Plan goes into a formula, which I will not discuss. Simply, all the information that goes in is available when and how various criminal history items would be either removed, which is expunged, or else had their access limited, which is sealed.

An example of this is that a non-felony one conviction,after five years from discharge from incarceration or probation for a single misdemeanor, would be sealed. There is a whole list of these.

The State Plan, in comparison, does not deal only with automated information. It deals with all criminal history information systems, automated or manual. And I think in its conception and design, it was really written to address the State Central Repository for criminal history record information. The applicability of it was, then, broadened to include all systems, manual and automated.

And the information that is in there is arrest and disposition information only. And it is disclosed to criminal justice agencies for the administration of the criminal justice system and the employment of the individuals of a criminal justice agency.

Researchers have to get approval of a special Privacy and Security Council. And sealed information,

information that would have limited access, would be available only to the individual to whom it applied for purposes of inspection, challenge and correction. And it, too, has grounds for expungement, a series of criteria based upon the seriousness of the charge; certain periods of time having passed that information will be removed.

Both systems have a common denominator, the procedure for inspection and challenge. And any individual can ask, "What is in the system about me?" And if he feels that it is erroneous, there is a formal procedure whereby he can challenge its correctness and have a number of levels of appeal to get the information changed.

CHAIRMAN BERSON: Representative Hutchinson.

REPRESENTATIVE WILLIAM HUTCHINSON: I have a couple of questions. Perhaps, it is my stupidity about the whole thing. But you referred to "sealed" information that is available on a limited basis. Can you tell me -- because I think we have some basic general questions on technical things: Can you tell me who determines what is "sealed" and the extent to which it is"sealed"?

MR. CHASEN: Currently, on manual systems, I believe that there are -- I am not aware of any sealing provisions.

The purpose for sealing,as opposed to expungement, is that sealing is a reversible process, where expungement

is not.

REPRESENTATIVE WILLIAM HUTCHINSON: But my question is: Who do you envision as making the decision as to what will and will not be sealed?

MR. CHASEN: I feel that the decision on what would be sealed, as opposed to what would be expunged or what would be left in the record, should be a matter of law.

REPRESENTATIVE WILLIAM HUTCHINSON: A matter for government officials; is that correct?

MR. CHASEN: Whoever passes the law; the legislature.

REPRESENTATIVE WILLIAM HUTCHINSON: But when we pass that legislation, we will have to name a person who will make the decision; is that correct? Not a person by name; but we will have to have some institution,which is made up of people in government,to make the decision.

MR. CHASEN: I am not sure that I understand your question. I think if the law would state that an individual is arrested for a misdemeanor and after being dismissed from their probation or parole or prison, has not contact for two years -- I am arbitrarily making these up as I go along -- his record would become sealed;and to be unsealed,if he is subsequently rearrested.

I do not think that anyone would have to make the determination. That would be hard and factual. And someone

meeting that criteria would have their record sealed.

REPRESENTATIVE WILLIAM HUTCHINSON: But we do not know what -- it would be up to us to make the decision on what should be sealed; is that right?

MR. CHASEN: Right. And the implementation of those criteria would be left, I guess, to the people that are responsible for the repositories of information. And their failure to do so would put them in conflict with the law.

REPRESENTATIVE WILLIAM HUTCHINSON: But they are people that would be in government, essentially?

MR. CHASEN: Yes. People in charge of the government's records, either local,community or state repository.

REPRESENTATIVE WILLIAM HUTCHINSON: So, the final analysis, the decision as to whether or not that information will be made available will be made by government; is that correct?

MR. CHASEN: I am not sure I follow you. I think what we are discussing, and the point you are making is the government's record. And the decision to disseminate information would be made by government, under the guidelines of policy and law.

REPRESENTATIVE WILLIAM HUTCHINSON: What I am getting at is a very basic and, I think, philosophical question which is involved in this situation and is when the troubles begin.

We are talking about the mechanics and the details of this system. And we have a very difficult problem, because we do not want all kinds of information out that will be damaging to people. And we want to protect them.

But as we always must do, when we choose to institute that kind of protection, we must do it through government. A basic question that I am concerned about is because I have some feelings about the corruptibility of human beings and their fallibility. And my concern -- the question I am driving at -- is the whole basic problem here of, first, gathering this information. All right, we have to gather it to make it available.

Now, we are gathering it in a central repository, whether it is yours or the State's; the principle is the same. Probably, it may end up being the State's. We gather that information in a central repository, and then we can limit the availability of that information, by law, to people or persons that we choose to limit.

Don't you think that that gives the government, which I consider -- don't you think that that gives the government a kind of overwhelming power of control over that type of information, as opposed to the present situation, bad as it is?

MR. CHASEN: How is that different from how it exists now? I do not mean to ask the questions rather than answer them. I really do not discern the difference.

Right now, someone can petition the Court for expungement of their record, and the judge can so order it. It is up to the government to carry out that court order and the expungement is supposed to be made.

But that record of the individual's arrest and conviction or non-conviction, or whatever, that was court ordered to be expunged, is available to the press two years later.

REPRESENTATIVE WILLIAM HUTCHINSON: What is the present law with respect to expungement, and under what circumstances can expungement be granted, by the court, of public record?

MR. CHASEN: I am not a lawyer, and I cannot speak to the law. I know that, currently, manual records are expunged in Philadelphia by court order. And someone has to petition the Court; the Court makes the ruling. And if it is to expunge, the record is removed.

REPRESENTATIVE WILLIAM HUTCHINSON: Are they records of conviction that are expunged?

MR. CHASEN: It is possible.

REPRESENTATIVE WILLIAM HUTCHINSON: Arrest records are expunged sometimes. So to some extent, that is an area of the law that has to be examined. We must determine, aside from the technicalities -- we have a very serious policy consideration to determine what types of records should be expunged.

MR. CHASEN: Yes. And various criteria, both plans address them. They have, I guess, in common the fact that they do address it. I think of it in terms of society's forgiveness, based upon severity of the crimes and time constraints.

REPRESENTATIVE WILLIAM HUTCHINSON: Do you envision a process of doing this by court order or some other administrative method with respect to whether it is sealing or expungement?

MR. CHASEN: To my knowledge now in working with this system -- and it is limited to Philadelphia -- there are two procedures. One is the court order expungement. And the Police Department have a general policy; and their policy is very severe. I think the individual has to be over 100, has to be dead, and has to have had no contact with the system for 20 years. Then they will just purge their file.

Perhaps, I am exaggerating it, but it is a very severe criteria just for the sake of getting rid of their records and not keeping them forever.

As a citizen, I think that is absurd, and there should be something. And the something, whatever it is, should be uniform. And the only way it is going to be uniform and there will be some muscle to implement it or oversee it, is if it is law.

REPRESENTATIVE WILLIAM HUTCHINSON: You said that

the data that you are collecting,or that you have currently collected, includes only public factual information and does not include intelligence data, medical data, and that sort of information.

MR. CHASEN: Right.

REPRESENTATIVE WILLIAM HUTCHINSON: You said that was different; that was one of the differences between the Philadelphia Plan and the State Plan.

MR. CHASEN: I do not think so.

REPRESENTATIVE WILLIAM HUTCHINSON: Then I misunderstood you.

MR. CHASEN: The scope of the two plans that I discussed -- the Philadelphia Plan limits input to computer systems of that type of information. That type of information may not go into the system.

The State Plan does not deal with that at all. It limits its discussion only to arrest and conviction information.

The scope of the project I direct --

REPRESENTATIVE WILLIAM HUTCHINSON: This is where I am confused. Yesterday,we were told that the State Plan did not address itself to the problem of intelligence data, medical data and so on.

MR. CHASEN: Right. It does not.

REPRESENTATIVE WILLIAM HUTCHINSON: It does not

address itself at all. As I understand your claim, you do not even get that data into the computer; is that correct?

MR. CHASEN: We are currently not putting that information into the system. It is the scope of the project I direct that that information would eventually, if allowed, go into the system.

The scope of the PJIS Project of the Philadelphia Jutice Information System is to collect and disseminate, via automation, all of the information that the various justice agencies would need to execute their function.

And those functions include things like pre-sentence investigation reports, alert notification to the prisons of someone that is epileptic, or has a heart problem. That information would get into the computer for dissemination, so they can administer appropriate procedures.

Dean Liacouras' plan specifically says that that information should not be in. And we are not proceeding to the full scope of our project until there are some hard guidelines that we must adhere to. I do not know whether we will ever or not.

REPRESENTATIVE WILLIAM HUTCHINSON: But you do say that if you were to get all the information into the system which would affect the criminal justice process, you would need to get that information.

MR. CHASEN: Yes. To fully harness the capability

of automation, that information should be in.

REPRESENTATIVE WILLIAM HUTCHINSON: Now, I am sure you are familiar with the situation; we all have been through the newspapers. And otherwise, I am sure you are familiar with a lot, especially with the manual file; the type of information that is often available, the typical FBI file with all kinds of informants, information, and so on,in it.

If you are going to convert the manual file and put it on the computer, do you have or suggest any restrictions with regard to the type of information that would get into it?

I suppose that the fact that Mrs. Smith called and said that so and so did something some time ago, is kind of intelligence information, isn't it?

MR. CHASEN: There are no plans in the full scope of the project I am involved in to ever have intelligence type of information. Anything that would be investigative would be the sole responsibility under the jurisdiction of the Police Department, and they would separately control that and utilize it.

REPRESENTATIVE WILLIAM HUTCHINSON: So, that would not get into it?

MR. CHASEN: Right. The sensitive information that we are discussing, personal, medical, educational, employment type of information, if entered into the system, would have to have its own severe set of limited restriction

but it will eventually get out

guidelines to be used on a as needed basis and not publicly available.

REPRESENTATIVE WILLIAM HUTCHINSON: But that means as needed by government?

MR. CHASEN: By government; right. And that puts it into direct opposition to the present Philadelphia Plan that Dean Liacouras discussed.

REPRESENTATIVE WILLIAM HUTCHINSON: I am really deeply troubled by that problem; that it is not available to anyone. And I am concerned about the privacy right. But that it is available as needed to government --

MR. CHASEN: Right.

REPRESENTATIVE WILLIAM HUTCHINSON: -- that concerns me a great deal, because--since information is really power in our society and the availability of information, it further increases the power of the government, it seems to me, as opposed to the general public.

And I know there are problems with the way it gets out. I am really troubled phil sophically.

MR. CHASEN: In my opinion, I think that is the crux of the issue.

REPRESENTATIVE WILLIAM HUTCHINSON: That is the basic issue here, isn't it? Not how we have security or what kinds of things we have; that is an issue. Once we get over the basic issue, is this a desirable thing at all?

MR. CHASEN: Yes. Another comment, if I may, is that information, once it is in the system, I think, has the potential for control via automation more so than it would with a manual system.

There are limited access techniques that lend themselves to automation; whereas the manual file can be open information. It can be pulled, reproduced, and disseminated without controls. But it is a double-edged sword.

Dean Liacouras, also, was quick to point out the capability of 19-year-old math majors to break files. That is true, and the potential for abuse is a real one. However, I think the potential for implementation of adequate guidelines and security procedures also exists.

It disturbs me to operate on the premise that if it is in the computer, it will eventually leak out. I do not know; I don;t think that is a fair conclusion or an objective one.

REPRESENTATIVE WILLIAM HUTCINSON: I did not say that eventually it would leak out. The problem that I am concerned with is the fact that it is available to officials. It is available on an as-needed basis to government. But it is not available anywhere else. And I think that increases greatly the power of government, because information is really a tremendous power.

MR. CHASEN: Also, that information is currently in the system and is currently available. However, it is on

a piece of paper and disseminated manually with the time restraints of manual dissemination of documents.

I am not talking about information that is not currently captured or information that we do not have now and want to start to collect. What we are discussing is whether or not, if it is available in manual form, we can facilitate the administration of justice by utilizing the tool of the computer to collect it more rapidly and disseminate it more quickly.

REPRESENTATIVE WILLIAM HUTCHINSON: But the question is whether it is a difference of degree or difference of kind in having it available manually with all the difficulties of retrieval or having it in computers. . We can argue it.

MR. CHASEN: We are back in full circle to the increased potential for abuse via automation.

REPRESENTATIVE WILLIAM HUTCHINSON: Thank you. I have not heard any talk about the basic question. And I missed a good part of the hearings yesterday for which I apologize. But I thought the basic issue has to be faced.

CHAIRMAN BERSON: Representative O'Donnel.

REPRESENTATIVE O'DONNEL: Just a follow-up on Representative Hutchinson's questions about whether the difference between automation and manual record keeping is a difference in quality or quantity.

The manual record keeping necessarily, I think,

because of the limited number of indices available, limits the purpose for which the information might be used.

In other words, if we have a file on a given individual, we might be able to say, "Well, let's see how Bill Hutchinson is doing." You can go under H and under Hutchinson, sub William, and get him out.

But a computer would be able to index all the information in his file and cross-tabulate, I assume, so that now, for purposes not, in my view, germane to the criminal process which focuses on an individual, but rather for other purposes which, in my view, are not germane; such as, "Give me all the addicts or addict types in Zip Code 240."

Do you see what I mean?

MR. CHASEN: That capability would exist if a technologist would sit down and prepare the automated capability to do that. Now, that is a real and present danger of collecting that type of information. However, someone would have to make a specific inquiry for that information. That individual would have to have a level of clearance to warrant their getting it. A record of the information disseminated, where, when, and to whom would also be kept.

And then someone would also have to make the administrative judgment that that type of capability would be developed; that there would someday be a need for that.

That need might well be rationalized under the

guise of research. In which case, there would have to be aggregated type data; the number of those people by age, race, sex, or Zip Code, without unique individual identification. Unique individual identification of those people would, I think, be well rationalized as an abuse of the information.

REPRESENTATIVE O'DONNEL: It would be relatively easy, wouldn't it, to cross-tabulate or set up a cross tabulation in that fashion?

