

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY

In re: Public Hearing on SB 635 - CHRIA

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Stenographic report of hearing held
in Room 140, Majority Caucus Room,
Main Capitol Building, Harrisburg, PA

Wednesday,
October 31, 1990
9:30 a.m.

HON. THOMAS R. CALGATIRONE, CHAIRMAN
Hon. Gerard Kosinski, Subcommittee Chairman on
Courts

MEMBERS OF COMMITTEE ON JUDICIARY

Hon. Jerry Birmelin	Hon. Christopher McNally
Hon. Kevin Blaum	Hon. Nicholas B. Moehlmann
Hon. Richard Hayden	Hon. Jeffrey E. Piccola
Hon. Paul McHale	Hon. Robert D. Reber

Also Present:

William Andring, Chief Counsel
David Krantz, Executive Director
Katheryn Manucci, Staff
Mary Woolley, Republican Counsel
Mary Beth Marschik, Republican Research Analyst

Reported by:
Ann-Marie P. Sweeney, Reporter

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1 **APPENDIX:**

2 **David S. Bayne, Secretary, Board of Pardons**

3 **Ronald D. Castille, Legislative Chairman,**
4 **Pennsylvania District Attorneys Association**

5 **Ida Vonara, Emporium, Pennsylvania**

6 **Gary S. Gildin, ACLU**

7 **Joseph D. Lehman, Commissioner of Corrections**

8 **Ernest D. Preate, Jr., Attorney General**

9 **Col. Ronald M. Sharpe, Commissioner, State Police**

10 **Gary Tennis, Philadelphia District Attorney's Office**

11 **David J. Domzalski, Asst. City Solicitor, Philadelphia**

12 **Paul Rager, Chief of Police, Manheim Township**

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1 killers or serial criminals follow distinct patterns.
2 Police can uncover clues and evidence that can lead to
3 the killer or criminal if they can quickly analyze
4 crime scenes for similarities. Florida investigators
5 now use computers to help solve murder at the Florida
6 University in Gainesville. Serial killings happen in
7 this State. Although Pennsylvania has not had a Ted
8 Bundy type case, the State has dealt with dangerous
9 people like Joseph Callinger, who in the 1970's
10 committed a string of heinous crimes in eastern
11 Pennsylvania and New Jersey. CHRIA would have helped
12 investigators quickly see that the same dangerous
13 individual was committing such crimes, would have
14 helped to get the danger off the streets. Serial
15 killers and organized crime individuals cross police
16 jurisdictions. They have no respect for boundaries.
17 Police need a simple tool to share information to build
18 cases against such criminals. There are other
19 arguments for allowing police to use computers in their
20 investigations.

21 I question why the State should prevent
22 police from using a tool that any individual, reporter,
23 school, or business can use. Schools keep an
24 assortment of information on students on computers.
25 Credit bureaus have almost the complete history of

1 every individual nationwide stored on computers.
2 Reporters compile, organize, and sort through notes and
3 write stories with the use of computers. Investigative
4 reporters have methods similar to the police in storing
5 and analyzing information. Police in 49 out of the 50
6 States can use computers to store investigative
7 information and compare and analyze various minute
8 details from crimes. Why not have the same ability
9 here? Companies who wish to sell their wares can buy
10 computer disks from other companies that show mortgage
11 purchasing credit or almost any other information about
12 an individual in the State.

13 The fear does exist that big brother will
14 misuse the computer to snoop on the average Joe. I
15 believe that this law contains the necessary safeguards
16 that will stop any possible misuse. We, as
17 legislators, and the public would not stand for any
18 unlawful prying into the lives of innocent people.
19 Police also have enough work to do to keep them busy
20 without spending time investigating innocent men and
21 women. I personally believe that to be the case. I
22 believe any misuse would be quickly uncovered and
23 severely dealt with.

24 Overall, I believe Pennsylvania needs to
25 unshackle police efforts to combat organized crime and

1 drug smuggling. With the many thousands of municipal
2 police departments and the State Police working on
3 similar cases, duplicating efforts and trying to bust
4 the same people, we as legislators also must give
5 investigators an easy method to quickly cooperate and
6 share information.

7 I want to thank you, and I'd like for the
8 members to introduce themselves. If they care to make
9 any statement, they can please do so at that time.

10 I'm State Representative Tom Caltagirone,
11 Chair of the House Judiciary Committee, and I'd like to
12 introduce Nick Moehlmann, who co-chairs the committee
13 with me.

14 Nick.

15 REPRESENTATIVE MOEHLMANN: Representative
16 Nick Moehlmann from Lebanon County, the Minority
17 Chairman of the committee.

18 I have a brief statement. Do you want me
19 to make that now or after all of the other members?

20 CHAIRMAN CALTAGIRONE: Sure.

21 REPRESENTATIVE MOEHLMANN: First, thank
22 you to all the witness who agreed to testify on
23 relatively short notice during a very busy time of the
24 year, especially for some of us.

25 This hearing is unusual. It is not

1 unusual for the Judiciary Committee to conduct hearings
2 on significant legislative proposals. We do it
3 routinely. Nor is it unusual for this committee then
4 to vote out that legislation. We did vote out CHRIA
5 amendments during the 1987-88 session when Bill DeWeese
6 was the Majority Chairman of this committee and twice
7 during this session under Representative Caltagirone's
8 leadership.

9 What is unusual about this specific
10 process is that this hearing is being held after this
11 committee overwhelmingly approved Senate Bill 635 and
12 sent it on to the full House. That bill, as amended by
13 Senator Craig Lewis on the Senate floor, represented a
14 more measured approach to law enforcement
15 computerization of intelligence, treatment and
16 investigate information than that which this committee
17 previously approved, but House Democratic leadership
18 did not see fit to permit a floor vote on SB 635, nor
19 will they release from the Rules Committee
20 Representative Caltagirone's House Bill 1141, which
21 also contains the Lewis version of the CHRIA
22 legislation.

23 As a result, and on the behalf of the
24 Pennsylvania law enforcement community represented here
25 today - the Attorney General the State Police, our

1 district attorneys, the Philadelphia Police Department,
2 the Pennsylvania Chiefs of Police, the Department of
3 Corrections, the Board of Probation and Parole, and the
4 Pennsylvania Commission on Crime and Delinquency - we
5 tried to amend the CHRIA amendments into Senate
6 vehicles during the final days of session prior to the
7 election recess. A procedural ruling and a subsequent
8 procedural vote blocked consideration of the Hagarty
9 amendment.

10 I am convinced had we had the opportunity
11 to run a vote on the substantive issue of CHRIA we
12 would have been victorious. I believe the rank and
13 file of both caucuses recognize that we are tying the
14 hands of Pennsylvania law enforcement, inhibiting their
15 ability to protect the public safety, unlike law
16 enforcement agencies in any other State, by prohibiting
17 them from making use of a tool - a computer - a tool
18 which sophisticated and even not so sophisticated
19 criminals make use of routinely to plan and commit a
20 crime.

21 Representative Hagarty, our Minority
22 Chair of the Subcommittee on Crime and Corrections,
23 regrets her inability to attend but wanted me to extend
24 her gratitude to the witnesses for their support during
25 our earlier effort. We both look forward to and

1 anticipate our ongoing partnership in this seemingly
2 endless struggle.

3 Thank you.

4 CHAIRMAN CALTAGIRONE: If you just want
5 to introduce yourself for the record.

6 REPRESENTATIVE BIRMELIN: Representative
7 Birmelin from Wayne County.

8 MS. WOOLLEY: Mary Woolley, Minority
9 Counsel to the committee.

10 MR. ANDRING: Bill Andring, Majority
11 Counsel to the committee.

12 REPRESENTATIVE McNALLY: Chris McNally,
13 Representative from Allegheny County.

14 CHAIRMAN CALTAGIRONE: I'd also like to
15 submit for the record a letter that I received this
16 morning from David S. Bayne, Secretary for the Board of
17 Pardons, and I'd like to the submit that as an official
18 part of the record rather than reading it in.

19 (See Appendix for a copy of the letter
20 from Mr. Bayne.)

21 CHAIRMAN CALTAGIRONE: And at this time,
22 I'd like to introduce Senator John D. Hopper, prime
23 sponsor of Senate Bill 635, for some statements.

24 SENATOR HOPPER: Thank you. Thank you,
25 Chairman Caltagirone, Mr. Moehlmann, members of the

1 committee. Thank you for giving me the opportunity to
2 comment on Senate Bill 635, of which I am the prime
3 sponsor.

4 The Criminal History Records Information
5 Act, as Chairman Caltagirone mentioned, does not permit
6 storage in computers of intelligence information,
7 investigative information, treatment information, and
8 635 would amend CHRIA to permit that. Incidentally,
9 Pennsylvania is the only State out of the 50 States
10 that does not have such authorization, and therefore, I
11 think it's a good idea that this legislation be passed.

12 In compiling the final version of 635, \\
13 the State Police, Attorney General Preate's office, the
14 Bureau of Corrections, the District Attorneys
15 Association of Pennsylvania, all contributed, and we
16 want to thank them for their input, and they're in
17 favor of this legislation, too. As a matter of fact,
18 when Dr. Bill Bennett addressed the joint session of
19 the legislature, he urged the passage of 635, and as
20 you know, Bennett is the national drug czar, and we
21 feel that this legislation is important in that
22 respect.

23 Chairman Caltagirone summarized the whole
24 situation and there will be protective measures taken,
25 security taken by local law enforcement establishments

1 training people that would have access to the computer,
2 appointing a security officer to make sure that the
3 guidelines of the local law enforcement agency were
4 enforced in order to protect the private lives of
5 individuals as far as dissemination of this information
6 is concerned.

7 That pretty much summarizes it, in
8 addition to what Chairman Caltagirone said, and I
9 respectfully urge that this legislation be taken off
10 the table and submitted to the full House for a vote.

11 Thank you very much.

12 CHAIRMAN CALTAGIRONE: Thank you,
13 Senator.

14 Are there any questions?

15 SENATOR HOPPER: If anybody has any
16 questions, I'd be glad to try to answer them.

17 CHAIRMAN CALTAGIRONE: I indicated to the
18 Senator that if he would care to stay with us then
19 after he's finished here until he has his appointment
20 that he'd be more than welcome to sit on the panel here
21 with us.

22 Representative Piccola.

23 REPRESENTATIVE PICCOLA: I apologize for
24 being late, and maybe you covered this, what was the
25 vote in the Senate?

1 SENATOR HOPPER: The vote in the Senate
2 was a bipartisan vote. It passed 35 to 15, and that's
3 a pretty fair majority. This was after about an hour
4 of interrogation by one of the Senators on the
5 Democratic side, and it's strictly a bipartisan effort,
6 and we appreciate that.

7 REPRESENTATIVE PICCOLA: Thank you, Mr.
8 Chairman.

9 CHAIRMAN CALTAGIRONE: Thank you,
10 Senator.

11 SENATOR HOPPER: Thanks very much.

12 CHAIRMAN CALTAGIRONE: Attorney General
13 Ernie Preate's office. Oh, there is the Attorney
14 General. Okay, Attorney General Ernie Preate.

15 ATTY. GEN. PREATE: Can I defer, Mr.
16 Chairman, that the State Police Commissioner and I will
17 be testifying together, and he has informed us that he
18 will be here just momentarily, so if there's another
19 witness that you want to call out of turn, I'd be happy
20 to defer to them.

21 CHAIRMAN CALTAGIRONE: All right. I'd
22 like to have Commissioner Lehman, if you'd care to go
23 next.

24 COMMISSIONER LEHMAN: Chairman
25 Caltagirone, members of the House Judiciary Committee,

1 I thank you for the opportunity for me to testify
2 before you today.

3 When the Criminal History Record
4 Information Act was amended in 1979 prohibiting the
5 automation of intelligence, investigative and treatment
6 information, it's not likely that I think people at
7 that time had any notion or could imagine the kinds of
8 information that might be made available at one's
9 fingertips with the use of a computer. In the October
10 1990 article in the magazine Governing, which focuses
11 on State and local government, they address some of the
12 ways in which criminal justice agencies are utilizing
13 what they call high tech tools to some significant
14 benefit in terms of public safety. They also use a
15 term called "B.C.," or before computer, and frankly,
16 Pennsylvania, in terms of its current law, would have
17 to be described as B.C. or before computer mentality.
18 I think, unfortunately, the criminal justice system in
19 the Commonwealth is probably 10 years behind where it
20 should be in terms of using relevant information
21 through the use of computer in its fight for crime
22 control and public safety.

23 I think preventing criminal justice
24 agencies from capturing intelligence, investigative and
25 treatment information on individuals is hampering us.

1 Frankly, this requires additional personnel at a time
2 when agencies are actually being asked to do more with
3 less. The work that is required manually requires too
4 much of an effort in terms of manpower resources, in
5 terms of time, the effect being that we simply don't do
6 the work. The effect overall is a chilling one, a
7 chilling effect on, frankly, agencies within the
8 criminal justice system carrying out activities which
9 are consistent with the mandate that you have given us
10 in terms of public safety.

11 The current law is hampering the
12 corrections system in terms of its management. The
13 problem is not on the restrictions on the type of
14 information that we can deal with or on whom we can
15 collect information. The problem is that the
16 restrictions on automating that information you in fact
17 are hampering our capacity to have critical information
18 usable in a timely manner. Frankly, the restrictions
19 are inconsistent with the mandate you've given the
20 Department of Corrections in terms of providing for the
21 safety, security of visitors, staff and inmates alike.
22 The bottom line is recordkeeping in a system of 22,000
23 inmates is just not feasible in a manual system. It's
24 not simply a matter of collecting data on 22,000
25 inmates, it's a matter of collecting data and having

1 the capacity to analyze that data and to compare
2 information relative to millions of discreet data.
3 Please let me give you some examples of ways in which I
4 think the current law inhibits Corrections from doing
5 what it should be.

6 Inmate groups in prisons often organize
7 and form gangs, even though they may at times attempt
8 to masquerade and hide their identity. It is critical
9 that the department have a capacity to identify members
10 of these groups, to monitor their activities, to
11 monitor their membership and activities both inside and
12 outside the walls. That requires gathering information
13 on identifying tattoos, on identifying the colors of a
14 gang, how those colors are displayed, what contacts
15 gang members have on the streets, who in fact their
16 leaders are both in the context of the prison
17 environment and on the street, how they recruit
18 membership inside the prisons and how they recruit
19 memberships on the streets, what information law
20 enforcement has in relation to the activities of gangs
21 on the street and how that activity translates into
22 criminal activity. To what extent gang members, for
23 example, carry out organized drug distribution
24 activities. It's a critical problem in terms of the
25 correctional environment.

1 I respectfully submit to you that you
2 cannot manage an intelligence system dealing with gangs
3 within a prison environment without automating that
4 information.

5 Second, a significant problem in any
6 prison environment is preventing and responding to
7 criminal activities, not surprising considering the
8 people that we lock up in prison, but that activity in
9 terms of dealing with preventing and responding to
10 criminal activity extends not simply to the inmates
11 inside the prisons but to their connections and
12 interactions with the outside world. It relates also
13 to investigative activities on the part of the law
14 enforcement agencies on the streets. The reality is we
15 need to, in fact, track the activities in terms of
16 communications, mail, visits, money transactions that
17 exist inside the prison and go outside the prison.
18 That means that we need to be aware of what inmates
19 are, in fact, corresponding across the system to a
20 single Post Office box; what family members or what
21 friends in the community are being instructed by
22 inmates to transfer money or to send money to
23 particular individuals in the community; what
24 relationship those activities have to criminal
25 activities in terms of either extortion, in terms of

1 drug activities, in terms of criminal activities on the
2 part of the inmate population; what visitors in fact
3 are acting as circuit riders within the prison system
4 in going from institution to institution interacting
5 with individual inmates to facilitate the criminal
6 activity or planning.

7 All that has to be done, all that needs
8 to mean investigative, intelligence activity that
9 relates to activities inside the prison as well as to
10 law enforcement activities on the street. I
11 respectfully submit to you that we cannot manage that
12 activity without automating the information.

13 Thirdly, crime control in the community
14 shouldn't be hampered by the current law. Inmates
15 released from prison and supervised in the community do
16 and should have crime-related prohibitions placed on
17 them. The prohibition of specific offenders that are
18 related to criminal activity should be shared with the
19 total law enforcement criminal justice community. In
20 doing so, you increase the capacity of the system to
21 supervise offenders, you increase the capacity of the
22 system to provide for public safety. As an
23 illustration of where I think we need to be headed in
24 the future, let me give you just one possible
25 hypothetical example.

1 John Doe is a 50-year-old sex offender.
2 He has done his time, he is on parole. He was
3 involved, in terms of the criminal activity, in
4 predatory sex offense dealing with a minor. He is,
5 because of that, prohibited, as a condition of parole,
6 from being on a school playground, he's prohibited from
7 being on a park or in other areas where children might
8 gather without being accompanied by another adult.
9 Now, let's assume that with an automated information
10 system that we put Mr. John Doe's name and other
11 identifying information into a central criminal justice
12 information system, along with a list of the
13 crime-related prohibitions that are in fact imposed on
14 Mr. Doe. As we carry this hypothetical example, let's
15 assume that one afternoon a teacher notices a stranger
16 hanging around the playground or a patrol car going
17 through the area of the playground notices a stranger.
18 In any event, the police are there, they confront the
19 individual, they gain access to Mr. John Doe's
20 identity. They, in fact, access through their computer
21 terminal in the car information regarding the
22 crime-related prohibitions against Mr. John Doe. They
23 there in that situation have the capacity to intervene,
24 a capacity to arrest, a capacity to, in fact, provide
25 for public safety. The critical control efforts of the

1 criminal justice system have then been significantly
2 enhanced.

3 These are just a few examples. We can no
4 longer allow the criminal justice system in the
5 Commonwealth to be a slave to its fears of technology.
6 It is as if the criminal justice system is being asked
7 to forego the technology of today in its crime control
8 efforts. The analogous situation would be to ask law
9 enforcement to use inferior weapons. Today's
10 restrictions on using automation and electronic
11 information systems for intelligence, investigative
12 purposes is the same thing. You are asking the
13 criminal justice system to tie one of its hands behind
14 its back.

15 That does not mean that we are not
16 mindful or concerned of the potential abuse that has
17 been expressed in what I hear as "Big Brotherism," but
18 let's not lose sight of what an automated and
19 electronic information system is. It is a tool. It is
20 not, in and of itself, evil. Legislation should
21 appropriately prescribe parameters of how information
22 gathered through the use of this tool is used. It
23 should not prohibit the use of the technology out of
24 some vague fear of how it might be abused or used. The
25 General Assembly needs to step up to the table and

1 address the concerns squarely by defining appropriate
2 limitations on the use of information so gathered and
3 stored. I believe Senate Bill 635 does that.

4 Thank you for allowing me to testify, and
5 at this time I would be more than happy to respond to
6 any questions you might have.