MR. CHASEN: It would be relatively easy once the information was in the system. However, the potential for abuse --

REPRESENTATIVE O'DONNEL: Once the information is in the system.

MR. CHASEN: Yes, the potential for abuse that you are pointing out, also, has another side of the coin. The potential for real research to come up with those types of information to determine where placement centers should be, half-way houses. I am groping for hypothetical type examples where that type information, although not easily available, available at great expense-- we'd have to manually correlate that--could be used to benefit society, to benefit the justice system, to harness this very powerful information by computer, to make these important management decisions.

REPRESENTATIVE O'DONNEL: I understand that. I think that is exactly the difference. I think the manual

file keeping is entirely consistent with what has been the kind of common law and well understood function of the criminal system which focuses on a given actand a given individual and processes him through the system.

Now, at some point, the relevant consideration in the system becomes planning for the overall system. And now the common law thread of looking at an individual and prosecuting him and vindicating him or finding him guilty or whatever, now, becomes secondary to an overall planning function.

Once you move the system from that level of decision to the higher level of decision, then automation becomes a kind of part and parcel of that level of activity.

I do not see how you can plan for masses of people, understood in demographic terms, unless you have automation. But I just want you to understand that we are not working from the premise that planning at that level, based on individuals as demographic personalities and not as a guy sitting in a witness chair, is entirely appropriate for this country.

CHAIRMAN BERSON: Does anyone else have any further questions?

Representative Hutchinson.

REPRESENTATIVE WILLIAM HUTCHINSON: One question that really deeply concerns me on the philosophy of this situation, we are talking here about the privacy of the individual and that problem and then you are talking about

getting information on that individual. And I would like to direct my attention to one area that is of concern to me, an area in which I have some experience. And that is the area -- and I believe in the plan here, they were talking about certain types of litigation involving the Department of Revenue and taxes and so on.

Now, the federal government is already able, through statutes passed by Congress--which have been upheld by the Supreme Court, somewhat to my surprise -- to obtain any kind of information about your bank account, my bank account, or anyone else's in connection with what they say is a tax matter, which can then become a criminal matter,and put that information into their file.

Now,I would suppose, if the Constitutional restrictions had been upheld by the United States Supreme Court -- the Constitutional restrictions on self-incrimination, search and seizure, and so on, do not prohibit the gathering of that kind of information.

I would suppose, also, that at the State level, we might very well anticipate that perhaps a State Court -- the highest Court of this State, Pennsylvania Supreme Court -- might also say that that information was not restricted as a matter of Constitutional law. And then it gets into a criminal record system.

Now, that gives me a great deal of concern, too.

We are talking about implementing this plan on the one hand with respect to true criminal record information and trying to protect the privacy of people and their rights as opposed to just general unfair dissemination. But at the same time, we have this other drive running on the other side where information of the most private nature, which really may not have anything to do with criminal information, is being made available on the computer.

I am not criticizing you and it is really beyond the scope of this hearing. I think we have to consider this whole thing as of a piece, this right of privacy.

I wonder how you feel about restricting access to a great extent the criminal record information when you have the readily available information on what I think is essentially private factors.

MR. CHASEN: The most sensitive information I think we collect in the Criminal Justice System, at least in Philadelphia, is perhaps the bail interview, where we determine an individual's financial background, his roots in the community, his medical background, his employment history, and a recommendation is made by a bail agency to an arraignment judge in terms of bail.

This information is written down and kept in manual form. This is the most sensitive data, I feel, on the individual. This is available now, I would assume, by subpoena by

the federal government, if they wanted it now. And I do not see where automation jeopardizes this information any further, except that it is available more rapidly,with greater facility.

But if someone wants to get it, it is available if they have the right to get it. As a matter of fact,I think the information could be disseminated currently without anyone knowing from whom it came and for what reason, if it were to appear in the newspaper or someone was to have it.

Whereas, if it were automated, we would have a record, even if the information were taken illegaly; we would have a record via the tool, the computer, where it came from, from whom, when, in whose hand.

REPRESENTATIVE WILLIAM HUTCHINSON: Again, going back to Representative O'Donnel's question and my question is whether the availability on the computer is a difference in degree or a difference of kind.

MR. CHASEN: The other side, if I may make one more comment -- the other side, in terms of the economy of the administration of justice, this same kind of bail type information that is collected at arrest time is almost identical to the kind of information that a judge would ask for in a pre-sentence investigation.

At a definite duplicative expense and a delay in the judicial process, the information is recaptured. And under the Philadelphia Plan that Dean Liacouras discussed,

that is the way you would recommend it being, because that type of information should not be automated and not put into the system.

REPRESENTATIVE WILLIAM HUTCHINSON: That would certainly make it more efficient.

MR. CHASEN: Right; in both terms of time and cost to the judicial system.

CHAIRMAN BERSON: Just as an aside, one of the reasons the legislature is so gun-shy in this area is that this federal statute that opened up bank records to the tax people was titled "The Bank Privacy Act." And we have gotten very leery of things that which are sailed past us under one name and then we read them and we find that we have got something else.

Representative Scirica, do you have some questions?

REPRESENTATIVE SCIRICA: I want to ask a specific question about your proposal to establish an Independent Security and Confidentiality Council.

The State Plan calls for the creation of a similar body. I am not as troubled by it in terms of the scope of your Philadelphia Plan, because you are restricting what can go into a computer. But assuming the legislature were to take a different attitude and allow a great deal more information to go into the data bank that would be ordinarily in practice under the term "public information," then, I am wondering

what kind of power and control we are giving to this overseeing agency.

And it is very appealing for us to delegate a lot of the sensitive policy issues to a so-called independent agency. We get it out of politics. We are not going to have the legislature, the Governor, the Attorney General, or whomever, control them; then there is some reason to get it outside.

On the other hand, we have no responsibility for the independent agencies; they are not accountable to anybody. Some people may be in there for a long time and may do a very poor job at it.

In your consideration of the establishment of this Independent Security and Confidentiality Council, did you go through some of these questions: why do you think it is necessary, what kind of safeguards would you have in this agency?

MR. CHASEN: I would say the formation of this agency, as discussed in the Philadelphia Plan, was made by the Confidentiality Committee that Dean Liacouras headed up. I was just a technical advisor to that Committee, and I played no part in the formation of those guidelines that included this Security Council that the Plan discusses.

The Plan very succinctly states that they are an Appeal Board for the people accessing and challenging the

information, and within 18 months after the adoption of the guidelines, they can meet,and by two-thirds vote modify the guidelines to perhaps reconsider additional information in the Plan.

They are just a general policy Board.

REPRESENTATIVE SCIRICA: That is just the thing. How general of a policy are they going to have?

I can see where you need an agency that would hear appeals and correct information. Obviously, that would serve that function very well. But how far beyond can it go?

MR. CHASEN: If there is no law passed and Philadelphia arbitrarily accepts the Philadelphia Plan under Dean Liacouras, as policy -- this is not law -- and agrees, "I am so ordered, that nothing in the automated system would be other than the public information now called out," I see that board as a Board of Appeal.In 18 months they will say,"We are doing this,"and I would like the Board to consider the possibility of bail information going in with severe restrictions in dissemination and penalties for abuse, so that it could be used for pre-sentence investigations.

And that Board then would consider that, would allow the automated system to do it under its current policy, if 18 months had passed and a two-thirds majority of that Board votes for that.

That is very arbitrary. It is all done locally;

it has nothing at all to do with any uniform policy between Allegheny County or Philadelphia County.

REPRESENTATIVE SCIRICA: That is precisely the kind of power that I would not like to see the legislature delegate to a State Security Board.

CHAIRMAN BERSON: Representative Itkin.

REPRESENTATIVE ITKIN: To what extent is the data presently now obtained used by Criminal Justice Planning and Research Agencies in order to perform performance evaluations on programs that they are conducting?

MR. CHASEN: The information on arrest processing and criminal history is a collected information only, and it is not being used to prepare any formal reports. The Police Department are just holding up until they see the direction of these hearings and the pending laws.

The Courts, themselves, have preceded this project in automation. I think Philadelphia led the country back in the late 60's in developing an automated system. And they prepare very comprehensive and statistical reports on the Philadelphia Judicial System via automation, and have for some years.

REPRESENTATIVE ITKIN: Let's say in the area of crime prevention, where we spend tens of millions of dollars, annually, in this regard hoping to reduce the crime, and we support appropriations for various programs in expectation and hope

that we will be able to reduce crime, the question is: in performing a performance analysis of the work of these agancies, do you have any request -- are they making requests of you today for data so that they can gauge how successful their programs are working?

MR. CHASEN: Not of me directly. There are reports being requested from current data bases and information on things like recidivism, arrest by Zip Code, aggregated data, not traceable to specific individuals, but to categories of individuals or areas.

And the tools of automation are being used to report, to the extent possible, on demographic type data.

REPRESENTATIVE ITKIN: So, you do support these activities?

MR. CHASEN: Yes. They make legitimate requests, research agancies, and they are given consideration, and they get information.

REPRESENTATIVE ITKIN: How have these agencies gone about in the past with a manual system?

MR. CHASEN: Yellow pads and pencils and going through file drawers and making notations.

REPRESENTATIVE ITKIN: In the past, who did these types of things?

MR. CHASEN: The people; the researchers.

REPRESENTATIVE ITKIN: And they went to the

Philadelphia Police System and sat down at a table and some policeman said, "These 18 file cabinets contain the appropriate information." And they laboriously spent months chicken-scratching numbers of duplication of arrests from rap sheet to rap sheet.

MR. CHASEN: Well, not necessarily the Police Department's files;I do not know whether they would be that accessible; but certainly the Court clerks, historical records, which also contain copies of rap sheets on individuals, yes.

REPRESENTATIVE ITKIN: Do you think that is an efficient method of methodology for approaching the particular analysis?

MR. CHASEN: I think your question answers itself; of course not.

CHAIRMAN BERSON: Are there any further questions?

Representative O'Donnel.

REPRESENTATIVE O'DONNEL: Just one question.

What do you suggest to be the difference in terms of policy for the access of the third party, the public, an individual decision maker in the system such as a judge, and other components of the system such as the Crime Commission or the Governor's Justice Commission? Just take an item like like the pre-sentence report.

MR. CHASEN: You mean access to that pre-sentence

report?

REPRESENTATIVE O'DONNEL: Yes. Do you see any difference in terms of policy among the access available to those three participants?

MR. CHASEN: I cannot speak to how the justice system should run, because I am not an attorney or an official in the administration of justice.

I think that the various things that come out of the computer have the capability of being controlled in terms of the function of that information.

REPRESENTATIVE O'DONNEL: Do you think that the people who set up a computer would be setting it up for the advantage of the judge?

MR. CHASEN: We are setting up our system to increase the facility of the administration of justice. And my position, which I do not know whether it is appropriate to get to or not, is that the thing that hurts us the most is no policy and no law, no decision whatsoever ,where we are constantly harassed by the differences between the various plans and philosophies.

I really do not have a parochial opinion, not a professional opinion anyway on which way it should go. I am hoping that the issue can be resolved and definitive guidelines can come out; and that we make progress under those guidelines to effectively spend the large sums of money we are getting,

and give to the public and to the government the results that they are entitled. Otherwise, we are spending this money. And a large part of our effort is being sandbagged; it is being held in abeyance, waiting; we are taking a common denominator type approach, which is not very efficient, but of necessity much the way things have to be done now.

REPRESENTATIVE O'DONNEL: I see. Thank you.

CHAIRMAN BERSON: Are there any other questions?

(No response.)

CHAIRMAN BERSON: Thank you, Mr. Chasen. We appreciate your coming here.

(Witness excused.)

CHAIRMAN BERSON: This would be a good time to break for lunch. We will reconvene at 1:20 p.m.

(Whereupon, at 12:20 p.m, the hearing was adjourned to reconvene at 1:20 p.m. this same day.)

A F T E R N O O N S E S S I O N

(1:50 p.m.)

CHAIRMAN BERSON: The next witness on our schedule is Raymond M. Seidel from Norristown, Pennsylvania.

You may proceed whenever you are ready.

MR. SEIDEL: Thank you.

Mr. Chairman and members of the Committee, my position here is that of simply being able to make some comments that may be of some help to you from the standpoint of my activities with the Montgomery County Court in which we are, and have been for the last two years, endeavoring to construct an automated system for processing the work of our Court and the satellite offices connected with the Courts.

The increased demands of modern society have forced the criminal justice community, as well as the entire court system, to find ways of becoming more efficient, better managed and more responsive. This pressure has inevitably led the Courts to automation and to the computer.

This new modern tool introduces no new problems that did not previously exist. However, it does permit existing problems to proliferate in an uncontrolled manner. A reasonably efficient manual system may suddenly become an ungovernable monster.

To control or prevent this proliferation in the area of security and privacy, a new discipline must be developed

and applied. This discipline should be in the form of statewide rules and procedures which will uniformly apply to all criminal justice activities from the lowest to the highest.

The Pennsylvania Plan for privacy and security of criminal history record information addresses itself to this need by establishing privacy and security guidelines for all state and local units of government that compile criminal history information.

Those areas of the Plan that have the greatest impact at the county level are, one, completeness and accuracy; two, limits on dissemination; and three, security.

Of the three areas, security has the greatest impact on a county criminal justice information system. As long as the criminal history record information is collected and retained in a manual form by the official charged with that responsibility, there usually is no problem with respect to privacy and security.

A crisis may develop, however, upon the automation of this criminal history record information because at this moment the physical records are delivered to persons who may not be responsible or answerable to the criminal justice system for the processing, the use or the security of these records.

I would digress for a moment and simply try to emphasize the fact that suddenly the control of those court

records is leaving the Court and is moving over to the computer people who,themselves, are not responsible to the Court. And this is where we have found a substantial and major problem.

The obvious solution to this problem is to simply require all criminal justice agencies to utilize dedicated equipment and personnel. For most counties, except Philadelphia and Pittsburgh, this solution is not financially feasible.