7 CHAIRMAN CALTAGIRONE: Thank you,
8 Commissioner.

9 Representative Piccola.

10 REPRESENTATIVE PICCOLA: Thank you, Mr.
11 Chairman.

12 BY REPRESENTATIVE PICCOLA: (Of Commissioner Lehman)

13 Q. Commissioner, on page 2 of your testimony
14 you made reference to the formation of gangs both
15 inside and outside of the institution. During and
16 after the Camp Hill incident, we in this committee
17 received information of the involvement or possible
18 involvement of individuals who were associated with an
19 organization known as the Fruits of Islam, which exist
20 I think both inside and outside of not only Camp Hill
21 but I believe some of the other institutions. Is this
22 the kind of gang or group membership and activity that
23 you're talking about? And if so, what kinds of things
24 might you have done without, of course, compromising
25 security, what kinds of things could be done with this

1 proposed system that were not done or could not be done
2 pre-Camp Hill?

3 A. One of the -- when you only have the
4 capacity to deal with information on a manual basis,
5 and that's what we're talking about, you don't have the
6 capacity to, I think, adequately track and identify
7 those who might be a member of an FOI or equally
8 dangerous gangs who really in today's world are being
9 organized around drug distribution systems. That's a
10 prevalent reason for organized gangs today. But it
11 doesn't give you the capacity on a manual basis to
12 identify who are the members and what are their
13 behaviors? One of the concerns of the FOI, frankly,
14 was they were exhibiting certain kinds of paramilitary
15 activities within the institutional environment.
16 Unless you have the computer capacity to identify and
17 track individuals as they move through the system, who
18 is being the ostensible leader of those groups, who is
19 organizing, what kind of authority are they exerting
20 inappropriately over other inmates and how are they
21 exerting that force, it's just impossible to deal with
22 it realistically without having the capacity. With
23 22,000 inmates across 15 institutions, you just can't
24 do it manually. We would have had better information
25 on the activities of groups and members of the groups

1 if we had an intelligence information system that would
2 have allowed us to do that.

3 Q. Thank you.

4 REPRESENTATIVE PICCOLA: Thank you, Mr.
5 Chairman.

6 CHAIRMAN CALTAGIRONE: We've had some
7 additional members join us since we started. Would you
8 care to introduce yourself for the record, Jerry?

9 REPRESENTATIVE KOSINSKI: Representative
10 Jerry Kosinski from Philadelphia.

11 REPRESENTATIVE BLAUM: Representative
12 Kevin Blaum, city of Wilkes-Barre.

13 CHAIRMAN CALTAGIRONE: Are there any
14 additional questions?

15 Bill.

16 MR. ANDRING: Yes.

17 BY MR. ANDRING: (Of Commissioner Lehman)

18 Q. Commissioner, I know that in the past in
19 addressing the whole area of criminal history record
20 information there have been proposals that the
21 Department of Corrections simply be taken out of the
22 general prohibition but that no other law enforcement
23 agencies be removed from that prohibition, and I can't
24 help but note that you're not endorsing that approach,
25 that you are in fact endorsing the approach taken by

1 Senate Bill 635, a comprehensive approach to law
2 enforcement agencies. And could you maybe expand on
3 that a little bit and tell us why you feel it's
4 necessary, from your particular corrections viewpoint,
5 that the removal of this prohibition apply to all law
6 enforcement agencies?

7 A. Well, as I tried to allude to in terms of
8 my remarks, dealing with criminal activities or gang
9 organizations within a prison environment, you need to
10 have the capacity to look at their link to the outside
11 world. You can't really deal with either inmate
12 disruption or inmate activities or criminal activity by
13 simply focussing on what's happening within the wall.
14 Drugs aren't manufactured in the wall, they are
15 generally brought in from the outside. We need to have
16 a coordinated criminal justice response, and that means
17 not only an enhanced capacity on the part of
18 Corrections to deal with an automated system, but the
19 law enforcement community in general. So that if we
20 need information on individuals who in fact are
21 apparently or under suspension of being conduits of
22 drugs or money or whatever, we have the capacity to
23 link with law enforcement on the outside to have an
24 effective response.

25 CHAIRMAN CALTAGIRONE: Thank you,

1 Commissioner.

2 COMMISSIONER LEHMAN: Thank you.

3 CHAIRMAN CALTAGIRONE: Did you want to
4 wait a few more minutes?

5 ATTY. GEN. PREATE: No, I think we better
6 proceed. I have a plane to catch, Mr. Chairman.

7 CHAIRMAN CALTAGIRONE: Okay.

8 Attorney General Ernie Preate. If the
9 Commissioner happens to come in while you're there,
10 we'll have him join you.

11 ATTY. GEN. PREATE: He's supposed to be
12 gathering a computer to show you how this thing would
13 operate.

14 Mr. Chairman, members of the committee, I
15 appreciate, once again, the opportunity to appear
16 before you to discuss what I consider to be the number
17 one legislative priority for law enforcement in this
18 Commonwealth - it's the passage of House Bill 1141,
19 which would permit the computerization of law
20 enforcement information, specifically investigative,
21 treatment and intelligence information as defined in
22 the present law. As you all know, we're at the end of
23 a very long legislative road and this hearing is the
24 third time in this legislative session that this
25 committee has considered in some way or another the

1 amendments to the Criminal History Records Information
2 Act, CHRIA.

3 Seventeen months ago, on May 31, 1989,
4 when you first reported out House Bill 1427, you recall
5 the Governor's proposal, and I supported it, so this is
6 not a partisan issue, this is clearly a bipartisan
7 issue, and I think that were you very much in the
8 forefront, and the Chairman and Nick Moehlmann were all
9 supportive of this initiative. And the second time was
10 in October of this year when this committee favorably
11 considered Senate Bill 635, Senator Hopper's bill, and
12 as you heard from Senator Hopper today, he again had a
13 tremendous bipartisan support in the Senate. And
14 finally, today, Mr. Chairman, you've called this
15 meeting to heighten the awareness of the importance of
16 passing this legislation before the end of the current
17 session, which takes place at the end of November.

18 I anticipate that Colonel Sharpe will be
19 here shortly, and we appreciate this opportunity to
20 tell you that all of law enforcement stands together
21 united on this critical issue. You've heard from
22 Commissioner Lehman in a very articulate and candid
23 statement of his absolute need to have this legislation
24 so he can do his job in a better way to protect the
25 inmates and protect society, and all of us in law

1 enforcement - the State Police, the district attorneys
2 whom you'll hear from later on, and indeed the
3 Governor, I believe - support a package that will give
4 law enforcement, take the shackles off of law
5 enforcement and give it the opportunity to do its job
6 in the 20th century and not be bound by 3" by 5" index
7 cards with people sitting behind desks and with stacks
8 of paper trying to figure out patterns of individuals
9 and what not in the analysis of criminal data.

10 I hope that Pennsylvania corrects a very,
11 very, very sad fact that this legislature can do it,
12 and that fact is that Pennsylvania is the only State in
13 the nation that denies its law enforcement officers
14 access to current technology for information storage
15 and retrieval. Pennsylvania alone, among the 50
16 States, shackles its police by forcing them to rely on
17 horse and buggy filing systems while all of their
18 colleagues around the nation benefit from the latest
19 computer technology. This bill would simply take the
20 handcuffs off the police and the prosecutors and allow
21 us to use basic computer filing systems to organize,
22 retrieve and review information which we now do
23 manually. It will allow Pennsylvania's law enforcement
24 officers to do what Pennsylvania's businesses, its
25 industries, its governmental agencies, its academic

1 institutions, and indeed even its high school students
2 already are doing, and that is replacing 3" by 5" index
3 cards with computer disks.

4 You see, this bill would not give police
5 any new powers to gather information. The simple fact
6 of the matter is we already have the information filed
7 away in police reports and fingerprinted information
8 and in intelligence information. What this bill would
9 do is to enable the police to do a better job of
10 organizing, analyzing, and sharing the great volume of
11 information they already have on file and would also
12 remove a serious and unwarranted obstacle to cross
13 jurisdictional investigations and the investigation of
14 crimes such as serial murders that exhibit repetitive
15 characteristics. Currently, even the basic task of
16 identifying similarities among a series of crimes that
17 may be the work of a repeat offender requires hours and
18 days of tedious paper shuffling, and while we dig
19 through the files, the crime spree may continue.

20 Currently, we are attempting to track,
21 without computers, the activities of suspected toxic
22 waste dumpers and drug traffickers who move large
23 volumes of their respective poisons throughout the
24 State and the interstate and who themselves use
25 computers to keep their business records. Currently,

1 pedophiles use computers to support an elaborate
2 network in which they continually exchange information
3 on child pornography, child prostitutes, and child
4 seduction methods. But currently, my child abuse
5 investigators are not allowed to use computers to keep
6 track of the pedophiles as they move from place to
7 place exploiting victim after victim, and they do
8 travel. Just this past weekend here in Harrisburg we
9 arrested an alleged would-be child abuser who had
10 traveled here from Lackawanna County to meet his
11 intended young victims.

12 House Bill 1141 would enable us to make
13 better use of the information we already have so that
14 we can move more quickly to identify the similarities
15 in serial killings, recognize the connections among key
16 members of drug trafficking organizations, track toxic
17 waste dumpers, and recognize the patterns of
18 pedophiles. As a consequence, this bill would enable
19 law enforcement to do a better, more efficient job of
20 arresting and prosecuting criminals, and that's what
21 this bill is all about, and that's all this bill is
22 about.

23 The unique handicap under which we now
24 labor has drawn national attention. As Senator Hopper
25 has pointed out, in June of this year, the national

1 drug czar, William Bennett, addressed a joint session
2 of this legislature and emphasized the importance of
3 intelligence gathering in the war on drugs and urged
4 you to make this one of your key legislative
5 initiatives, yet to date we have no law. With the
6 possibility of six session days remaining, I urge you
7 to move forward today to take the final step toward
8 passage by concurring in the amendments to House Bill
9 1141. The bill, of which you, Mr. Chairman, are the
10 prime sponsor, originally addressed another issue. But
11 after one year of negotiation, the Senate, by a vote of
12 49 to nothing, amended the bill by adding CHRIA
13 amendments permitting Pennsylvania to join 49 other
14 States in the use of the 20th century law enforcement
15 techniques.

16 The ultimate beneficiaries will be not
17 the police but the law-abiding, taxpaying citizens of
18 Pennsylvania. And this will be accomplished because it
19 will save thousands of hours now spent on manual
20 retrieval, as Commissioner Lehman so eloquently pointed
21 out. The mountain of data that's available there just
22 simply cannot be gone through manually anymore. This
23 bill will shorten the time it takes to investigate
24 crimes and in many cases will enable police to solve
25 crimes that otherwise could not be solved.

1 By allowing law enforcement to reassign
2 manpower to other duties, the bill will result in
3 better police protection at no increase in cost. And
4 this bill will prevent the waste of taxpayers' dollars
5 because the collection of information will be done in a
6 much more efficient manner.

7 It is important to note that while it
8 does permit police the use of computers, this bill
9 includes extensive safeguards to protect individual
10 privacy. Indeed, HB 1141, as amended, would make
11 Pennsylvania the most restrictive State in the nation
12 in the control of its law enforcement information. The
13 law enforcement community is prepared to live with
14 those restrictions.

15 Among these restrictive provisions are:
16 The bill sets strict standards for collection of data
17 and to insure the information remains confidential. It
18 allows for no storage of information that does not
19 demonstrate a reasonable suspicion of criminal
20 activity. The reasonable suspicion standard is a test
21 that has long been relied on by the courts in other
22 areas of criminal law emanating from the famous case of
23 Terry v. Ohio several decades ago. It has proven to be
24 a reasonable, workable standard and one which meets the
25 balancing test of protecting the public and individual

1 rights. The bill forbids the sharing of information
2 with anyone other than a criminal justice agency, and
3 any agency which requests such information must
4 evidence that its information system controls and its
5 dissemination standards are consistent with
6 Pennsylvania law.

7 Further, the bill requires that all the
8 information that meets the reasonable suspicion test
9 must be placed as subject matters in specific
10 categories that are crimes as defined by statute.

11 I know that there are many people that
12 have put forward a great deal of effort on this House
13 to get this bill to the floor for a vote. Although
14 there have been, disappointingly, and I find it
15 regrettable that there is a small number of legislators
16 who seemingly are openly hostile to law enforcement on
17 this issue and have tried to use their powers to
18 handcuff all of us in law enforcement. Now, these same
19 few lawmakers appear to be determined to ignore the
20 will of the members of the House - Republicans and
21 Democrats alike - who just want a floor vote for
22 concurrence in this important legislation. I don't
23 think it's McCarthyism to want a floor vote. I think
24 that everybody here ought to be given the chance in the
25 legislature to stand up and be counted on this

1 important piece of legislation which I believe does
2 balance the rights of the police and the rights of
3 individuals.

4 This is not a time for name calling and
5 it's not a time for emotionally charged rhetoric from
6 certain individuals to try and persuade people not to
7 vote on this issue. This is simply an absolute
8 necessity for the people of this Commonwealth to be
9 secure. It's a safety issue. It's a safety issue.
10 And at the same time, it's necessary to authorize our
11 police to work under certain kinds of constraints so
12 that they don't intrude unnecessarily and unreasonably
13 upon individual rights.

14 But let's take Pennsylvania out of really
15 the Dark Ages, the B.C., as Commissioner Lehman has
16 pointed out. We're now in the computer age, and
17 Pennsylvania needs to move forward if it's going to
18 effectively fight drug traffickers, environmental
19 polluters, serial killers, child pedophiles. They're
20 all using the computer systems, and the only people
21 that are suffering right now are the police and the
22 people of this Commonwealth who are unprotected.

23 Thank you all very much. I appreciate
24 the chance to be here. I'll answer some of your
25 questions, Mr. Chairman, and members of the committee.

1 CHAIRMAN CALTAGIRONE: Thank you.

2 I do want to recognize that
3 Representative Robert Reber from Montgomery County has
4 joined the panel.

5 Are there questions from the panel?
6 Representative Piccola.

7 REPRESENTATIVE PICCOLA: Thank you, Mr.
8 Chairman.

9 I'd like to thank both Commissioner
10 Lehman and the Attorney General and I guess the State
11 Police Commissioner is going to be here to the testify
12 in favor of this bill, and it is unfortunate -- and I
13 agree with everything the Attorney General said on this
14 subject -- it's unfortunate that this hearing is being
15 held before the House Judiciary Committee and not the
16 House Rules Committee or the House Appropriations
17 Committee because while you were rather polite, Mr.
18 Attorney General, in your ascribing blame for the lack
19 of passage of this legislation, I'm not going to be
20 quite so polite.

21 This committee, led we Chairman
22 Caltagirone, has faced up to its responsibilities. The
23 Senate, in a bipartisan way, has faced up to its
24 responsibilities on this issue, and the blame for the
25 lack of this bill being brought before the House,

1 either of these bills being brought before the House,
2 lies with the House Democratic leadership. And that,
3 bluntly, is the reason why we have not considered it.
4 The Chairman of the Rules Committee and the Chairman of
5 the House Appropriations Committee refuse to report
6 these bills to the floor of the House for a vote. They
7 also refuse to allow bills that we could possibly
8 amend, Senate bills dealing with Title 18 or Title 42
9 which we could amend CHRIA into to take it back to the
10 Senate for a concurrence.

11 So while you were rather polite, Mr.
12 Attorney General, in describing the blame, I, for the
13 life of me, can't understand why any member of the
14 House would want to do what you're suggesting is being
15 done by the lack of passage of this bill, and that is
16 the protection of pedophiles, the protection of drug
17 dealers, the protection of serial killers. I don't
18 understand why anyone would want to do that by
19 preventing this bill to be brought to a vote, and I
20 want to thank you and your colleagues in the law
21 enforcement community and in the administration for
22 coming forward today and allowing this committee to
23 once again attempt to do its duty and highlight the
24 needs for this legislation, and we thank you.

25 ATTY. GEN. PREATE: Thank you. Thank you

1 very much.

2 BY REPRESENTATIVE MOEHLMANN: (Of Atty. Gen. Preate)

3 Q. First of all, General Preate, I want to
4 thank you very much for coming here today and appearing
5 before this committee and for your very strong support
6 of these bills. I think one of the fears and sometimes
7 the criticisms that we get with a bill like this is the
8 real or just perceived or just flack criticism that
9 it's "Big Brotherism." You had pointed out in your
10 statement that if this bill were to become law it would
11 be the most restrictive in the nation. I wonder if you
12 care to amplify how, in what ways this is more
13 restrictive than what one normally finds in such
14 statutes in other States?

15 A. Well, I think I've outlined that,
16 Representative Moehlmann, in my statement to the
17 committee which outlined at least four different ways
18 in which this bill far outdistances other States and
19 the Federal government in its attempt to insure that
20 police officers or anybody in the criminal justice
21 system does not abuse the computer system.

22 Q. The four points that you make here in
23 your statement on page 6, are they specifically
24 restrictions that normally do not appear in statute or
25 in other--

1 A. Generally they -- I can't speak because
2 every State has different standards--

3 Q. Sure.

4 A. --and the Federal government has
5 different standards, but we have, I think, here clearly
6 legal standards that are imposed upon anybody who is
7 trying to engage in computerization, information
8 retrieval, analysis, and I think that these
9 restrictions far exceed those of the other States in
10 the nation, and it would be just too long to go into
11 comparing this bill to all the bills that exist out
12 there and the laws that exist, but clearly this
13 presents a great deal of -- a great number of
14 restrictions on Pennsylvania's law enforcement
15 community. If you would like for me to submit to you
16 after this meeting some analysis comparing what, for
17 example, the Federal government requires of the FBI and
18 the DEA and the Justice Department, just to use that as
19 a simple comparison, what the Federal government
20 restrictions are, I could do that, and maybe one or two
21 other States.

22 Q. I don't really think that's necessary. I
23 simply wanted to emphasize and have you emphasize that
24 a great deal of work has been put into this bill in --
25 from that perspective, that the public be entirely

1 protected from any sort of encroachment by
2 investigative and police agencies in using this kind of
3 a statute, and I think that that needs emphasis and I
4 think it bears emphasis that as you've testified, this
5 would be the most restrictive statute in the nation.

6 Thank you, General Preate.

7 A. Um-hum.

8 BY MR. ANDRING: (Of Atty. Gen. Preate)

9 Q. Just a couple of questions, General.

10 The law right now requires that the
11 Attorney General conduct annual audits of the central
12 repository, it requires that your office develop
13 regulations relating to the dissemination of
14 information, and Senate Bill 635 would add even more
15 requirements on your office relating to regulations.
16 And I can't help but notice there was a recent PCCD
17 report, I think it was, that said maybe a third of the
18 fingerprints that should be in the system aren't even
19 in the system at the present time, so I think there is
20 a legitimate concern as to the accuracy of the
21 information that goes into this system, especially with
22 the number of police departments we have in this State,
23 and could you tell us if your office is now doing the
24 audits that the law requires, are you developing
25 regulations and what sort of a role are you prepared to

1 assume to make sure that this whole system works the
2 way it's intended?

3 A. I'd be happy to answer that question. I
4 think it's important that this legislature understand
5 that I am absolutely committed to following the
6 dictates of the laws that are passed by this
7 legislature, and one of the things I discovered when I
8 became the Attorney General a year and a half ago was
9 that there was no auditing being done of the Criminal
10 History Records Information Act, and so I set about to
11 try to correct that situation, and what I did was to
12 see if there was a capability in my office, the Office
13 of Attorney General, to go ahead and do the auditing
14 that would be necessary under this act.