A logical compromise must therefore be developed that will permit the use of "shared hardware" and "shared operations personnel."

Such a compromise must permit the criminal justice agencies to retain control over questions of security and privacy and at the same time to resolve the financial problem by sharing computer costs with other branches of county government.

The Pennsylvania Plan, under Section III entitled "Security" on pages III-A-1 through 6, reviews this problem and offers three management options to the criminal justice agency.

Option one is to use dedicated hardware and personnel; two, management participation between the Court side and the administrative side with a veto power; and the third is to create a management participation through a user committee

consisting of at least equal representation from the criminal justice community.

The Courts of Mongonery County several years ago determined that a computerized court information system was necessary in order to more rapidly process the workload and to obtain improved management information to more effectively run the business of the Courts.

An agreement was worked out between the Courts and the Commissioners to employ "shared hardware." Management option Number Three was selected an a User Committee was appointed.

An organization chart, together with a regulatory charter, was drafted and adopted. An understanding of our commitment can be obtained by reviewing Paragraph 2 of our charter intitled "Objectives of Committee."

The objectives are to encourage and make possible use of shared hardware and and the same time, one, satisfy the Constitutional requirements relating to separation of powers; two, assure adherence to federal, state and local requirements relating to privacy, security and confidentiality of computerized information and assure that all computer operations are in conformity with standards established by the administrative office of the Pennsylvania Courts and the Attorney General of Pennsylvania; and three, permit the most reasonable and economical use of county resources.

By employing these management techniques as set forth in Section III of the Pennsylvania Plan, we have been able to preserve the public's historic right to access Court records as before and, at the same time, we are able to adequately protect and administer criminal history record information so as to reduce the chance of abuse.

In so doing, the rights of privacy of Pennsylvania citizens will be safeguarded. I find the plan to be workable, reasonable and logical.

Now, one further comment, if I may. We are not here to add to the philisophical discussions that have taken place. We are here to give you an expression of our experiences on a County level and the problems that we have run into which, in turn, will affect the way that we can administer an automated system.

We feel that it is a critical need that you understand the fact that we do have to have either dedicated hardware or, if we cannot afford dedicated hardware, we then must have some regulation that requires us, as a County other than Philadelphia or Pittsburgh, to use shared hardware by one of the two options set forth in this Plan.

We think they are workable; we have tried it, and we have functioned under it now for three or four months, and it works very satisfactorily.

That, basically, is the information that I have to

give you.

CHAIRMAN BERSON: Thank you, Mr. Seidel.

Do any members of the Committee have questions?

Representative Itkin.

REPRESENTATIVE ITKIN: In reference to dedicated or not dedicated computer systems, what do you think about the dedication among common interests throughout the State? That is to say that counties would tie into terminals, so there would be one computer dedicated to this particular activity for every county in Pennsylvania; and, therefore, to divide the non-criminal justice parts of county governments separate from the criminal justice parts?

MR. SEIDEL: I think that is an excellent solution. It is a regional concept, and that has been discussed at some length with the State Court administrator's office. And, as a matter of fact, I wrote to Judge Catani yesterday in Delaware County recommending that, at least, Chester, Montgomery, and Delaware enter into conversations directed towards creating standard systems in our Courts, so that some day, we may be able to use one computer center just for Court work.

I think that is the only solution really. And that will have to come sometime.

CHAIRMAN BERSON: Representative Scirica.

REPRESENTATIVE SCIRICA: What is the kind of information that we presently have in our computer system?

MR. SEIDEL: We are at the stage of development in Montgomery County where we are going to go into only Court records during the course of this next year. Possibly the year after, 1978, we will begin to get into the satellite offices around the Court, such as parole, probation, the prison, defender, district attorney, Court Administrator, et cetera, wherein we will be picking up information other than court records.

It is at that time, two years or a year from now, that we are going to be looking to Harrisburg for the guidance which this book does give us now; maybe not satisfactorily in everybody's view, but it does at least offer us some guide-posts to know how to conduct ourselves.

Now,it may be refined by action of this Committee and the legislature, but we are going to have to have it; and we are going to have to have it from Harrisburg.

CHAIRMAN BERSON: When you say "court records," does it include the rap sheet?

MR. SEIDEL: No, sir; not in our County nor in any other suburban or rural County,that I know of, do they include that as part of the Court record.

REPRESENTATIVE SCIRICA: What do you include; what do you mean by "court record"?

MR. SEIDEL: The indexes and the dockets that presently exist in a manual fashion, every single paper

related to a Court piece of litigation.

REPRESENTATIVE SCIRICA: What would you contemplate including in the event that you were to get into the areas that you mentioned before, such as county probation departments and so forth?

MR. SEIDEL: When we get to the point where we can start to work out some sub-systems for the various departments, we are going to have to ask them what their needs are, what they want to put into the computer, and what will be of service to them.

At this point, we are not prepared to know what that information would be.

REPRESENTATIVE SCIRICA: Who would make that decision as to what would go into that; is this the Committee that you mentioned earlier?

MR. SEIDEL: I would say that the items that would be necessary to go into a computer would be specified by the head of the department. And they would then be presented to this consolidated computer committee that we have in the County now.

REPRESENTATIVE SCIRICA: So, they would be the final arbiter?

MR. SEIDEL: Yes.

REPRESENTATIVE SCIRICA: As to access,control and security, again, that is determined by the joint committee

that you mentioned earlier.

MR. SEIDEL: Of which the Court side has a 50 percent control.

REPRESENTATIVE SCIRICA: And the County Commissioners?

MR. SEIDEL: The other 50 percent.

REPRESENTATIVE SCIRICA: What happens if you get into conflict?

MR. SEIDEL: We have a procedure of referring that sort of a question to the President Judge and the President of County Commissioners. And if the two of them cannot resolve it, I do not know where the end is going to be.

CHAIRMAN BERSON: Representative Hutchinson.

REPRESENTATIVE WILLIAM HUTCHINSON: At present,you say what you have is court information. In response to Tony's question, you said that that included the dockets, the indexes, and the information concerning the case. I assume that means the file generally on the case; is that correct?

MR. SEIDEL: That is the information that is presently in the Clerk of Court's office.

REPRESENTATIVE WILLIAM HUTCHINSON: That information that is in the Clerk of Court's office is public information?

MR. SEIDEL: Absolutely; it always has been.

REPRESENTATIVE WILLIAM HUTCHINSON: There is not a problem, is there, with access and security with that information?

MR. SEIDEL: No, sir. And as a matter of fact, this Pennsylvania Plan says it does not apply to that sort of information.

REPRESENTATIVE WILLIAM HUTCHINSON: It is only when you get into these other areas, with one exception; that is the Juvenile Court.

MR. SEIDEL: Precisely. So, we are really a year away or tow years asay from meeting this proglem head-on.

CHAIRMAN BERSON: Are there any further questions?

Representative Kistler.

REPRESENTATIVE KISTLER: Who has access to the Montgomery County Records File?

MR. SEIDEL: You are talking about case records?

REPRESENTATIVE KISTLER: Whatever records filed.

MR. SEIDEL: The only records we would have, at this stage of the game, would be the records that are in the Clerk of Court's office. That is the only record that would be on the computer this coming year, and they are already public records.

REPRESENTATIVE KISTLER: Let me restate the question. The question was: Who has access to the Montgomery County Records File; who has access to it?

MR. SEIDEL: I would say the public has access to it.

REPRESENTATIVE KISTLER: Everybody?

MR. SEIDEL: Everybody.

REPRESENTATIVE KISTLER: Thus, the individual would have the right to review his own file?

MR. SEIDEL: Surely. He has that right in a manual form now, and he will have it on the computer.

REPRESENTATIVE KISTLER: Do your records contain only court docket information?

MR. SEIDEL: Exactly.

REPRESENTATIVE KISTLER: Nothing else?

MR. SEIDEL: Nothing else.

REPRESENTATIVE KISTLER: Are your records available to corporate bodies and employers and so forth?

MR. SEIDEL: Yes, sir; just as they are manually at the present time.

REPRESENTATIVE KISTLER: It is open to the press as well?

MR. SEIDEL: Yes, sir.

REPRESENTATIVE KISTLER: Thank you.

CHAIRMAN BERSON: Are there any further questions?

(No response.)

Thank you, Mr. Seidel.

(Witness excused.)

CHAIRMAN BERSON: Mr. Packenham, Mrs. Velemesis is not going to be with us. If you would like to take this spot, why don't you do so. I know you have a plane to catch.

This is Michael Packenham, Director of the Freedom

of Information Committee of Greater Philadelphia Chapter of the Society of Professional Journalists.

MR. PACKENHAM: Just by way of my constituancy, that organization is a group of about 300 working newspeople, both print and broadcast in eastern Pennsylvania.

We have spent a fair amount of time in the last two years watching what has been going on in this whole area concerning the Philadelphia area.

I have not got a prepared statement for the very simple reason that I knew that Dean Liacouras was going to be here this morning. I was aware of what he was going to be saying. And I had no ambition at all to be redundant of that.

Most of the points that were made by Dean Liacouras, I subscribe to, and my organization subscribes to. There are two major exceptions that we take to the so-called Philadelphia Plan; the Plan that was produced by the Liacouras Committee over a period of about two years and was ultimately passed on to the Governor's Justice Commission by the regional planning council meeting in Philadelphia.

I do not want to go into an exquisite analysis of either that Plan or the Plan produced by Lieutenant Governor Kline's Task Force. But I am familiar with them both and would be delighted to answer questions which you might have on my perception of those details.

Rather, I would like to talk with some emphasis

about the broader philosophical and public policy concerns, which I and the people who I represent are profoundly concerned with.

It is not an easy area. There is some ground on which earnest people can disagree; there is a great deal of ground on which earnest people, I believe, have not yet come to recognize what they are looking at.

We have heard even today, and you heard yesterday, the Pennsylvania Plan described in the legendary way as of the Wise Men with different parts of the elephant.

I think that it has been depicted in its kindest light by its proponents as having enormously limited scope. I think that its implications of scope, realistically, are far greater than were argued by its drafters and proponents. And I think that the dangers that it represents implicitally are enormous.

I think that it is remarkably welcome and propitious that this Committee is now looking into this matter in broader terms than simply the details of these Plans. And the broadest possible terms are those which must be addressed.

And we do not have to get into an exquisite examination of the process involved. But the fact is that under the LEAA submission that the Plan produced by the Lieutenant Governor's Task Force will indeed in large measure become the road map which will be followed in Pennsylvania until this

legislature does something else or until other executive branch or judicial branch regulations or restrictions are produced to pre-empt what, I believe, is a major legislative responsibility.

In that, I would come back to much of what was said this morning by others, but in slightly different perspective, that there are two profound concerns before you. One is individual citizen's privacy, and the other is the entire concept of the people's right to access to all information or as much information as possible that has to do with the people's business, with the government's doings.

There is conflict there, and there are a dozen conflicts which we can spend hours talking about which have been resolved by institutional devices that people such as you have managed to produce.

I do not think that the conflicts are as serious in the area of criminal justice records, as opposed to criminal history records and all of these other exquisite breakdowns, as they would appear in some of these disputes.

I think that the principle that we achieved in Philadelphia that it is unnecessary and it is dangerous to work on the assumption which is articulated by the computer community, if you will, that there must be one huge central collection of material.

Whether that material is manual or whether that

material is stored in electronic fashion and accessible elctronically is utterly irrelevant to your concern. It is utterly irrelevant for one good reason, and that is: as the computer industry goes forward, it is going to become decreasingly practical to maintain manual records.

One of the answers that was put forth by the Liacouras Committee Report, with which I do not agree, and which I urge you to examine very carefully, is that somehow or other, by keeping parallel systems, you can ensure traditional public access to Court records, to the due process of justice, whilst locking away from public access that material in electronic data retrieval.

Our experience in Philadelphia is microcosmic and it is premature. But during the debates of the Confidentiality Committee there, I objected a number of times to the fact that already, under the program that Mr. Chasen -- who testified to you this morning -- is managing,that an enormous amount of material is no longer accessible to the public which had been accessible to the public through the entire history of American jurisprudence.

There were two senior judges in a meeting of that Committee one day; both of whom said, "Nonsense. Of course, you have access to everything you ever had access to." I challenged them that there was no way in Philadelphia today to trace an indictment by the defendant's name, by any

alphabetical index without using the product of the computer system which now exists and now functions.

The two senior judges, with administrative responsibilities,sat at a table with the best of intentions and said,"Of course, there were alphabetical dockets; there always have been."

The long and short of that tale is: four days later they came back to a similar meeting having looked and found that, indeed, for eight years,from 1968 until 1976, there had been no such records.

It is amazing how little we know about what we are doing with our information. It is amazing how little the people who are in positions to make serious decisions know about the incredible complexity of the record business as it is going.

You heard Mr. Chasen say today very candidly and very characteristically -- and he is an honorable man -- that if he had it his way, or if his organization had it their way, that they would include almost every imaginable kind of data that is of any consequencial use to the criminal justice system at any point.

Granted, it would be very efficient to be able to punch a button and get this sort of information that is done at bail investigation, at pre-sentence investigation, and indeed at probation and parole time.

If you put that sort of material into an accessible central bank, you are going to have a situation which cannot be policed, which cannot be sufficiently defined in restriction to protect privacy. It is going to be absolute demagoguery and foolishness to say that any sealing procedure that leaves any of that data existent is going to be protected from manipulation by the people in public power.

We can argue that, indeed, the people who have earnestly gone at this thing at the State level say that they do not really know how many police entities there are in the State.

But the fact is: if you have a repository, if you have central access, whether it be manual or electronic -- and mark my word, it will be electronic, eventually -- everybody is going to be able to use it within the system for good or bad, for corrupt or political or selfish or any other reasons that we all know are dangerous, because man is infinitely fallible.