15 And what I discovered is that the Office
16 of Attorney General did not have the capability at that
17 particular juncture to perform these audits, and in
18 fact Roy Zimmerman never, to the best of my knowledge,
19 was any thorough audit done. And so I submitted to the
20 legislature last year, I submitted to the Governor a
21 line item, a line item that said I have this mandate
22 from the legislature and I'd like to perform it. And
23 so I asked the Governor to give me approximately a half
24 a million dollars -- \$563,000, to be specific -- to be
25 able to perform this auditing function, and the

1 Governor did not, unfortunately, see fit to put it in
2 his budget.

3 So then when I saw that I went ahead and
4 submitted a second rebudget to the legislature, to each
5 one of you, and I stated in that rebudget on February
6 17th that I wanted a \$565,000 line item appropriation
7 to fund a unit of two Deputy Attorneys General, six
8 special agents, three auditors, and four clerical
9 personnel specifically to conduct the mandated CHRIA
10 audits, and unfortunately, this legislature chose not
11 to fund that line item. When you passed the budget in
12 June, you did not fund that particular provision. And
13 I specifically said in my February 17th proposal to the
14 legislature, quote, "Unless the legislature elects to
15 provide funding, this legislative mandate will go
16 unmet."

17 Now, I'm not criticizing the legislature
18 for choosing not to fund this audit. I know that
19 there's a lot of priorities out there for money in this
20 legislature and that you've made the decision, and I
21 have to abide by it. You knew when I submitted the
22 budget to you that I needed money and manpower to
23 perform this audit and you said, Ernie, we think that
24 there's other priorities out there, and that's a
25 decision I have to live with.

1 I, however, have resubmitted the same
2 line item request in my 1991-92 budget, and I hope that
3 you would act appropriately in permitting me to do
4 this. I want to do it but I, at the same time, you
5 know, let me just tell you that what this act mandates
6 the Attorney General to do is to examine the criminal
7 history repositories of Pennsylvania, not just the
8 headquarters of the State Police, which contains an
9 immense number of records, but the 1,200 municipal
10 police departments, the 560 district justices, the 67
11 district attorneys, the 67 courts of Common Pleas, the
12 39 State Probation and Parole offices, the 101 county
13 prisons and lock-ups, the 15 regional and State
14 correctional facilities, the 32 State appellate courts,
15 the 93 Pennsylvania State Police facilities, including
16 the central headquarters, in addition to that their
17 local detention facilities and local Probation and
18 Parole offices, and 8 Crime Commission facilities, all
19 coming to something in the neighborhood of 2,100
20 different agencies that you've asked me to review and
21 at least mandate -- you mandate the central repository
22 of the State Police be done every year and you ask for
23 a representative sampling of all others to be done.
24 Now, a representative sampling could be somewhere in
25 the neighborhood of 5 percent or 10 percent, and just

1 take 5 or 10 percent of 2,100 and you'll see that
2 you're asking for an audit of approximately 100 to 200
3 of these different units every years, plus the central
4 repository of the State Police.

5 So I'd like to do that, but I need some
6 people to do that. You need auditors to do that, you
7 need specially trained people to do that, and neither
8 Roy Zimmerman, the previous Attorney General, nor I
9 have the manpower to do it at the present time, and
10 I've outlined to you the rather modest sum of about a
11 half a million dollars that I think we could do this in
12 a fashion that would be compliant with the law.

13 Let me add very quickly now that because
14 the audit hasn't been done does not mean that there's
15 been a harm perpetrated as a result of that. I have
16 received no complaints from any group, from any civil
17 libertarian group, from any police department, from any
18 legislator or anybody in the criminal justice system
19 that the lack of the audit has perpetrated a harm on
20 the agency or on the public. In fact, what I have seen
21 is just the other way around, that the failure to have
22 amendments to CHRIA has harmed so many of us in law
23 enforcement, whether it be the Corrections Department,
24 the Pennsylvania State Police, the Office of Attorney
25 General, your Crime Commission, because it does not

1 permit us to analyze data that we need to plan and
2 attack organized crime. That's what's hurting us.

3 Thank you for the question. I hope it
4 answers you.

5 Q. Yes.

6 A. You got the picture?

7 Mary, did you get the picture?

8 MS. WOOLLEY: Yes.

9 BY MR. ANDRING: (Of Atty. Gen. Preate)

10 Q. Another question. The law provides right
11 now for various civil or administrative penalties for
12 persons who abuse the system by falsely obtaining
13 information or falsely requesting information. Would
14 you be in favor of, since we're going to be
15 accumulating, if Senate Bill 635 passes, intelligence,
16 investigative and treatment information which is not
17 public information, an increase in those, penalties,
18 the possible criminal penalties, for people who abuse
19 this information system?

20 A. I think that, you know, if we make
21 additional crimes out of a violation of this statute,
22 we kind of go too far. This is already, number one,
23 the most restrictive bill in the nation. And secondly,
24 there are existing in law adequate criminal penalties
25 for anybody that would tend to do violations of this

1 act.

2 For example, and the principal one that
3 comes to mind is called official oppression, which is
4 in the Crimes Code, it's Section 5301; and then there's
5 forgery, at 4101; and then there's tampering with
6 records or information, which clearly is applicable in
7 4104, falsification of data; and Chapter 49,
8 falsification in official matters. We have a plethora
9 of already existing criminal statutes that if somebody
10 violates this act, we can find a way to prosecute them.
11 And there are serious penalties already existing there,
12 so I'm not worried that we don't have the leverage of
13 criminal law here.

14 What I do suggest to you is that police
15 officers ought to be given the benefit of the doubt
16 that they are in fact going to comply with this and
17 that they are sworn to uphold the law, they will do
18 their duty and you don't need to club them over the
19 head with an additional penalty, and they already have
20 these several other matters in the Crimes Code that
21 they have to comply with - official oppression,
22 tampering of public records, et cetera - and so we're
23 well protected. My goodness, I can't think of an area
24 that we haven't covered like we covered this matter
25 where official action can be scrutinized for review.

1 We have the tremendous powers of the Crimes Code there.

2 And the other thing, lastly, is a matter
3 of housekeeping. You want to be sure that all of your
4 crimes are in a central volume. That was the whole
5 idea behind the Crimes Code was to collect these
6 varying, different crimes that we had attached to
7 different pieces of legislation scattered throughout
8 the books of the Commonwealth, the laws of the
9 Commonwealth, and put them under one code, and you've
10 done that, and I think that's a good idea and I support
11 it and we ought to stick with it because we've covered
12 the waterfront there already.

13 I hope that answers your question.

14 Q. Yes. And just one final question.

15 The provisions in Senate Bill 635 would
16 essentially provide for unlimited secondary
17 distribution of information, that is, one agency would
18 collect the information, give it to another agency
19 which could then give to it another agency and on down
20 the line, and with the requirements in the bill that
21 intelligence information be purged under certain
22 conditions if it's no longer relevant or necessary or
23 that the information has become obsolete, do you
24 foresee a problem in following the distribution of
25 information throughout this entire system in purging it

1 where appropriate, if you have unlimited secondary
2 distribution?

3 A. I, frankly, think that, you know, there's
4 been some discussion about this and part of the
5 restrictiveness of the bill, you know, says that the
6 agency that retrieves the information, for example,
7 can't distribute it to another agency unless they are
8 actively involved in the same investigation or the same
9 process. You know, that's a restriction that other
10 agencies in the United States do not have. Nick wanted
11 to know one particular restriction in this bill that
12 other laws do not have, and that's one of them. This
13 doesn't permit the sharing of information, except in a
14 very limited way. I think that, you know, we can live
15 with that. I mean, we're prepared to do what's
16 reasonable here. And tracking the data, I don't see
17 that it would present a problem if we had to follow the
18 chain. I'd rather not have it, but if that's what the
19 desire of this legislature is to get a bill, then let's
20 do it.

21 It's not going to hamper us. The simple
22 fact is we need to be able to use computers and for the
23 agencies that are going to be involved with them
24 directly, for example, the State Police, the Office of
25 Attorney General, we can do it. Or just the

1 Corrections, for example, if Corrections needs to know
2 a certain amount of information about some people in
3 the prison system, then they're the ones that need to
4 know that information. If there's a need to share it,
5 for example, in a riot situation or a hostage taking
6 situation, then I think there are some exceptions here
7 that are reasonable and would permit the information to
8 be shared under those circumstances. This is a very
9 reasonable bill.

10 I understand that Colonel Sharpe is here.

11 CHAIRMAN CALTAGIRONE: If you'd like to
12 join us, Commissioner, please feel free to come up with
13 the Attorney General, sir.

14 Does that conclude your questions?

15 MR. ANDRING: Yes.

16 CHAIRMAN CALTAGIRONE: Were there other
17 questions?

18 (No response.)

19 CHAIRMAN CALTAGIRONE: I'd like to have
20 the Commissioner please join us and if the Attorney
21 General would stay, we'd like you to make your
22 presentation and then follow it up with any questions,
23 Commissioner.

24 COMMISSIONER SHARPE: Certainly.

25 Mr. Chairman, committee members, the

1 Pennsylvania State Police welcome this opportunity to
2 address the House Judiciary Committee and testify on
3 behalf of House Bill 1141. This is one of the most
4 important issues facing law enforcement to date.

5 The consensus of the law enforcement
6 community is that the law prohibiting against the
7 collection of intelligence, investigative and treatment
8 information in any automated criminal justice
9 information system must be amended to permit criminal
10 justice agencies to take advantage of contemporary
11 computer technology. This prohibition, it should be
12 observed, does not prohibit criminal justice agencies
13 from collecting and sharing such information, it merely
14 prohibits them from collecting and sharing it
15 efficiently by automated means. It should also be
16 noted that Pennsylvania is the only State that does not
17 permit the use of computers to collect intelligence,
18 investigative and treatment information.