The way to protect the privacy of individuals who are badly treated, as we know they are today, by a police system which is failing in its record keeping, by a police system which is susceptible to arbitrary use of the arrest power, and much of the concern in the whole privacy line does come from this.

The original impetus in the Ervin hearings, in the

U.S. Senate, in the process which led up to this point of defining the LEAA guidelines, among other things, has been that it is demonstrable that there are tendencies in major American industrial cities to produce harassing and stigmatizing arrest records for people who are poor and people who are, usually, of minority groups.

The answer to taming that bear is not to shoot the lion. And the bear is, in this case, bad police practices or failures in the judicial system. It is not going to be solved by obliterating the track of what is already wrong.

The whole idea of taking information simply because it will be more accessible and saying the public cannot have access to it, and we are going to trust every policeman and every prosecutor and every probation department man and every computer operator and every one of these other figures in the public process to use this information with delicacy and with restraint and with a sense of the dignity of the individual citizen is just plain nonsense; it is not going to happen.

And if it does happen, and if you allow it to happen, and if you allow a substantial number of limitations on public access to this information and the central collection of this information, you are going to be creating a monster of that kind of danger, of the tyranny of the misuse of power.

The other aspect of the whole question of

confidentiality, which is not simply the managerial one which I have been talking about, which is profoundly disturbing, is one in which there is probably more earnest disagreement in this whole area of dispute than in any other. And that is what you do with non-conviction records.

And all of the Plans that I know of, all of the input, all of the fundamental implication of the LEAA regulations, even as amended, is that non-conviction data, after an administrative period of cleaning it up, should be, for all intents and purposes, obliterated; it should be done away with. If it is not expunged, it is deep-sea old. And there are a whole series of other ways that you can do it out of the way.

My concern with that is: one, philosophically, that when humankind obliterates the track of its own culture, it is preventing itself from learning from what it has done wrong as well as right. That is a very philosophical argument, which we could go on with for hours.

But I think more directly the concern there is that without impugning anyone who is presently on the bench, we have not been entirely free of judicial or prosecutorial corruption in this country.

And I think to obliterate or otherwise seal from access by the general public -- I ask for no special privilege for the press in any circumstance, but from the general

public, be it citizens groups or private citizens or a newspaper reporter or editor, the record of what has happened in dispositions other than findings of guilty is to assure that there will be absolutely no way to determine any patterns of judicial impropriety, of prosecutorial impropriety, or of combinations thereof; whether those be for corrupt political, corrupt venal, or, worse yet, essentially tyrannical purposes.

There is one principle of the erection of tyrannies. And the first thing they must do is to keep themselves from being accountable. And without the accountability of all of the product of the judicial process and the readily accessible accountability of that, there is going to be no way to hold it to account.

The problem that you face in trying to differentiate between the manual records and the computer kept records is one which I recommend that you face just as early as you can, because there is more opportunity to get lost in that than in any other single swamp on this road.

And I profoundly believe that you cannot make a distinction, that you must deal with the records and all of them indiscriminately, be they on computer or not.

It terrifies me,some of the implications that have been raised by a number of members of this Committee and by dozens of other people in the course of this seven or eight year dispute, which is culminating here, now, and is going on

in other states even as we are here.

The invasions of privacy and the potential for malicious use of inaccurate ostensibly criminal justice information if public has general access, is really very disturbing, profoundly disturbing.

I think it is overwhelmed, however, by the implications of any remedy that has been suggested, and those remedies all produce the potential for far grosser misuse of public power against individual liberties than the fragile matter of privacy, about which I am profoundly concerned. But I know no -- there is no way not to trade-off something.

I think, finally, if you have all of this immense amount of information out and accessible to the public, that a lot of the concerns about its misuse will be minimized simply because there is so much of it. That is speculative and you can make your own speculations.

The question of operational review: if one of these entities or an entity which is somewhere between that suggested by the so-called Pennsylvania Plan and that suggested by the so-called Philadelphia Plan, has been constructively raised.

And I think it would be correcting the record of earlier testimony of today, the arrangement that is in the final form of the Philadelphia Confidentiality Committee Plan which would allow reopening of the standards of access, after

18 months, was not,in fairness to the Committee -- not this Committee; in fairness to the Committee chaired by Dean Liacouras -- was not in the Plan that they offered, but rather was imposed as an amendment by the Regional Planning Council of the Governor's Justice Commission in Philadelphia when they passed on that document.

And I would suggest only--making no particular judgment, although I disfavor that -- that if you do pursue the question in your own deliberations of how to erect a maintaining authority, if you indeed find there is one necessary, which I rather doubt, but if you do, I would look very carefully to the potential for political manipulation of whatever is set up.

If a reviewing authority or a controlled authority is produced later on, it should be severely limited, if there is a necessity for it at all.

To sum up my broad position, it is that,one, it would be wise and would serve history if this Committee and this legislature drafted legislation and passed legislation and made it law, that would effectively prevent the consolidation of criminal justice data and data related to the criminal justice and penal and correctional and investigative functions; specifically, to those particular uses.

As to Court records, I believe it should be defined that the information that is put into any information system,

manual or computer, be that which happens in open court, which is now part of due process. And it is inconsequential whether that be on machines or not, and it should be totally and universally accessible to all citizens, as it is now, if you want to go in.

If you do not do that, it is inevitable that the forces that are at work now, with the best of intentions and their own good motives, are going to produce a complete chaos, which is what is emerging right now.

As any number of you have heard, there is confusion throughout jurisdictions in this State, in Philadelphia. The index record systems are now in a sort of limbo, because the Pennsylvania Supreme Court has let the President Judge know that they do not want that out until they have considered the concerns they are considering now.

No one really knows where it stands. The Supreme Court has not imposed its rule-making power to the extent that it clearly can if it wants to. And if it chooses to, they can very well pre-empt what you are now considering doing yourself. I would urge you to not let them do that, to move before they do.

In the second area isthe one of sealing and privacy. I do not think that anything should be sealed that happens in the open. I think that it is immensely important that not only conviction data, but that non-conviction data,

and all dispositions,rather,be kept intact.

And I would again warn you that anyone who tells you "Well, of course, the old manual records are there, and will be preserved and this Plan has only to do with some mysterious machine" may very well believe that. But it is not what is going to happen.

What is going to happen will be that, as soon as the computer system can effectively bear those data, the manual systems are going to decay and they are going to be abandoned.

It would be intolerable public policy to go on spending vast amounts of public money keeping a redundant manual system. And it will not happen; it just simply will not.

That is my main case. I would be delighted to answer questions.

CHAIRMAN BERSON: Representative Scirica.

REPRESENTATIVE SCIRICA: I have got a couple of questions.

The first concerns the regulations of LEAA and what they appear to say. The more I read them, the less sure I am of their content. But they seem to say that by December of 1977, if we are to continue to receive LEAA money for these criminal data information systems, we are going to have to restrict the dissemination of non-conviction data in

Pennsylvania to criminal justice agencies, to research groups that are concerned with criminal justice process.

And then what may be the "out" here, they say that individuals and agencies for any purpose authorized by statute or executive order and so on and so forth, that, in fact, may be the opening that we want. But the intent of that, of the entire regulations, and the intent of the statute is for us to adopt a statute that will regulate the dissemination of non-conviction data.

So, I think what you are asking us to do in reference to access of non-conviction data is to ignore the LEAA regulations.

MR. PACKENHAM:No. I am asking you to challenge the LEAA regulations. I believe in attempts I have made, which I cannot pretend are entirely successful, to trace the origin of the intent in the LEAA regulations and, indeed, in the statute-- and there was some discussion of this with Dean Liacouras this morning that I think what has happened there is what we have seen happen here.

And that is that a great number of people who have limited experience in the areas of concern of civil liberties and of due process, who are technical experts, and confident technical experts of good intent within their own areas, have taken certain imperatives as being inferred and have taken them beyond the original intent.

I think that there are two ways of reading your citation of the LEAA regs. One of them is that it applies -- and this has been argued to me,by LEAA administrators,that that, of course, does not apply to manual records.

And then if you read the footnote on the March 19 revision of the LEAA regulations, you will see it is clearly, although probably not bindingly, articulated that it certainly applies to manual records as well as computer maintained records.

So, there is ambivalence to begin with in the LEAA document itself. There is considerable exception possible under what I think is a rather flimsy read, but the one that was cited this morning from the '68 Act,"other legitimate purposes." It is a big door one can walk through.

My recommendation on that would be that you take that bull by the horns and that you challenge it. I am not litigious; I do not think you have to challenge it as Dean Liacouras suggested that the Commonwealth go to Court with the LEAA ,and should have. And indeed it would have been constructive if it had.

I think,as a legislative body, you can act on your best appraisal of the circumstances. I would hope that you would finally, after due consideration, come to agree with me about the importance of the inviolatabilaty of the records. And then let them come back and demonstrate,either, that that

particular aspect of the regulation is constitutionally defensible or that it is defensible as an extension of the statute.

REPRESENTATIVE SCIRICA: I think I am in agreement with you on that. I have got a little confused in that part of your testimony dealing with the manual and computer based systems. And I was not sure if you were making a statement regarding limitation on what could be included in computer based systems, if in fact the computer systems will eventually drive out the manual ones.

Were you saying that there should be no restriction on the kinds of information that should go into the computer systems?

MR. PACKENHAM:I think there should be very, very rigid restrictions on the kinds of information that should go into computer systems.

I think that a great deal of data does not need to -- in highly specified areas of investigation of public administration, of penal administration, and other things, that we are talking about entities of rather small proportions in many of these cases. And they really do not need to become a community of information.

Specifically, I would say that contrary to the perfectly natural expectation and desire of the technical expert's position,as articulated this morning with honorable

intention by Mr. Chasen, that I think that to say, "All right, we now have a system that is going to make criminal justice in Pennsylvania and, expecially, in major cities with large volume criminal calendars, more efficient for the Judges, the prosecutors, and the Court personnel;" that to take the next step to throw into that body of information -- which right now is what is often called "docket information" -- to throw into that the kind of data that you get in a pre-sentencing report or a bail investigation, simply because it offers some degree of extra convenience, I think is foolhearty; I think it is unnecessary.

Although they will throw enormous amounts of figures at you, I think as practical men, you can see that those things can be maintained in segregation. They do not have to be commonly dumped.

REPRESENTATIVE SCIRICA: But that kind of information, such as the pre-sentence investigation, would continue to be maintained in the systems?

MR. PACKENHAM: Yes. And if in that very specific area of public function, it is necessary to have additional regulations for the protection of privacy or the security of the information, itself, attend to it in its specificity; do not try to throw an umbrella.

Every time you say, "We have to talk systemically about all of this thing," what you are doing is trying

to encourage the movement toward the erection of an enormous information bank. And people talk about -- in that, they talk about building an edifice of privacy or security. And there is no way that the tools and the mortar and the stones of the edifice of privacy are not, also, going to build a tower of dangerous power. It is going to give people enormous amounts of new force to use in very, very worrisome ways.

REPRESENTATIVE SCIRICA: Following up on that statement of yours, I am going to question what we discussed this morning; that is the scope of the so-called Privacy and Confidentiality Committees that are indigent in both the Philadelphia and also the State Plan.

Could you comment on how the Committee in Philadelphia is supposed to work; what kind of a group it is; what kind of control it would have; would it, in effect, eventually usurp the function of the drafters of a plan, that it would eventually end up with the final control as to what went into the Plan and who would have access to it; and what you feel that we ought to adopt on the State level?

MR. PACKENHAM: Well, to begin with, as I said in passing, I am not sure that it is even necessary to have an entity of that sort with anything like the powers.

Unquestionable, someone is going to have to administer something. And I think that one of those areas -- the most obvious one is that there has to be someone who can

monitor the individual review process.

Whatever happens, everyone should be able to see their own files and to correct them and to make damn sure that what is wrong is either expunged or corrected in an inescapebly connected way. And there probably is a need for someone, for some entity, to ensure that happening.

What happened, Dean Liacouras gave you copies of the report of his Committee. And I am sure in your record you have all of these other documents. I am not going to dig it out here, because it would take five minutes to read it.

But, essentially, what it was ended up with in the Philadelphia proposal was a list of people, ex officio, who are all in the criminal justice process with an attempt to have some outsiders; I believe the ACLU or designations for public participation.

As is always the case in such matters, the public members would tend to dominate. And the dangerous thing that happened in the Regional Planning Council's amendment on that was that that entity was given power to change substantivally the rest of the Plan. Whether they would or would not is the question.

Obviously, I think that if you design good legislation, you are not going to give a license to someone to amend it in mid-stream. So, I would suggest that you not.

REPRESENTATIVE SCIRICA: Thank you.

CHAIRMAN BERSON: Representative Hutchinson.

REPRESENTATIVE WILLIAM HUTCHINSON: If I understand you correctly, what you are recommending is that a two-fold approach, which is quite the opposite, perhaps, of the approach here; one, that the type of information which can go into the computer, the type of criminal justice information, be strictly and severely limited; but then, by the same token, that any information that goes into that computerized system be made generally, publicly available.

MR. PACKENHAM: That is correct; that is my proposal.

REPRESENTATIVE WILLIAM HUTCHINSON: Thank you.

CHAIRMAN BERSON: Representative Itkin.

It is the Chairman's intention to adjourn the Session at 4:00 and we have three more important witnesses. And I would appreciate it, in view of that, if you would try and keep your questions as brief as possible.

REPRESENTATIVE ITKIN: My question will be brief, Mr. Chairman.

I would like to know from Mr. Packenham the value of keeping non-conviction data.

MR. PACKENHAM: There are a number of values. There are values which would be put forward by academics, who I will not presume to represent; that in order to understand the criminal justice systems and its broad sociological implications, you must be able to determine, not only who was

arrested and convicted, but who was arrested and acquitted, and who, more importantly and increasingly so in major statistics, is arrested, indicted, and somehow is not convicted but is not acquitted, and goes out through the various devices which we are producing that falls somewhere in between.

My particular concern, as well, is that it is impossible -- that my personal experience,as a newspaper reporter and as an editor in various places, not restricted to Pennsylvania at all, has been with judicial corruption.

I know no instance, although there may be some, in which there has been significant sanction, public dismay action taken in areas of judicial corruption that have not involved either by journalists, or by civic groups, or by bar associations, or by some independent, non-governmental investigation, the examination of non-conviction records by a Judge, by patterns of appearances by the nature of crimes.

This is the only way that you can determine if there is methodical perversion of judicial and prosecutorial responsibility going on.

Obviously, if you are blowing out cases for money or politics, the record of that is not going to be found in conviction records.

REPRESENTATIVE ITKIN: Do you believe there ought to be a statute of limitations that ultimately ought to purge data which may have appeared to be, on the surface, irrelevant?

We cannot keep on acquiring written records of every tranaction that each one of us incurs in our natural life; that there comes a time in which the abundance of information becomes so enormous, that some type of purging of extraneous information or judgment that it is extraneous, needs to made.

MR. PACKENHAM: Well, it strikes me that on a per capita basis, there is no more of it now than there was ten years ago or twenty years ago or fifty years ago. I simply do not understand why,suddenly, we have got to assume that what has worked so far no longer need work.

REPRESENTATIVE ITKIN: Well, let me ask you this: You are a journalist; you write stories, report stories. Do the newspapers carry every one of your stories?

MR. PACKENHAM: Well, I do not write stories; but people under me do, yes.

REPRESENTATIVE ITKIN: And if the stories are not published, do they retain them because it is a written commentary of some observation that they have recorded for all times?

MR. PACKENHAM: Well, we, too, have our failings. But if it is original information, then we try to maintain it; often, the reporter, himself, will; often, we will put it in our library. We will use it to a point.

Eventually, the world will be covered with U.S Supreme Court reports; right?

REPRESENTATIVE ITKIN: What I am saying is: obviously, there would have to be a certain amount of limitation in trying to maintain an orderly system of information; that when the size of the information system becomes so large, it becomes unruly and unworkable, and you do not have access to the information even if it is there, because of the mannerisms and the scope; I mean the scope is so large that to make certain judgments--I do not know whether this is important or not.--I do not think it is.-- to make a value judgment.

"I am going to eliminate it, because I can no longer get to what I still believe to be important, because it is too much confusion in the system."

MR. PACKENHAM: Obviously so. I have not gone back and tried to research the judicial or Court records of the 1850's; I do not know how many of those have been lost, destroyed by flood, as someone mentioned this morning.

Certainly, it gets overburdened. I do not think that we are talking about immediate problems then.

CHAIRMAN BERSON: Representative

REPRESENTATIVE KISTLER: Mr. Packenham, I have a couple of short questions. Yes or no answers will be adequate.

Am I correct in assuming that your group believes that there should be complete freedom of access to the record file?

MR. PACKENHAM: Correct.

REPRESENTATIVE KISTLER: Do you subsequently subscribe to the concept that the files should contain only court docket information?

MR. PACKENHAM: Yes; correct.

REPRESENTATIVE KISTLER: Do you believe that the subject should have access to his own file and be afforded an opportunity to correct the record where he deems it to be incorrect?

MR. PACKENHAM: Most emphatically, yes. I do not think that is a serious concern; I do not think that it is a serious worry, because every one of these plans does have, I think, rather effective proposals for personal review.

REPRESENTATIVE KISTLER: But they might not be adopted unless somebody makes sufficient emphasis that they ought to be in there.

MR. PACKENHAM: I welcome your emphasis.

REPRESENTATIVE KISTLER: How would you feel about requiring that the subject be notified when file information is sought and also that identification be provided to the subject of the seeker?

MR. PACKENHAM: I did not understand the second part As to the first part, I would be in favor of it. I think that notification is an excellent principle, which is gradually sneaking its way into a number of such areas not in the

criminal justice records area, and I am much in favor of it.

REPRESENTATIVE KISTLER: The second part of it is this: that the subject be supplied with the information as to who is seeking the information.

MR. PACKENHAM: I see no objection to that. I think it would be a healthy thing. In general principle, I think the more the people know, the better.

REPRESENTATIVE KISTLER: Thank you.

CHAIRMAN BERSON: If there are no further questions, then thank you very much, Mr. Packenham.

(Witness excused.)

CHAIRMAN BERSON: Our next witness is Chief Inspector, James Herron, of the Philadelphia Police Department.

Inspector Herron.

MR. HERRON: My name is James Herron, Chief Inspector of the Philadelphia Police Department. I am here on behalf of Commissioner Joseph O'Neill whose busy schedule precluded his appearance personally today.

Committee members, thank you for the invitation to appear today to testify before your committees concerning the matter of privacy and confidentiality of criminal history record information.

This issue of confidentiality is both complex and sensitive. It involves the need to balance the rights of the individual with the everyday requirements of law

enforcement agencies responsible for the safety and protection of the citizens of this Commonwealth.

The regulations developed by the Confidentiality Committee of the Philadelphia Regional Planning Council were approved by a vote of four to two, less than a majority of the nine-person committee, because three other members did not vote on the final document.

The Philadelphia Police Department most strongly objects to the sealing and expungement procedures of the Philadelphia regulations which would substantially limit our ability to quickly obtain information needed for the investigation of serious crimes as well as our ability to prevent crimes.

The sealing procedure will take precious time which would be better used to speed up the detection and apprehension of criminals and prevent additional crimes from being committed. The unsealing will merely add to an already overburdened paper-work system.

The standards for sealing can only be described as arbitrary and not based on any scientific prediction of criminal behavior. Who can say any felon will not repeat a crime after 10 years?

Some felons, because of a legal technicality or through plea bargaining will be convicted of only a misdemeanor and will be entitled to sealing after five years. Other

people such as organized crime principals have become isolated from arrests and convictions in recent years, and the records will be sealed.

The Philadelphia Police Department is certainly not opposed to public access to information traditionally given to the public. In fact, we strongly support public scrutiny of all aspects of the criminal justice system.

Everyone in the criminal justice system should be held accountable to the people for their performance. The Police Department must answer to the community about the level of crime each time the Uniform Crime Report is publicized. I firmly believe the public has the same right to review the performance of every criminal justice agency or official.

The Philadelphia Police Department strongly believes that the Philadelphia regulations, while applicable at this time to the PJIS system only, will strongly inhibit our future ability to automate information about crime and criminals.

Our position is not based on any lack of concern for privacy. Our present records system, both manual and automated, has incorporated most of the suggested safeguards as to accuracy, uniformity, security and dissemination.

We strongly oppose the thrust of the Philadelphia regulations which limit not only the amount of data stored

but the time periods in which the information will be kept.

The Pennsylvania Plan, structured in accordance with regulations established by the Law Enforcement Assistance Administration, has taken a different approach in permitting more kinds of information to be stored but reducing public access to such information.

The sealing and expungement procedures of the Pennsylvania Plan are much more realistic and in harmony with current practices than the Philadelphia proposed regulations.

In your legislative considerations, we urge the members of the Judiciary Committee and Appropriations Committee to realize the need for law enforcement's need for access to information concerning criminal violations. Any proposed legislation in this area should not limit a police agency access to information vital to the protection of our citizens.

ACTING CHAIRMAN SCIRICA: Thank you very much.

Any questions?

REPRESENTATIVE KISTLER: I take it that you do not want the files to contain anything that would come in other than what is in the Court records.

MR. HERRON: If you include the rap sheet, we would like that automated. We would just want to include the formal court disposition in terms of our needs.

We are not interested in personal, medical, psychiatric or other types of things. We are interested in one

other aspect, and that is caution indicators. The Philadelphia Plan specifically precludes caution indicators from being entered into the system.

Caution indicators are very important for the safety of policemen, to know that an escaped fugitive has used a gun in the past.

It is very helpful to correctional officials to be told that an inmate may be suicidal, may be homosexual, for the peace and harmony of the institution as well as the protection of the individual.

REPRESENTATIVE KISTLER: Do you believe that there should be general access to the file?

MR. HERRON: To the official court docket, yes; to the individual's rap sheet, no. There is not public access to the rap sheet now in Philadelphia.

REPRESENTATIVE KISTLER: Do you believe that the subject of the file should have access to his file?

MR. HERRON: I strongly believe that, and we do have a procedure which permits any individual to receive a copy of his rap sheet,as well as his attorney, when he so authorizes.

REPRESENTATIVE KISTLER: Do you feel that the subject should have the right and should be notified when inquiry is made about his file?

MR. HERRON: I have no objection with that.

REPRESENTATIVE KISTLER: That is all, Mr. Chairman.

ACTING CHAIRMAN SCIRICA: Representative Itkin.

REPRESENTATIVE ITKIN: I would like to know how you respond to Mr. Packenham's comment that denial of access to the information to the general public could encourage or at least respond to the so-called corruptibility and infallibility of persons who have this information in their possession.

MR. HERRON: You will have to be more specific, sir, on that one.

REPRESENTATIVE ITKIN: Well, he seems to claim that unless the public has access to this information, there is no way of a check in balance on any criminal justice agency, like the Philadelphia Police Department, of any wrongdoing among its personnel.

MR. HERRON: I think that if you are talking about current arrests and current court cases, the public through the media should have access.

If you are asking me that a neighbor will go down to the local police station and inquire about the background of somebody he is having a dispute over a fence with, for as long as the individual has been around, I think that is wrong.

REPRESENTATIVE ITKIN: How does the public know that a rap sheet has not been tampered with?

MR. HERRON: I would suspect there is no effective

way that the public can now guard against that. The Police Department, particularly through regulations like this, attempts to keep the integrity of the rap sheet as best is possible.

REPRESENTATIVE ITKIN: But we are taking your word for it, are we?

MR. HERRON: Absolutely.

REPRESENTATIVE ITKIN: I just wanted to get a dichotomy of opinion on the record.

REPRESENTATIVE WILLIAM HUTCHINSON: One other question. Perhaps, you are not the one to address it to. Because the process is, if an arrest is made, then the case goes to the members of minor judiciary in Philadelphia to Court and in other areas of the State to one of the District Justices would you think that the information for the disposition at the District Justice level should be included in the record?

MR. HERRON: Yes. In many cases, it is a terminating disposition. It can be discharged on a preliminary level.

REPRESENTATIVE WILLIAM HUTCHINSON: Especially in those cases in those counties where you no longer have Grand Jury action, where you no longer have indicting Grand Juries. I think there is a tremendously broad discretion of a District Attorney, which is perhaps the least subject to control of any

important official in our society; that he really has the final say often as to whether to decide to prosecute or not prosecute.

MR. HERRON: That is a correct observation.

REPRESENTATIVE WILLIAM HUTCHINSON: Thank you.

ACTING CHAIRMAN SCIRICA: Inspector Herron, I think I understand the reasons for your opposition to that Section of the Philadelphia Plan dealing with sealing and expungement. But I was unclear on your objections to the limitation of the data that would be stored in the automated system. I understand that it is limited to public information, because I think you also said that you would not recommend that information such as medical data, pre-sentence investigations, and other probationary reports be included within that system.

So, I am not sure what other kinds of information you would like to see included in this.

MR. HERRON: I would suggest, as I said earlier, the Police Department is not concerned about automating or s storing information about medical, pshychiatric, and educational

We do not computerize intelligence information, nor investigative information. We do have 100,000 records of individuals who have been processed through the Courts of Philadelphia, since 1968, automated. Because of the controversy over the regulations of security and privacy, we have not made that fileoperational.

The Philadelphia Plan would make the entire system accessible to the public. And we would strongly object to the average citizen coming into a computer terminal in City Hall and asking questions about any other member of the public without some right or need to know.

I think that is the basic thrust of why the Philadelphia Plan is so restrictive, but all-inclusionary from a public access point of view.

ACTING CHAIRMAN SCIRICA: But the information that you have been compiling since 1968 includes the investigative data.

MR. HERRON: It has no investigative data other than a chronological listing of arrests, and with the assistance of the Court Administrator's office in Philadelphia the official court disposition of that case. We have a very close and efficient working relationship with the Courts in Philadelphia.

ACTING CHAIRMAN SCIRICA: I am sorry if I misunderstood you. But you would object to the public having access to that information?

MR. HERRON: To the cumulative history, yes; to the fact of a current arrests still pending before the Courts, no.

ACTING CHAIRMAN SCIRICA: What would be the objection to your public having access to the cumulative history?

MR. HERRON: I think that there are many areas where the people could abuse others, particularly through extortion and things like that. If they have no basic need to know it, I would prohibit it.

ACTING CHAIRMAN SCIRICA: I guess we could argue that point out, but I think I am getting a little bit away from my initial question.

You mentioned that there may be certain indicators that you would like to see included in an automated system, such as --

MR. HERRON: Suicidal, dangerous which, by was of fact, i incorporated into a national system, but excluded specifically from the Philadelphia Plan, because it was one of those things that certain members of the Committee objected to.

ACTING CHAIRMAN SCIRICA: Dean Liacouras showed us a study that was done by IBM that is called the Philadelphia Information System.

MR. HERRON: Commonly referred to as PJIS.

ACTING CHAIRMAN SCIRICA: Are you familiar with -- did you see a copy of this?

MR. HERRON: I am not sure of that specific document. I am generally aware of what the design is about.

ACTING CHAIRMAN SCIRICA: It says "personal file" at the top, and then it has a number of things. It starts off with physical characteristics, race, sex, and so forth and

so on. And then it goes down and ends up with things such as escape artist, which you would find, I am sure, to be useful to you.

MR. HERRON: Extremely important.

ACTING CHAIRMAN SCIRICA: The correctional institutions would, too; suicidal, then homosexual, then racial hatred, then aggressive, then passive.

Is there any way that we can determine which of these have a legitimate use in the criminal justice system, and which of these do not? Would you consider all of these?

MR. HERRON: Certain ones have general use and some of limited use. The idea of someone being passive or homosexual is really a matter of institutional concern rather than police concern.