19 Criminal offenders will generally carry
20 out their acts in a repetitive manner and style.
21 Therefore, an analysis must be conducted to identify
22 the manner in which the crime or set of crimes was
23 committed, a comparison of the crime or similar crimes,
24 a comparison of the crimes with the modus operandi or
25 style of known offenders. Under the current system, we

1 are not able to accomplish such effective analysis.
2 This can only be realized through automation.

3 In Pennsylvania, having only the make and
4 color of a car as a lead in a drive-by shooting will
5 most likely result in a case remaining unsolved.
6 However, in other States this meager information can be
7 sufficient for investigation and prosecution. For
8 example, in a recent drive-by shooting in California,
9 detectives with the Los Angeles County Sheriff's
10 Department turned to their recently computerized crime
11 report data base to search for previous criminal
12 activity involving a car of a known make and color.
13 One of their officers prepared a field report on a
14 similar vehicle about three months earlier. The search
15 of the data base provided detectives with a plate
16 number from the previous report which allowed them to
17 trace the car to an east Los Angeles address. The
18 offender was apprehended and the weapon confiscated.

19 How would that case have been handled in
20 Pennsylvania? The information would be reported and
21 filed within the investigating agency. The
22 investigator and the reviewing supervisor would rely on
23 memorization and the cumbersome process of review of
24 extensive typed or handwritten reports searching for a
25 common denominator. More than likely, the officer,

1 trying to obtain information, would become frustrated
2 and the crime would go unsolved. The reported
3 information would probably be forgotten because it
4 would be too difficult to access.

5 Cases such as the disappearance of
6 Cherrie Mahan, who was allegedly abducted from a school
7 bus stop in Butler County, provides a perfect example
8 of the enormous amount of information collected during
9 an investigation and the need for the computerization
10 of such information. The Pennsylvania State Police
11 investigative report on this case already encompasses
12 over 3,200 pages, and this is the report that I brought
13 you just to give you an example of what one case looks
14 like. It's over 3,200 pages of investigative
15 information regarding leads as to her whereabouts.
16 Computerization would allow for instant access to
17 investigative information contained within that report.
18 Analysis of this information would take a computer only
19 several seconds, as compared with the hundreds of hours
20 necessary to manually accomplish the same task.

21 On a national level, we have the case of
22 Ted Bundy, with whom the committee is probably
23 familiar. This is a man who, over a span of 4 years in
24 5 States, was suspected of brutally murdering 36 women.
25 In July, 1979, Ted Bundy was sentenced to the electric

1 chair for the savage sex slaying of two Florida co-eds
2 and was recently executed. However, what is
3 interesting about this case is that law enforcement
4 agencies failed to exchange information which could
5 have been very helpful and would have brought Bundy to
6 justice much faster. Bundy was very familiar with how
7 poorly information was exchanged between police
8 jurisdictions and had many conversations with members
9 of the law enforcement community about this. He was
10 able to commit numerous vicious murders over a period
11 of several years.

12 The same problems Bundy knew about are
13 present today in Pennsylvania. In fact, the analysis
14 and sharing of information in this State is at a
15 critical juncture because we cannot computerize
16 important criminal data. Presently, we have a criminal
17 personality profiler within the State Police Bureau of
18 Criminal Investigation who has been trained by the
19 FBI's National Center for the Analysis of Violent
20 Crime. His job is to assess major cases such as serial
21 murders or complex drug investigations and analyze the
22 criminal behavior of the suspects who commit these
23 acts. Our profiler requires approximately 100 hours to
24 profile or complete an assessment on a criminal justice
25 investigation. In 1990 alone, he's been asked to

1 analyze in excess of 100 cases, and that's only on one
2 category of crime he reviews. As you might imagine,
3 the number of requests in this area far exceeds time
4 available to assist investigators. If we were
5 permitted to computerize this information, we would
6 have a much better chance to solve the violent crimes
7 that occur in Pennsylvania approximately every 11
8 minutes.

9 The preclusion of the use of computer
10 technology in this area also impedes the efficient
11 sharing of information throughout the criminal justice
12 system. The current options available to investigating
13 agencies in Pennsylvania to request and disseminate
14 information on crimes is limited to Uniscope Messages,
15 which is our computer system that disseminates
16 information. We hope that when this is sent out the
17 investigators get to see them. The other way we have
18 is through police information fliers, of which the
19 contents of dissemination is limited, and media
20 newspaper coverage, in which valuable investigative
21 information is, of course, not permitted.

22 In order to analyze criminal
23 investigations effectively, general patterns must be
24 discernible. This is accomplished by entry of
25 generalized search parameters rather than extremely

1 detailed reconstructions. Crime scenes are seldom
2 replicated, however modus operandi are. It is here
3 that an automated or electronic criminal justice
4 information system and criminal investigations require
5 different levels of specificity. An automated system
6 will take general information on each particular crime
7 entered into the system and searched this data against
8 the same data entered on other crimes looking for
9 similarities and determining if a relationship between
10 two or more cases exists.

11 Information is an investigator's stock
12 and trade. In today's highly transient society, serial
13 crimes frequently transcend jurisdictional boundaries
14 and an automated or electronic criminal justice
15 information system can play an effective role in
16 identification of relationships between these crimes
17 that may otherwise be perceived as isolated incidents.

18 I'm here before you today testifying on
19 behalf of a House Bill that will allow law enforcement
20 in Pennsylvania to be more effective in investigation
21 and prosecution of criminal activity. Nationwide, law
22 enforcement agencies are turning to high tech hardware
23 and software in an effort to streamline and improve
24 their operations. While police aren't anywhere near
25 taking full advantage of the technology that's

1 available, some jurisdictions are putting these tools
2 to dazzling uses, from optional scanning and digital
3 storage for rapid and cross-state transmission to
4 three-dimensional matching of blood splatter patterns
5 for a more accurate reading of crime scene evidence.

6 But putting high tech aside, another
7 major motivation for becoming automated is much more
8 mundane. Frankly, police departments are buried in
9 paper and mired in increasing caseloads. Managing the
10 vast amounts of attendant data and making that
11 information readily available to law enforcement
12 officials who need it can really be done only by a
13 computer. At the same time, integrated computerization
14 means a more efficient utilization of police manpower
15 and a more effective law enforcement community.

16 Again, I would like to thank this
17 committee for the opportunity to testify on behalf of
18 this most important legislation, and members of my
19 staff and myself are present and available to answer
20 any questions you may have.

21 CHAIRMAN CALTAGIRONE: All right, just to
22 interrupt the proceedings for just a minute, I do want
23 to recognize that one of our members who has been
24 participating in Operation Dessert Shield has joined us
25 today, and that's Representative Paul McHale, who has

1 just recently come back home. Paul, welcome back.

2 (Applause.)

3 REPRESENTATIVE McHALE: Mr. Chairman, do
4 I get paid mileage?

5 CHAIRMAN CALTAGIRONE: We'll check.

6 Are there other questions?

7 Yes, Jerry.

8 REPRESENTATIVE BIRMELIN: Thank you, Mr.
9 Chairman.

10 BY REPRESENTATIVE BIRMELIN: (Of Comm. Sharpe)

11 Q. Commissioner Sharpe, just a couple
12 general informational questions maybe you could help me
13 out with. Since Pennsylvania's the only State of the
14 50 that does not computerize this information, does
15 that mean that you also cannot get access to
16 information from the other 49 States via computer?

17 A. We can retrieve the information from
18 them, yes. We'll ask and they'll mail it to us.

19 Q. Okay.

20 A. Now, some information is sent over
21 computer.

22 Q. So you're already receiving the benefits
23 of the other 49 States that already computerize this
24 information?

25 A. Yes.

1 Q. The second question, what percentage of
2 the crimes do you and the State Police investigate go
3 unsolved? Do you have a ballpark figure?

4 Q. Well, a ballpark figure, our clearance
5 rate on Part I offenses is probably about 30 to 40
6 percent. That's a ballpark guess on my part.

7 ATTY. GEN. PREATE: That's about right.
8 About 60 to 70 percent go unsolved.

9 COMMISSIONER SHARPE: Unsolved, yes.

10 REPRESENTATIVE BIRMELIN: Sixty to 70
11 percent go unsolved.

12 ATTY. GEN. PREATE: That's good. Now, I
13 want you to know that, that that's terrific, because
14 the national average is about 22 percent, so the State
15 Police far exceed the national average, even though
16 they're restricted by these--

17 REPRESENTATIVE BIRMELIN: You mean with
18 all law enforcement agencies?

19 ATTY. GEN. PREATE: That's correct.

20 REPRESENTATIVE BIRMELIN: Okay. Well,
21 I'm only addressing the State Police because I'm sure,
22 you know, he's more familiar with them.

23 A guess from you, perhaps, maybe. Could
24 you tell me if you had access to this computerized
25 information in Pennsylvania and were able to store this

1 information how well you feel you would improve on that
2 figure?

3 COMMISSIONER SHARPE: I couldn't give you
4 a guess as to how much it would improve it. It would
5 definitely improve, but there's no way of telling
6 because we don't know how much time that's going to
7 save and how fresh the leads are going to be. I can't
8 give you a figure on how much it would be.

9 REPRESENTATIVE BIRMELIN: I'm assuming
10 you're obviously thinking it's going to?

11 COMMISSIONER SHARPE: Yes, it would
12 definitely improve, but I don't know how much.

13 REPRESENTATIVE BIRMELIN: Maybe, Attorney
14 General Preate, you could answer that question in a
15 broader scope, because all law enforcement seems to be
16 only solving about 22 percent of the crime, or at least
17 coming to some sort of a justification of an
18 investigation. Is that higher than it used to be
19 before the use of computer information in all law
20 enforcement agencies?