ACTING CHARIMAN SCIRICA: So, it may not be necessary to include those in a computer data bank?

MR. HERRON: Or you could include them in the computer data bank, but through various devices, restrict it to certain levels or various agencies.

ACTING CHAIRMAN SCIRICA: Mr. Kistler.

REPRESENTATIVE KISTLER: It seems to me that you backed away from the question that I put to you earlier that you answered in the affirmative that there should be free access to the file.

Now, you qualified that later by saying that the

need for the information -- that is the inquirer's need -- should be justified. And this, in my judgment, would raise serious questions.

Suppose the press wants to come in there and check for some reason sufficient unto themselves; why should they have to review for the police why they are doing this or else perjure themselves by telling you something other than the truth?

MR. HERRON: I will try to answer it by analogy of a court opinion handed down by the Pennsylvania Supreme Court which binds us in this area. We are permitted,under the law, to disclose to the media and to the public the fact that a person has been arrested on a certain date and charged with a certain crime.

We cannot provide cumulative histories which detail the entire background of that person. Now, the Police Department is in favor of making public the reporting of that one specific arrest event. But we do not think it is in anybody's general interest to make it publicly accessible; the idea that everyone is entitled to the entire rap sheet on everyone else.

I do not know whether that anwers your question.

REPRESENTATIVE KISTLER: The purpose here today is not to handle the law as it is, but rather to promulgate laws yet to come.

MR. HERRON: I understand that.

REPRESENTATIVE KISTLER: It is this area in which the Committee is interested as it will put before the General Assembly the various concepts.

So, it is in that sense that we are interested in knowing whether or not the Police favor, notwithstanding certain Court rules which can be set aside by the policy-making body of this State, which is the General Assembly.

So, in that regard, would you want some Police official to be able to tell the press that they cannot have this information unless they tell you why they want it?

MR. HERRON: In a sense, you are saying that the Police would control, for example, investigative reporting. We are not opposed to that. I can only answer that, under the current laws we are now operating, sir, we are not permitted to give rap sheets to the press.

REPRESENTATIVE KISTLER: We are not talking --

MR. HERRON: If you in your collective wisdom would like to change that law, I am sure that we would not object.

REPRESENTATIVE KISTLER: We are asking this question, not what the law is -- we know that -- but in promulgating new law, would you want to put some police officer in charge in a position of blocking the press from an inquiry that it might be making for its own purposes?

MR. HERRON: If the law could be changed, I am sure

that the Philadelphia Police Department would not object to a regulation that said -- a law, sir, that stated, for example, that the media had access to rap sheets. We would not be against that.

REPRESENTATIVE KISTLER: We are not just saying, "Media."

MR. HERRON: The public; but, again, I think you have to demonstrate a right to know or a need to know.

REPRESENTATIVE KISTLER: To whom; to the Police officer?

MR. HERRON: To someone, perhaps, a judge in the local courts.

We got into trouble with the Supreme Court when we started issuing data about judges, and, henceforth, a ruling came down from the Supreme Court that we could not hand out rap sheets.

REPRESENTATIVE KISTLER: Not if the information is limited to the court docket information, which you earlier said "yes" to?

MR. HERRON: Given that --

REPRESENTATIVE KISTLER: In other cases, you would be revealing information on people that were involved with the Courts and whether they were acquitted or whether the case was continued or whatever. That would be there quite often.

We have found people able to get out of one scrape after the other, until they ultimately -- one just recently here was shot down by the Lancaster Police.

We know -- the police knew that they had insufficien technical evidence to convict. For instance, the principal witness went insane as a result of her ordeal. He later was shot down by the Police. And I think we should be glad to be rid of him.

Thank you, Mr. Chairman.

ACTING CHAIRMAN SCIRICA: Thank you, Inspector.

(Witness excused.)

ACTING CHAIRMAN SCIRICA: Is our witness from the ACLU here?

MR. RICHARDSON: My name is Edward Richardson.

I want to thank you for the ACLU; and I want to especially thank you for giving the public a chance to testify in this very important area.

I am a doctoral candidate at Rutgers University and a member of the faculty of Glassboro State University.

I have been working with computers since 1952 in program planning, sale support, systems development, analysis.

I worked in the United States Ordinance Department, Sperry Rand, RCA. I am working as a consultant at the present time. And I am really here to give testimony particularly in technical areas.

I have brought with me some materials, and I hope that these will be given to you. Let me just tell you what they are about.

We have here a sort of a news release telling what ACLU hopes I will do for them I have a copy of a letter that was sent to Governor Kline by Burton Caine who was unable to be here today which gives some of the points of view of the ACLU.

We have also submitted a copy of a law addressed by ACLU to indicate the kind of concern that ACLU has in the general area.

Here is a document,"Investigators for Insurers indicted for procuring sensitive FBI, IRS data"to indicate to you the kinds of dangers that we envision can happen when we play fast and loose with this extremely powerful, technilogical device.

And then here is an article which talks about embezzlement through the use of computers to indicate to you that, even in the private sector, there are great dangers that nobody knows how to overcome.

And we submit to you that when we computerize the kind of data that we are talking about, that it leaves itself open to these problems.

I want to say that much of what Mr. Packenham said I am in full agreement with. But in one specific area, I want

to take specific exception. And that is to his statement that there is not really any major difference, any basic difference, between manual files and computerized files.

In fact, my testimony is mainly based upon the idea that this is completely different. And I would submit to you that if we were talking about the use of firearms and were basing laws in 1976 upon the type of information that was limited to the use of bows and arrows, that, certainly, we could not just say that the general principles of firearms applied --that we would apply in a bow and arrow culture -- would be sufficient to consider what we would do with firearms here in 1976.

Computer-based systems are different from manual systems in several respects. One of the kind of things that we have to consider is the speed with which you can gain access to data and scan large amounts of data.

When I started in the computer industry, we thought that machines were extremely fast, and we talked about them in terms of thousands of a second or milliseconds. And then we got them faster, and we began to talk about them in terms of millionths of a second. And now the general term is to talk about the speed of computers in billionths of a second and ana seconds. And already the technicians have decided that they better come up with another terminology, pico seconds, for trillionths of a second, which means that

tremendous amounts of data can be scanned in a very, very short period of time.

And we talked about storage here. All of the data in the world, it blows your imagination. Just last week, IBM announced it was increasing the memories of their computers so the internal storage would contain a million characters of information.

And we have single files now that are being developed. It will contain trillions of bits of information. I am not talking about the binary digit. But I am talking about facts of information.

And so, consequently, the amount of storage that the technology is making possible and the speed of scanning brings us into a completely different dimension. The communications situation is something that you have face. Computers now speak to each other. Not only do they speak to each other, but they pass information back and forth.

I believe that when the Army said that they had expunged records that they were instructed by the Court to expunge, and they later turned up in a computer at MIT, they did not even know they were there.

Nor is it necessary to consider that some individual person authorized the transfer; that this transfer could take place as an implication of things independent technicians had put into the computer. Not an implication of what one person

had put into the computer, but several people.

We are still developing hardware and software. This concept of intelligent terminals is something that we have not gotten used to, and we are going further and further with it.

And so, consequently, I believe that you must consider not just the present technology but the technology of next year and the technology of the next year.

And I submit to you that the speed with which this technology is developing means that the characteristic that you look at today will be completely changed in just two or three years.

And so you have to consider these kind of things when you are considering what type of legislation must be passed.

I have to tell my students at Glassboro State College, when I talk to them, that the information that I am presenting them in their textbooks, as Freshmen, will probably be obsolete before they finish College. And this is the speed with which the technology is changing.

ACLU wants to say that the Philadelphia System has much to commend it, and yet we are not giving the Philadelphia System a full endorsement.

Our main problem with the Pennsylvania Plan for Privacy and Security is that we feel, upon examination, that

it really is not that type of a plan. It certainly addresses itself to efficiency in the use of the machines and it addresses itself to several other topics. But we feel that it really is not a plan for privacy and security of criminal history records in an automated system.

And this then is one of the things that we want to say. We are not here to support the Philadelphia Plan versus the Pennsylvania Plan. But we are here to say that we feel that the many issues that we think are important are not addressed by the Pennsylvania Plan, and many of these are addressed by the Philadelphia Plan; but not always to our satisfaction.

We believe that it becomes very, very important to limit the data that goes into the system. And we think a very severe limit should be placed upon this. Certainly, rap sheet information, we feel, should not go into it, and various other types of information.

It should be very, very carefully limited. And one of the reasons that it should be so carefully limited is that once you put it in, as a technician, I find it very difficult to figure out how to put on adequate controls.

So, I do not believe that it is possible to build a computer system that will not leak badly and can be caused to leak by technicians and can leak because of technical errors; and not only can leak because of technical errors, but can

alter the information stored by individuals without anybody realizing that this information has been altered, and then widely disseminate the information.

So, these are dangers that have to be faced. And I might indicate that my concern is to minimized the maximum harm that can be caused by the system. And I think that is the principle that I would like to suggest that you consider very, very carefully.

I think that there must be very, very careful provisions for public review; public review not only of the data that is put into the system, but also public review of the system design,of any changes which might be made in the system design,or any new technological devices that might be connected to the system.

I do not know of any better way to provide protection than by keeping the system transparent to the public and allowing the public to review this system from all aspects.

I think that there must be central control and responsibility. I shudder to think that they are going to have a criminal justice system in which information will be scattered to local computers and intelligent terminals which are not under any kind of a central control. Because then when we do find errors in the system,when we find something wrong, who is responsible?

When we say expunge a piece of data, and some

other system does not expunge it; in fact, reintroduces it to the system, and we have all of these connected parts under local autonomy, I see no possible way for control. And I see things open for great dangers.

I believe that there should be limited access to the data system. And I am not, at this particular point, specifically saying limited access to the data in the system. But who is it that is going to have the authority to address the terminals, address the computer, modify the programs, et cetera?

These things need to be very, very carefully controlled and controlled on a limited basis. When it comes to the data, itself, I would like to submit to you that the auditing procedures that have been applied in other areas do not work with electronic data processing systems.

Furthermore, it is my considered judgment that the technicians in electronic data processing have not yet been able to provide adequate auditing controls. They can, however, provide better auditing controls than can be provided by any other means. And these auditing controls mean that the system, itself, will automatically monitor who is trying to get into it, will automatically keep records of who did get into it successfully and unsuccessfully, what terminals they came in from, what codes they used to access these terminals.

And I think that this kind of auditing controls

must be built into the system. But I warn you that they will not be foolproof.

Finally, I would like to say that there should be -- in fact, I would like to say there must be -- unabridged access to the system by the person whose record is stored. Every person should be able to get full information about the information stored on him.

I can think of no reason to deny this. But here, again, I cannot say to you that I believe that this will provide an absolute safeguard. I can think of many reasons how a person could be coerced to get information about himself and reveal it to people who he does not want to have it.

Furthermore, I can also find reasons to believe that a person suspicious that he might have a record stored in the computer, under many circumstances, would be hesitant to go down and ask if the record was there, feeling that that in itself would open him to suspicions that he wants to shield himself from.

So, I see no reason to say that he cannot have access to the record. But I do say to you, very specifically, that I do not believe this is going to give an absolute guarantee.

I want you to realize that if you accept some of the suggestions that I have made, you will limit the efficiency of the system. But I am much more concerned with the

humanistic value of the system and with limiting the system's ability to do harm to the individual than I am to maximizing the efficiency of the system.

Thank you very much.

ACTING CHAIRMAN SCIRICA: Thank you,Mr. Richardson.

Both Mr. Packenham and Dean Liacouras, this morning, argued persuasively for open access by the public to all of the information that is going to be stored in the computer system, although they would severly limit what could be stored in the system.

And in terms of the Philadelphia Plan, it would be what is defined as public information, but in terms of the Pennsylvania Plan, of course, it would be the rap sheet, which is not now presently defined as public information.

It seems to me that the ACLU and other groups that have been concerned about individual rights have usually come down on the side of the right to privacy rather than on the right of public access and freedom to know.

Does your group take a position with regard to the right of privacy for this information that would be included in both of these Plans, or do you feel that open access to the public is preferable?

MR. RICHARDSON: We have discussed this, and we have not been able to come to an absolute answer to that question.

We feel that the privacy needs to be protected and that the individual is,himself, protected by providing access by the public to the information

I think that it depends really upon what information we finally decide must be stored in a system. And we have to consider that not only what specific information is stored, but we have to consider the power of the system, itself, and what we are going to allow to be done in the system.

In other words, there is, at the present time, some indefinite amount of information stored in public documents about my own person. I have no idea where all of this information is or how much it is. But if this information is computerized -- and some of it is -- and computers in various parts of the country can access these various data banks, then people can scan my history and find out things about me and find out implications of these things, which I would consider to be dangerous to my person.

So, I think that when we decide upon what type of system we are talking about and what type of data is allowed, at that particular point in time, we must make a judicious decision about how to balance the public's right to know and the individual's right to privacy.

REPRESENTATIVE WILLIAM HUTCHINSON: A technical question, and I really do not know that much about this field. One of the problems that has been discussed here, particularly

at the local level -- and I think we have been talking about a lot of other different things. But one of the problems that has been discussed is the problem of the cost -- the problem of shared time as opposed to a dedicated computerized system.

If you are going to have criminal information computerized at local levels or any kind of information,indeed, it has been suggested that it is too expensive to do it with a dedicated system which would help at least solve some of the security problems. It would limit the data on a particular computer at the terminal.

You talked about technology. Some years ago -- not too many years ago, I guess -- there was an article in the "Scientific American" that suggested that one possible way of attacking that problem where you had shared time was by using some form of cryptogrophy for various logical classifications of information, and then providing access to the key to that cryptography,to the uncode agent,to various people for various kinds of things.

In technology, is that a possible solution to the shared time situation from a technical standpoint; can that be worked out?

MR. RICHARDSON: I would say, no, it is not an adequate solution. There is no doubt about the cost efficiency advantages of shared time.

However, there is no absolute protection. And the

thing that I must suggest to you is that the computers, themselves, can be utilized to break the codes. And no code can be held inviolate for more than a very short period of time in this area.

REPRESENTATIVE WILLIAM HUTCHINSON: What do you mean by a "short period"? That was suggested in the article that it was impossible to have a completely inviolate code, because, as you say, the computer could be used to break it. What are you talking about in terms of time limitations? Do you have any idea how long a code can be kept inviolate?

MR. RICHARDSON: I would say that if a person set out to develop a computer system to break a code, once he developed his programs, that he could break most codes in a matter of a few days.

REPRESENTATIVE WILLIAM HUTCHINSON: A few days; thank you. So that would just not be an adequate way of doing it; is that not a feasible solution?

MR. RICHARDSON: The protection would not be there. I would suggest to you that the data system, it seems to me from my knowledge, which has really protected the rights of privacy, has been that of the Department of Commerce for census data. And this is a purely dedicated system.

There probably have been some misuses of census data, but it has not come to my attention that, at any point, individual census information has leaked from that system.

It is a completely dedicated system.

REPRESENTATIVE WILLIAM HUTCHINSON: So you feel the only solution to that is a dedicated system, and that if we have a computerized criminal justice information system, we should,one, limit it severely, and two, have a dedicated system.

MR. RICHARDSON: That is absolutely imperative.

REPRESENTATIVE WILLIAM HUTCHINSON: That means a centralized system.

MR. RICHARDSON: Yes, it does.

REPRESENTATIVE ITKIN: Conceivably, who would go to such laborious efforts to break such codes, to spend time and expense to gain this kind of information? In other words, who are the evil instruments in our society out to crack the security of this type of information to learn this information and to spread it among the public and to damage the reputations of innocent individuals?

MR. RICHARDSON: I suggest to you that there are two types of people who would do this. One type of person is a person who just does it for game. If you stop and think about what people have done just to meet a challenge, then there is no reason to believe that some computer person would not just do this to meet a challenge.

Another type of thing that I would suggest to you is that breaking this type of a code can be of monetary value

to certain types of people. We talk about the kinds of things that organized crime is getting in and the kind of things that they might use this type of information for. We can think of various instances where it could be quite profitable to them.

And the thing that I would suggest to you is that if they utilize it to break the codes to get information on one individual, that they now have access to everybody.

REPRESENTATIVE ITKIN: Do you believe that such threats really exist or are we talking about hypothetical occurrences? It could conceivably occur, but not within the realm of reasonable probability at the present time.

MR.RICHARDSON: I think the occurrences are only hypothetical because we have not yet put this type of information universally into the computers.

REPRESENTATIVE ITKIN: If there was such a breach, could we, at that time, deal with it effectively and restore the system?

MR. RICHARDSON: That is a hypothetical question that I really do not know the answer to. I would have very serious doubts.

Many organizations have found that once they have computerized information that it becomes very, very extremely difficult to back up and to pull out of the computer, because there are many companies who have huge amounts of computerized

data for their company, who are frantically seeking means to free themselves from the tyranny of the computer and their dependence upon technicians who really do not have the kind of information to make the kinds of decisions that they are called on to make.

REPRESENTATIVE WILLIAM HUTCHINSON: Could I ask one more question? The encoding of the data -- you understand I am talking about encoding the data in such a way that if an unauthorized person seeks access to the data, a particular type of data, he gets out a meaningless jumble.

And as I said, I understand that any code can be broken. There is one kind that cannot, but that in itself renders it unuseful as I understand. Has that ever been tried, though, as a security device; has it ever been utilized in coding the data in such a way that access to it is limited to authorized persons?

MR. RICHARDSON: Yes, it has been. The particular type of coding that you are talking about has not been used.

In the early days of computers, it was sort of felt that the very fact that when you put the data in the computer, it rendered it unreadable to people was in itself a protection. This proved to be a fallacy.

There are, however, various types of data that are protected by codes. The data, itself, tends not to be scrambled

But access of the data is protected by very elaborate codes. These codes have been broken by numerous people and there is now a developing a literature of means of breaking codes and getting access to various types of information.

People have stolen equipment. There was a young man who broke the Bell Telephone Code and,over a period of years, had Bell Telephone equipment delivered at a dock for him to pick up and he made a fortune, because he did have accounts receivable but no accounts payable. He was getting all of his material free.

There are very serious problems concerning industrial spying and insurance data access. As I say,there is a developing literature of crimes that have been perpetuated by breaking various types of codes and getting access.

REPRESENTATIVE WILLIAM HUTCHINSON: Isn't it difficult at least to do so,and does it not require some kind of a substantial monetary reward or incentive to do that? Do you think that same incentive would exist with respect to obtaining of information about private individuals? That is Mr. Itkin's question. Do you feel that same kind of incentive really exists?

MR. RICHARDSON: All I can say is: If it is profitable to somebody to do it, then I think there would be an incentive. But if the type of data that is stored is of such a nature that there is no profit in getting it, all we then

we have to worry about is some prankster who decides to spend an awful lot of time to break the code.

CHAIRMAN BERSON: Are there any other questions?

Representative Kistler.

REPRESENTATIVE KISTLER: Mr. Richardson, I noticed that you did say that the subject of the file had to have free access to his own file.

MR. RICHARDSON: Yes.

REPRESENTATIVE KISTLER: But I did not hear you say, if you did say, that you believe thathe ought to have some easy method not unreasonably, tehnically complicated nor expensive to himself to correct inaccuracies in the file.

Does it follow that you believe that he ought to have these rights built into any law that is subsequently promulgated?

MR. RICHARDSON: It was my intent that that would be the case.

REPRESENTATIVE KISTLER: Thank you.

CHAIRMAN BERSON: Thank you very much.

(Witness excused.)

CHAIRMAN BERSON: Our next witness is Stephanie Greco of Women in Communications.

MS. GRECO: I do not know if I am in a position this afternoon to round out the hearings today. But as the Chairman said, my name is Stephanie Greco. As an Editor for

the American Society for testing materials, I oversee the publication of specifications and test methods used by the nuclear petroleum and plastics industries in the United States and other countries.

I also chair the Freedom of Information Committee for the Philadelphia Chapter of Women in Communications. Women in Communications is an international, professional organization of more than 7,000 members in all fields of communications, whose job it is to work for a free and responsible press and to recognize and promulgate the achievements of women journalists

Now, in our consideration, it is apparent that it is in the consideration of everyone here, that one of the issues at stake here is how the Pennsylvania Plan for Privacy and Security of Criminal Record Information will affect the ability of the media and the public to obtain information that has historically been available to them.

From now on I will shorten the title of the Pennsylvania Plan for Privacy, et cetera, by referring to it as the Kline Plan, which is nice and short and also a lot closer to the truth, because, I think, the people of Pennsylvania have had really very little to do with it so far.

We had so little to do with it that, by the time we first learned of its existence, it had already been drafted in veritable secrecy and spirited off to the Federal

Law Enforcement Assistance Agency for approval which it received in short order.

By the press release issued shortly after the LEAA approval, the Lieutenant Governor presented his plan as more or less of a fait accompli by saying, "I am pleased by the approval of the Plan which seeks to balance the public's right to know and the individual's right to privacy. I plan to have the Task Force meet shortly to consider implementation of the Plan."

Now, if the public's right to know is really of such serious concern, then we do not really understand or condone a lack of public participation during the drafting stages, followed by the lack of public hearings before the Plan was submitted to LEAA.

Having made some inquiries as to what happened yesterday, I heard that Lieutenant Governor Kline talked about sunshine laws that had supposedly been enforced throughout.

But we feel that it takes more than just a following of the sunshine laws, meaning more than opening of a skylight in the room; public participation needs to be encouraged.

Now, we wonder if really these hearings would have been held if the alarm had not finally been sounded. Now, in his press release, the Lieutenant Governor talks about implementation, not about asking the public whether it felt its

right to know had been protected.

However, there is a precedent for what-the-public-doesn't-know-won't-hurt-them kind of operation. The FBI and CIA, organizations that have been mentioned previous today, never bothered to hold public hearings on whether they should set up vast centralized data banks in which to indiscrimanantly collect information on individuals and organizations.

And this brings us to the second major issue that we have discussed today. And that is the questionable status of government controlled highly centralized data banks, questionable in regard to the security of such systems and the potential concentration of power in the hands of those who know how to use them.

Now behind the facade of protecting national security which we hear quite often from federal agencies such as the FBI, the CIA, they amass dossiers on citizens and misuse them to such an extent that the Freedom Information Act of 1974 had to be enacted to end this kind of abuse.

Now, by the Act, citizens are able to find out what has been filed within the FBI and the CIA, and in some instances, have to pay for it, but at least they are able to get to it.

Now the facade behind which the Kline Plan seems to operate is that of an individual's right to privacy. As a matter of fact, previously, one of the members of the

Committee talked about the Bank Privacy Act which turned out to be a completely different kind of thing.

But we feel that in this case it is a completely different issue at stake also. The right to privacy also happens to double as the cloak of secrecy over the actions of judges, defense attorneys, district attorneys, court officials, police, probation officers, and any others connected with the court system.

Consider also the possibility of internal misuse of the stored information. The Kline Plan professes to have built-in rules for limited dissemination. A whole section of the Plan deals with the way in which dissemination of records would be carefully audited.

We just heard Mr. Richardson talk about the inability of present auditing procedures to really do the job. Now the Plan speaks confidently about its auditing procedures. Yet, we all have seen stories many times about how, for example, clever individuals can use computer systems to embezzle large amounts of money from banking insitututions. And there is an example that Mr. Richardson had passed out earlier of this article from the "Enquirer."

Now, if anyone knows how to audit, certainly, a bank should. Yet, bank auditers in many cases are unable to circumvent the efforts of those who are determined to bypass the proper operation of the system and hide traces of their

tampering besides.

Now, in the case of banks, the gain is monetary. In the case of the Kline Plan, the gain is measured in terms of power and influence over a vast amount of centrally stored and highly important criminal record information.

In essence, the Kline Plan does not recognize the need for public participation either during its developmental stages or at its completion.

Furthermore, we submit that the Kline Committee has not anticipated the inherent dangers in the system they wish to create.

In direct contrast with the Kline Plan, the recommended rules on standards and safeguards for the privacy, confidentiality, and security of information in the Philadelphia Justice Information System has recognized and anticipated these critical matters.

From now on I will shorten the title of the Philadelphia Plan for Standards and Safeguards, et cetera, by referring to it as the Philadelphia Plan, which is not short, but which is, nevertheless, the truth.

It is really and truly the Philadelphia Plan, because it is the result of developmental meetings that were opened and encouraged and public hearings that were held to elicit the opinions of the people of Philadelphia.

Citizens from various sections of the city -- and

I was a witness to them,having been at those hearings -- in many cases representing neighborhood organizations came and spoke, but, more importantly, were listened to by the Committee.

The document that the people of Philadelphia came to speak out against read very much like the present Kline Plan at that point. But the Committee listened and revised their Plan to recognize needs that were apparently not obvious to them before.

Unlike the Kline Task Force,the Philadelphia Confidentiality Committee recognized that no plan could really guarantee restriction of disclosure of information in the system to certain classes of users.

They opted instead for restrictions that would allow only publicly accessible records to be stored in the system, thus opening the door to continued public access; in this case, computerized access; access that has been the public's right for 200 years.

Now, the statements in the Kline Plan that claim the continuation of public access to original records are empty promises when one considers the inevitable encroachment of the computer over other systems of record keeping, especially manual systems.

As Mr. Lennox stated earlier, manual systems are not the best. For instance, if a person was to review his file, it is very difficult to compile all of the information

that is presently in manual systems. So that you know that this is going to be on its way out as far as an accurate, complete, and easibly obtainable system.

So upon the urging of the public, the Confidentiality Committee began to view the computer in this realistic and all encompassing light.

Now, having decided its course, the Committee then sent its final draft to Harrisburg, thinking that their recommendations would be incorporated into the Kline Plan and that their request for public hearings would be honored before the document was sent to LEAA for approval. And what happened to their recommendations and public hearings is history.

Now, the Philadelphia Plan is a step in the direction of the kind of decentralization that is necessary to maintain democratic principles in this age of the computer.

We feel that this is the direction that the people who know how to operate and maintain and develop computer systems -- this is the direction that they need to go into if they are going to be developing systems for criminal record keeping.

They should be able to do this. We have heard Mr. Richardson say that the technology is getting so great that they can do just about anything. Well, they should develop and focus their attentions in this area of decentralization

and find an efficient way to do it. I am sure the computer companies that are panting after the right to set up these programs should be able to do this. So, we went and asked the State Legislature to follow in Philadelphia'a footsteps.

Thank you.

CHAIRMAN BERSON: Any questions?

Representative Kistler.

REPRESENTATIVE KISTLER: I want to ask you if you believe that the input of any computer file should be limited to court docket information.

MS. GRECO: In the present instance, I feel at this time that it should be limited, yes, to computer docket information.

REPRESENTATIVE KISTLER: Is it your position that it should be freely accessible to all segments of the public?

MS. GRECO: Yes, I do.

REPRESENTATIVE KISTLER: Is it your feeling that the so-called rap sheet should not be part of any computer record at this point?

MS. GRECO: At this point, no. I feel that the only access should be to court records; that is, at this point.

REPRESENTATIVE KISTLER: Do you feel that the subject should have free and complete access to his own file?

MS. GRECO: Absolutely.

REPRESENTATIVE KISTLER: Do you agree that subjects should be able to challenge the inaccuracy and to correct the same without undue personal expense or complicated technological involvement?

MS. GRECO: Yes; definitely. Unlike the case where, in order to find out what the FBI or the CIA has on you, you have to pay a certain amount of money for computer time and printouts, et cetera. Yes, I feel that they should be able to have access to it,and a completely free access and review, and have corrections taken care of if they find inaccuracies; yes.