21 ATTY. GEN. PREATE: I can't tell you
22 whether it's higher or lower, but we've been inundated
23 with a tremendous increase in crime and violent,
24 particularly violent crime in the last couple of years,
25 and we know that people out there, criminals, are using

1 computers. In Pennsylvania, we're restricted in our
2 ability to use that data, and it certainly is hampering
3 us. The idea is that if we had the use of computers,
4 we could do our job better, more efficiently, and more
5 effectively in solving a greater number of these
6 crimes.

7 As the Commissioner has pointed out, and
8 I'm in law enforcement 20 years myself, it's the
9 repetition that gets somebody caught. Inevitably, that
10 is the way you capture somebody, and if you can analyze
11 the data, the discreet data particular to each
12 particular incident and have that analyzed on a screen
13 right in front of you instantly instead of going
14 through hundreds and hundreds of pages and manhours,
15 you can capture that person before he or she commits
16 another crime. That's, I think, the thrust of this
17 thing. We want to get these criminals off the street
18 quicker.

19 And secondly, it permits us to plan
20 ahead. When you see patterns developing in a
21 particular area or with a particular individual, you
22 can stake out a place, you can put the full resources
23 that you have available to you in manpower and money to
24 go out and attack that, be a proactive and an
25 aggressive law enforcement agency. That's what this is

1 all about.

2 REPRESENTATIVE BIRMELIN: One further
3 question.

4 Commissioner Sharpe, Attorney General
5 Preate mentioned in his testimony earlier that when a
6 police officer was investigating a crime or perhaps
7 picked a car up for traffic violation or whatever, that
8 he would have a computer in his car to access the
9 information, maybe punch up the driver's license number
10 or the data on the driver of the car, and that he would
11 be able to then use that information to determine
12 whether or not he was fleeing a crime or was wanted for
13 something somewhere else. Do you envision the day when
14 State Police cars, for instance, will have computers in
15 the cars where the driver can or the police officer
16 driving that car can access that information almost
17 instantaneously and are you making any plans toward
18 that happening, if that is your desire?

19 COMMISSIONER SHARPE: Well, sir, as you
20 are well aware, the budget situation being what it is,
21 yes, we're looking forward to it. When it's going to
22 happen, we don't know. That technology is currently
23 available. There are some departments that have it.
24 Once again, we have that information available, the
25 only difference is rather than the officer punching it

1 up himself in the car he has to call in on the radio
2 and get it from our station, and then it's just a voice
3 transmission of the same information. That would save
4 some time with the data terminal right in the car. But
5 the information is still available.

6 REPRESENTATIVE BIRMELIN: I would assume,
7 though, it would still be a better procedure to have it
8 in the car rather than voice over the radio.

9 COMMISSIONER SHARPE: Oh, yes.

10 REPRESENTATIVE BIRMELIN: Because the
11 officer who is there is more aware and cognizant of the
12 particulars of that person he has detained or whatever
13 than a person on the radio.

14 COMMISSIONER SHARPE: Yeah, and it saves
15 time because he doesn't have to wait for the operator
16 back at the barracks to do the same punch it in, get
17 the reply back, then call him back on the radio.

18 REPRESENTATIVE BIRMELIN: Thank you very
19 much.

20 CHAIRMAN CALTAGIRONE: Are there any
21 further questions for the Commissioner or the Attorney
22 General?

23 (No response.)

24 CHAIRMAN CALTAGIRONE: Thank you.

25 ATTY. GEN. PREATE: Thank you very much.

1 We appreciate it.

2 CHAIRMAN CALTAGIRONE: We'll next hear
3 from the ACLU representative, and if you would care to
4 introduce yourself for the record.

5 MR. GILDIN: Yes. My name is Gary
6 Gildin. I'm a professor at the Dickinson School of
7 Law. I'm here testifying on behalf of the ACLU of
8 Pennsylvania.

9 I'd like to thank this committee for the
10 opportunity to testify. We are here to testify in
11 opposition to the proposals to amend the Criminal
12 History Records Information Act.

13 I'd like to begin by addressing the
14 interests that are at stake here. We've heard
15 throughout the morning from virtually everybody's
16 remarks that the impetus for this legislation is the
17 desire of law enforcement to increase its ability to
18 detect and successfully prosecute crime. There's no
19 question that given the technology of the 1990's, we
20 could arm law enforcement to radically increase these
21 abilities; we could authorize them to utilize
22 technology that's available to intercept all telephone
23 communications; we could authorize them to use
24 technology available to plant bugs to detect
25 conversations in homes, places of business; we could

1 technologically authorize them to engage in video
2 surveillance; and presumably we could, with respect to
3 computerization, from a technological standpoint,
4 authorize personal dossiers to be computerized on each
5 and every citizen of this Commonwealth, and in all
6 these means we could, I'm sure, increase the ability of
7 the law enforcement agencies to track people, detect
8 them in terms of crimes they propose to commit and do
9 commit.

10 And while this legislature has always
11 been properly sensitive and sympathetic to the needs of
12 law enforcement and problems of crime, it has not
13 authorized, to date, criminal justice agencies to
14 simply utilize all available technologies, and the
15 reason for that is that there's another interest at
16 stake. The interest is not, as some persons have
17 suggested, protection of organized crime, protection of
18 criminals, protection of child pornographers. That's
19 interesting rhetoric but not the interest that
20 counterbalances or balances against law enforcement.
21 It's the interest in protection of innocent persons,
22 citizens who've done nothing wrong, and the need to
23 protect them against unwarranted invasions of privacy.

24 Now, unlike law enforcement agencies,
25 there really is no organized lobby in an extensive way

1 to protect against these invasions of privacy. One
2 simply has to look at the list of persons testifying
3 today to see that there is no standing lobby to
4 advocate in favor of privacy on behalf of the innocent.
5 And this is particularly true where an act in issue
6 does not target a particular class of individuals, and
7 that's exactly the situation we have here with the
8 proposals to amend the Criminal History Records
9 Information Act. It does not target any specific
10 category of individuals for investigation, information
11 gathering, and computerization, so you're not likely to
12 see an organized group saying our interest in privacy
13 are at stake, it's really the interest of all citizens.

14 And frankly, it's up to this legislature
15 and this committee to bear the special responsibility
16 to act as the guardian of rights of persons who are not
17 likely to appear before them against the zeal to ferret
18 out crime. Now, no one is suggesting here that we
19 ignore law enforcement interests and make privacy
20 absolute, rather the question before this committee and
21 this legislature is really one of balance. How are we
22 going to balance the justifiable means of law
23 enforcement against the often unheard voices but
24 similarly justifiable interests in protecting the
25 privacy of citizens?

1 Well, this is not a new question for the
2 legislature. It was barely more than 10 years ago that
3 the balance was struck between what information ought
4 to be computerized to further the interests of law
5 enforcement, and at the same hand what information
6 should not be computerized because it goes too far to
7 invade the privacies and autonomy of innocent persons.
8 Now, I'm here to suggest today that the balance struck
9 in 1979 was proper and should not be disturbed.

10 Alternatively, the proposals to amend
11 this legislation would simply sweep away in a blanket
12 fashion those prohibitions, and at the very least what
13 is proposed here is overbroad by not targeting specific
14 needs of law enforcement and determining whether there
15 are certain specific types of information that we
16 perhaps now can computerize that was prohibited in
17 1979. I'd like to address that 1979 balance and the
18 problems with that.

19 The notion that in 1979 it was before
20 computers is simply, in my view, incorrect. The
21 legislature, in 1979, when it amended CHRIA, recognized
22 the utility to government and law enforcement of
23 computerizing information. It's not that we've been in
24 a void and this is the first time that this legislature
25 is considering this issue. They considered it in 1979

1 and expressly permitted computerization of what is
2 defined as criminal history record information, and I,
3 suggest that the definitions in Title 18, Section 9102,
4 must be consulted to deal with this on a specific level
5 than over general.

6 Now, expressly authorized was
7 computerization of what is defined as criminal history
8 record information, and that is information that is
9 generated or arises from the initiation of a formal
10 criminal proceeding. So yes, we are allowed and
11 presumably do, in Pennsylvania, computerize the fact
12 that someone has been arrested or the fact that someone
13 has been indicted, or the fact that other formal
14 charges have been initiated and the disposition of
15 those charges. So under current law, to use an example
16 that I think it was the Police Commissioner, if you
17 encountered somebody you could presently poke into your
18 computer and say, are there pending charges against
19 this individual? That technology is available, that
20 technology is authorized to be used under the CHRIA as
21 it stands as present.

22 And I'd like to identify what I think are
23 five characteristics of this information to
24 differentiate that from what is prohibited. There are
25 certain things about what is defined as criminal

1 history record information. First of all, it arises
2 out of the initiation of a criminal proceeding. That
3 is, we are computerizing information on persons where
4 they have been formally accused or where at the very
5 least there has been probable cause, which is the
6 conventional legal standard for the initiation of
7 proceedings, there's probable cause to believe that
8 they have committed a crime.

9 Secondly, the source of information of
10 these records are public. It doesn't come through the
11 grapevine or from anonymous tips. The information that
12 is computerized under existing legislation comes from
13 currently existing public records.

14 The third feature, which flows from the
15 second, is that you're getting information that is
16 objective in nature. We know that someone has been
17 arrested. That's not subject to interpretation.

18 Fourth, this information will not reach
19 into a description of the privacies of daily life, and
20 I'll get to that in more striking contrast when I talk
21 about what's prohibited. Arrests certainly are not
22 information that people say, well, I think it's a
23 private matter that I was arrested.

24 And finally, the individual, under the
25 current legislation, has the right to access his file

1 and to challenge its accuracy. That protection exists
2 in subsequent provisions of the Criminal History
3 Records Information Act. Not only do we have the audit
4 by the government, although we've heard a little bit
5 about that here today, but the individual under Section
6 9151-53 has the right to access and review, so there's
7 not sole reliance on law enforcement to guard the
8 accuracy of the information. Each one of us in this
9 room has the opportunity to say what are the records on
10 me, and if they're inaccurate, to bring them to the
11 attention of the agency and have them corrected.