REPRESENTATIVE KISTLER: I have no other questions.

CHAIRMAN BERSON: Representative Hutchinson.

REPRESENTATIVE WILLIAM HUTCHINSON: The questions you asked about rap sheets, I am not quite sure I understand them. I think a lot of the controversy in the privacy level evolves around the problem of arrest records and such things such as that. I think that is the area that we have focused in on.

Do you think that the records,say, of a district justice with respect to criminal charges brought before him should be included in the system?

MS. GRECO: I am sorry.

REPRESENTATIVE WILLIAM HUTCHINSON: The district justice is the lowest authority in the system. A criminal

complaint is filed before that district justice. It is his function in our system to determine whether or not there is probable cause for that complaint. And if so, it is sent out to the District Attorney who then decides whether to ask for an indictment or to endorse the complaint in that system.

In many cases -- let's take the case where the district justice finds a lack of probable cause. This is the key area,I think, in the controversy. Do you think that that should be included in the system?

MS. GRECO: I have not considered that specific instance. I object to including investigative and other kinds of information. But that -- I am not sure if I find that --

REPRESENTATIVE WILLIAM HUTCHINSON: You do not have a position. What about arrest records? That is another key area that would be a controversial area,I think.

MS. GRECO: I think they should be included.

REPRESENTATIVE WILLIAM HUTCHINSON: Thank you.

CHAIRMAN BERSON: Representative Itkin.

REPRESENTATIVE ITKIN: There has been a lot of talk today about maintaining and the public having access to what are traditional forms of information, court records.

Somehow if they are available in manual form, they should be preserved and the system should not contain any more data then what is initially available to the general

public.

But on many occasions the courts, themselves, circumvent their own right to public access. For example, the conversations between adversaries in the judge's chambers, for instance, is never part of the court transcript. The dealings between a counsel for a defendant and a district attorney, in terms of plea bargaining, are not part of the court record.

I am just curious to know in terms of -- there seems to be a general feeling,today,that the courts have been so outfront in terms of its making available the information that goes on in the court system. And I want to know how you react to that.

Do you think that the tendency upon what is allowed to be public record in the court is totally acceptable in terms as a journalist?

MS. GRECO: I feel that the journalist will probably always want to have more information than they can get. And I do not know if a lot of work could be done within the judicial system wihout some of the plea bargaining and this kind of thing that goes on which does not become a part of the official record.

I am not being really a journalist. I do not know if I am speaking correctly in saying that I do not see any way in it to be able to get this information out to the public

without introducing a lot of opportunity for abuse.

REPRESENTATIVE ITKIN: What I am concerned about -- and I am not an attorney, but members of the Committee here are. So there is a certain special concern in reference to the judiciary, which I do not necessarily have.

I question why a computer technician does not have the integrity of preservation of what is right and proper, but a jurist in a court system somehow has magnanimous appreciation for what is fair and the adequate dissemination of all the information the public should have.

I only bring that up as a question,because certain people are being put -- elements of the executive branch of government are being questioned now for the system was developed for an abuse of power. And our police agencies which are a part of the executive branch are also being suspect today of the potential abuse of power.

I wonder whether why throughout this entire hearing there has been no discussion of potential abuse of power on the part of the judiciary-- they are human beings; they make decisions-- and why we just accept and allow and let them be the final resort in making those determinations.

Do you see what I am getting at? We tend to suspect two branches of government. And we are saying to them, "Watch them. They will abuse power. Watch them.. They will do things against society."

Yet, throughout these whole two days of hearings, we have never heard any criticism about the powers vested in the judiciary to withhold information and to sequester information. And this troubles me.

I am just wondering now as we conclude the hearing whether maybe we should go beyond just the parochial nature that we have talked about today and really expand our inquiry not only to what the executive branch is proposing, but what, in fact, is being done in the judiciary in terms of the security of information and privacy.

MS. GRECO: I think the judiciary is just as much suspect as the other branches. I feel that by making records accessible to the public, I feel that this is a way to check the judiciary also in order to be able to see examples of a judge's decision record, this kind of thing.

REPRESENTATIVE ITKIN: But we had testimony about non-conviction data and whether it should be included or not included in terms of giving some insight to the public about how the judiciary has approached an allegation of criminal misdeeds. And now there has been quite a lot of controversy as to whether or not the conviction data ought to be stored by another branch of government in order to act as a check on the judicial branch of government.

I do not have the answer, Mr. Chairman. However, I do think it is a phase of the inquiry which has not been

addressed in these two days of the hearing.

CHAIRMAN BERSON: I just think that a portion of Mr. Packenham's statement very adequately addressed that very issue and raised it quite vividly.

REPRESENTATIVE KOVALYSHYN: Also, Inspector Herron made that point.

CHAIRMAN BERSON: Representative Hutchinson.

REPRESENTATIVE WILLIAM HUTCHINSON: I think that we do have a problem in checking all branches of government and that a great concern of mine is that the judiciary today with the vast powers they have and the use to which they have been put, especially their general powers for rule making, that it does have a tendency to become, perhaps,the over-whelming power in our system. That is a concern to me.

But I do not think that is the issue here, I think when we talk about court records, as I understand it--I am trying to pin down the area of controversy, because we have to write legislation. I think when we talk about court records we are talking about the docket records which are disposition, non-disposition of cases, not the transcript of testimony, not the briefs and those arguments. That information is so massive, and often after the case is over, just really not usable.

I believe that is what you are talking about, aren't you; just docket entries that show what happened in the case

in very brief summary form and its final disposition.

MS. GRECO: All of the members of the Committee have received copies of the report and the Philadelphia Plan. And in that, the description of court information, docket information, is described in the Plan, and I agree with that principle that Dean Liacouras' and his committee has come up with as far as what should be made available; whatever that exact description is.

REPRESENTATIVE ITKIN: Perhaps someone on the panel could advise me. Does the Philadelphia Plan list jury trial, non-jury trial, verdict by sentencing, verdict by judge, verdict by jury; is it that explicit in what would be stored?

REPRESENTATIVE WILLIAM HUTCHINSON: I do not know. I do know this: that the situation in Philadelphia with respect to juries, as I understand it, is that a large percentage of criminal cases are now non-jury. I understand that is because of the great backlog in the system.

In my own county, most criminal cases remain jury cases. Because of the great backlog; am I right on that, most counsel will finally take the case non-jury.

CHAIRMAN BERSON: Mr. Chasen could answer that question.

MR. CHASEN: The court docket will show the actual disposition, jury or non-jury, even specific as to waiver exactly what happened. But the rap sheet will be more

narrow; it will just list the adjudication, itself, not the details of the disposition.

REPRESENTATIVE ITKIN: What is stored in computers?

MR. CHASEN: Both; courts maintain a disposition file, and the Police Department maintains,both in manual and automated form, a summary of the disposition for rap sheet purposes.

REPRESENTATIVE WILLIAM HUTCHINSON: Excuse me. I have one other question, if I can, Mr. Chasen.

You do put the docket -- in other words, you are computerizing the information on the docket; is that correct?

MR. CHASEN: We computerize the information on the docket and that is part of the court computer system that has a summary of dispositions.

REPRESENTATIVE WILLIAM HUTCHINSON: Does it include motions and actions on various motions?

MR. CHASEN: Complete history of the case itself.

REPRESENTATIVE ITKIN: There is no editing done of the docket? That is what I want to know.

MR. CHASEN: The docket, itself, exists in both manual and automated form.

REPRESENTATIVE ITKIN: But the automated form is not an editing or an abridged copy of the written form?

MR. CHASEN: It is according to a format. It is not in a free-form narrative. But is does contain all of the

essential facts.

REPRESENTATIVE O'DONNEL: Let me interrupt just to explain this; If you waive a jury and your attorney puts you through a colloquy to demonstrate to the court that the waiver was knowing and intelligent, the appellate court would frequently have to go back and examine the content of that colloquy to determine whether or not the waiver was intelligent and knowing, if that question were raised on appeal.

So, the original record would contain the exact words of the colloquy but the docket would only contain a notation "jury trial waived."

So, the record is the notation on the docket "jury trial waived," At the next level, the record is a document which is signed by the defense attorney and signed by the defendant. And at the next level, which is, of course, manual, is a full transcript of the colloquy between the parties.

REPRESENTATIVE KISTLER: Would the court docket disclose that plea bargaining entered into the disposition of the case?

REPRESENTATIVE O'DONNEL: The docket would not, but the full record would.

REPRESENTATIVE WILLIAM HUTCHINSON: The transcript would in many cases --

CHAIRMAN BERSON: Pleading to a lesser charge.

REPRESENTATIVE WILLIAM HUTCHINSON: A person who

had a knowledge of the system could tell from the docket, in most cases, whether plea bargaining had entered into it.

REPRESENTATIVE KISTLER: I have a question and somebody on the Committe can answer this. Could not a new law be promulgated, be arranged, so that the court docket would indicate if plea bargaining was part of the disposition?

REPRESENTATIVE WILLIAM HUTCHINSON: We do not admit that it is going on.

REPRESENTATIVE SCIRICA: Mr. Chasen, if one person's entire criminal history were in Philadelphia, then your computer file would actually contain more complete informational background on that than the State Police rap sheet.

MR. CHASEN: Your question limits his criminal career to the City of Philadelphia. We would have input, in manual and automated form, a comprehensive record of his activity.

We also have facility in both manual and automated form to enter foreign arrest, if by some facility, that information gets to us.

Everything that we have also in Philadelphia, we feed to the State system. We do not operate unilaterally.

REPRESENTATIVE SCIRICA: Then the public information that is limited in your computer system is really no less than what would be included in your rap sheet were it allowed to be put into the computer system.

MR. CHASEN: I am not sure that I follow your

question. Rap sheets are not public now. They, also, are not automated now.

REPRESENTATIVE SCIRICA: But is it not really the same information?

MR. CHASEN: As?

REPRESENTATIVE SCIRICA: As a rap sheet. The information that you can glean from a docket if a guy has had five arrests and five trials in Philadelphia --

MR. CHASEN: You have to know in advance that he has had five trials and five arrests, and you have to have the case numbers to go look at the files at the Archives.

If you want to put together a criminal history on Irving Chasen, if you know that his criminal career has been limited to Philadelphia, you have an endless job to do. All you know is that all of my arrests have been in Philadelphia.

And you go to the Philadelphia Archives and begin to search starting in 1890 to the present time.

REPRESENTATIVE SCIRICA: And you could not get all of that in Philadelphia under your system.

MR. CHASEN: It is a summary. A rap sheet is not available to the public.

REPRESENTATIVE WILLIAM HUTCHINSON: Here is the question. The question is whether or not, in your system, now, I could go there and get the information if you have been arrested five times and convicted once and acquitted four times,

an I by drawing out the name Irving Chasen -- will the computer give me information on all five of those incidents?

MR. CHASEN: If you go in there now and you make a public inquiry with my name, you will get information indices onlt to currently active cases.

REPRESENTATIVE WILLIAM HUTCHINSON: I will not get anything that has been finished, that has been judicated, whether it has been an acquittal or a conviction.

MR. CHASEN: Right. You will have to know that specific case number and then go to the Archives to get it.

REPRESENTATIVE SCIRICA: As Director of the system, could you get it?

MR. CHASEN: Could I get it? A person of authority could get it. I could get it, yes. I could get it from the automated system.

REPRESENTATIVE WILLIAM HUTCHINSON: If it were Bill Hutchinson and Bill Hutchinson went in today and asked for that information, just giving you the name, would I get it, all five of them, under your system?

MR. CHASEN: Could you get it?

REPRESENTATIVE WILLIAM HUTCHINSON: Yes. I come in and I am interested in what you have on me in that record. I have one current case pending and there are four that have been finished.

MR. CHASEN: The Police Department has a procedure

now for any individual. I think Inspector Herron alluded to that. He more than alluded to it.

REPRESENTATIVE WILLIAM HUTCHINSON: Can I get it?

MR. CHASEN: Yes. The Police Department will give anyone complete information that they have on that individual.

REPRESENTATIVE WILLIAM HUTCHINSON: I could get it; you could get it because you know the system. But an investigative reporter, perhaps, could not obtain the information on the older cases from your system; is that not correct?

MR. CHASEN: The press has their way. The press, as it goes, they do. The press currently in a manual system--

REPRESENTATIVE WILLIAM HUTCHINSON: I am not talking about a manual system. I am talking your system.

MR. CHASEN: I do not like the nomenclature. It is not"my system."

REPRESENTATIVE WILLIAM HUTCHINSON: The Philadelphia Computer System; could a reporter that came in and asked questions about Bill Hutchinson --

MR. CHASEN: Get automated rap sheet information? I think that in actuality, I could get it by making a request and have the system modify it. In actuality,there is really only one person who can get it, and that is the Director of Data Processing for the Philadelphia Police Department who could get it. He is the systems manager and fully responsible if any of that information leaks out.

The accessibility of that system, at the present time, is really zero, because it is not being utilized.

REPRESENTATIVE WILLIAM HUTCHINSON: All right.

MR. CHASEN: The main reason it is not being utilized is, as I stated and Chief Inspector Herron stated, because we do not know what the guidelines are for that information.

REPRESENTATIVE WILLIAM HUTCHINSON: I am just trying to find out some facts now. The fact then is that the chronological information on the dispostion of all charges that have been brought against me can be obtained by me, if I go in.

The person involved -- it can be obtained by the Director and that is it.

MR. CHASEN: And that is it.

I would like the record to show that the hypothetical case of Irving Chasen is strictly hypothetical.

REPRESENTATIVE WILLIAM HUTCHINSON: And I would like the record to show that the hypothetical case of Bill Hutchinson was strictly hypothetical, too.

CHAIRMAN BERSON: If there are no other questions, I would congratulate everybody on meeting the Chairman's deadline of 4:00,and we will adjourn these hearings.

Thank you all very much.

(Whereupon, at 4:03 p.m., the hearing was closed.)

C E R T I F I C A T E

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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