12 And with those five protections, the
13 legislature, in 1979, permitted computerization of
14 criminal history record information. At the same time
15 in considering computerization, and again, I think it's
16 misleading to say that the technology was not there,
17 the legislature prohibited computerization of three
18 discreet categories of information. And again, the
19 definitions are important to understand what's at
20 stake. I think the labels suggest different things
21 than the definitions.

22 Prohibited was computerization of
23 intelligence information, and that is defined in the
24 legislation as information concerning someone's habits
25 or practices or characteristics or associations or

1 financial statements of any individual -- not
2 individuals who have been subjected to the criminal
3 justice system in terms of formal prosecution, not even
4 individuals who are subject of investigation -- any
5 individual, and they precluded that sort of
6 computerization.

7 Similarly prohibited was computerization
8 of what was called investigative information. Again,
9 information out of the formal process of criminal
10 prosecution, but where there was any inquiry, formal or
11 informal, into a criminal incident, that was likely to
12 generate some information, even if no probable cause
13 was determined, and the legislature made the decision
14 that that sort of information ought to be prohibited.

15 The third category was treatment
16 information. The legislature made the judgment that we
17 should not be computerizing information concerning
18 someone's medical treatment or psychiatric treatment or
19 psychological treatment or other rehabilitative
20 treatment that was either provided, suggested, or
21 prescribed.

22 Now, the question is, why, when the
23 legislature little more than 10 years ago considered
24 the same issue that we're considering here today, why
25 did they prohibit these three categories of

1 information? Rather than go through each definition
2 and try to pick it apart and suggest the rationale for
3 them independently, what I'd like to do is to compare
4 the five characteristics that justify computerization
5 of the criminal records and suggest why this sort of
6 information is different and more dangerous with
7 respect to the privacy of our citizens.

8 Of the first feature, we allowed
9 computerization of criminal history record information
10 because it only concerned people against whom criminal
11 proceedings were maintained, and under current
12 constitutional standards, you cannot initiate a
13 criminal proceeding against someone on reasonable
14 suspension. Probable cause is required, which is
15 loosely defined as you have to have a reasonable person
16 would believe that the crime had been committed by this
17 individual. And when it had been committed and that
18 person had been arrested and processed, we allowed the
19 computerization of that information.

20 Of the proposed amendment, to delete the
21 restrictions would now authorize computerization on
22 persons who are not subject to the criminal justice
23 system, where no probable cause existed, persons guilty
24 of no crimes but rather there was some suspension,
25 although not enough rising to the level of probable

1 cause, to initiate some sort of inquiry, and that's
2 differentiation number one, which, of course, spreads
3 the net much more widely beyond any persons who have
4 been subjected in any way to our criminal justice
5 system without a finding of probable cause.

6 Characteristic number two of the arrest
7 records and the like were that the source of that
8 information was contained in public records. You
9 translated the public arrest records, the indictment,
10 the conviction records, into your computer system.
11 Under the proposed amendment to sweep away those
12 restrictions, we are now going to permit
13 computerization of any information gained in the course
14 of intelligence gathering, regardless of its source -
15 anonymous tips, rumors from sources of questionable
16 reliability that come to the attention of the law
17 enforcement agency - even if the agency itself had not
18 initiated any investigation. Again, there's no
19 restriction under the label "intelligence gathering"
20 that the information came in the course of an
21 investigation. This is information received on any
22 person by the law enforcement agency.

23 Treatment information will not come from
24 public records. Interestingly enough, not only is that
25 information not public, but it raises another equally

1 serious issue that this legislation does not address,
2 and that is that there is other legislation that seeks
3 to guarantee, actually prescribes that the
4 confidentiality of these records shall be maintained.
5 The Drug and Alcohol Abuse Act is one such example.

6 In my review of the proposed legislation,
7 I saw nothing to deal with the now conflict between
8 confidentiality provisions of other statutes and the
9 invitation to computerize treatment information under
10 the proposed amendments to CHRIA. But certainly this
11 marks a move away from the notion that the records
12 computerized will be public, which I think leads to the
13 third feature.

14 Computerization of arrest records and the
15 like was permitted by the legislature in 1979 because
16 the data is relatively objective. It's not subject to
17 interpretation, it's not rumor, it's not impression,
18 but under the proposed amendment to permit
19 computerization of intelligence data and the like we
20 are now going to be in the arena of computerizing
21 purely subjective data, just dealing with the
22 definitions themselves. Now we will have
23 computerization of someone's habits -- or at least
24 someone's perceptions of someone's habits -- someone's
25 practices, someone's characteristics. I'm simply

1 tracking the language of the statute in terms of what
2 sort of information they prohibited from
3 computerization in 1979.

4 Not only is the data subjective, but this
5 legislation would authorize computerization of
6 information of the most private nature. As you may
7 recall, with respect to arrest records, there was no
8 claim that that was a matter that was private, nor with
9 conviction matters, but now under this proposal to
10 sweep away the prohibitions we now will allow
11 computerization of, and again, I'm using the statutory
12 language, someone's possessions, including, I suppose,
13 computerization of every individual who happens to own
14 any sort of weapon; anybody's finances may be subject
15 to his or her computer file; anyone's associations may
16 be part of his or her computer file; anyone's
17 participation in political or religious organizations.
18 If the file is permitted to be opened on this
19 individual and computerized, this may include
20 participation in political or religious organizations,
21 and beyond that, attendance at assemblies, rallies, or
22 similar speeches, which of course starts to trigger
23 certain First Amendment concerns of the most
24 fundamental nature.

25 And finally, I recall with respect to the

1 criminal history record information even though it was
2 relatively public and objective, we gave the individual
3 the right to access his or her file and attack any
4 inaccuracies and have them clarified. Now under the
5 proposed legislation increasing the net of persons upon
6 whom information may be computerized, vastly increasing
7 the type of information that may be computerized, I saw
8 nothing in the proposed legislation to amend Sections
9 9151 through 9153 to give the individual the access to
10 his or her file to say, wait a minute, that rumor that
11 someone told you that I was doing such and such is way
12 off. Or, no, I never participated in this particular
13 activity. The legislation simply ignores that
14 protection, and ironically, hardened criminals are
15 given greater access in rights of review and correction
16 than an innocent citizen who happens to be victimized
17 under these circumstances. Perhaps some consideration
18 ought to be paid to Sections 9151 through 9153.

19 The result of the amendment as proposed,
20 which, again, it's important to keep in mind, blanketly
21 sweeps away the prohibition without careful
22 consideration of type of information that perhaps we
23 might be willing to computerize now because of the
24 greater need and lesser risk of privacy. We've
25 increased the number of persons upon whom these files

1 will be computerized, we've vastly expanded the nature
2 of the information and the quality of information that
3 will be computerized, we're going beyond the current
4 criminal history records currently authorized, we're
5 infusing computer files with unreliable subjective
6 versus verifiable objective information, we're
7 establishing files that detail the privacies of an
8 individual's life, and despite the increasing risk that
9 such information is unreliable, we're disempowering the
10 citizenry to access and correct that file.

11 Now, there's no question that if law
12 enforcement were the sole motive we'd have useful
13 models in our society, or at least in global society,
14 of how to maintain law and order at the expense of the
15 citizenry, but I don't think the totalitarian model or
16 the Orwellian Big Brother model, however efficient that
17 is, in punishing crime is the American model. In fact,
18 the distinctive feature of the American system has
19 been, however inefficient occasionally it is to
20 recognize privacy, that it's taken into account that
21 particular value and placed importance on that.

22 We're not urging absolute protection of
23 privacy upon this committee, rather we're urging that
24 that this committee strike the very balance that the
25 legislature struck in considering the issue in 1979,

1 and at the very least taking a closer look at the
2 specific categories to determine that if in fact
3 there's a need to increase computerization, don't do it
4 in a blanket, sweeping fashion, take a look at what
5 type of information perhaps can be computerized without
6 that great sacrifice of privacy.

7 I thank the committee for the opportunity
8 to testify. I'd be happy to answer any questions.

9 CHAIRMAN CALTAGIRONE: Representative
10 Hayden.

11 REPRESENTATIVE HAYDEN: Thank you, Mr.
12 Chairman.

13 BY REPRESENTATIVE HAYDEN: (Of Mr. Gildin)

14 Q. Mr. Gildin, maybe I'm missing something
15 or perhaps the bill that you analyzed wasn't the
16 correct printer's number, but Senate Bill 635,
17 Printer's Number 2358, on page 2 of the bill, has a
18 specific prohibition which reads as follows:

19 "Intelligence information may not be collected or
20 maintained concerning participation in a political,
21 religious or social organization, or the organization
22 or support of any nonviolent demonstration, assembly,
23 protest, rally or similar form of public speech unless
24 there is a reasonable suspicion that the subject of the
25 information is or may be involved in criminal activity.

1 A. That's quite correct, and that's the same
2 bill I reviewed. Two responses to that. Number one,
3 it does not prohibit the collection of investigation
4 that suggests that attendance at that rally or the
5 participation in that activity is in and of itself
6 criminal. In other words, the reasonable suspicion
7 standard, as I read it, does not require that we
8 reasonably suspect the reason the person is at that
9 rally or at that religious activity is that that action
10 in and of itself is criminal.

11 Q. But don't those words "reasonable
12 suspicion of criminal activity," don't they access
13 other legal terms of art with respect to Fourth
14 Amendment issues? Reasonable suspicion that a crime
15 has occurred, isn't that a standard by which arrest
16 powers can be granted to police?

17 A. Yes and no. Let me explain why yes and
18 no. Arrest power, no. We cannot arrest an individual
19 on reasonable suspicion. The standard for an arrest,
20 the standard for a search, whether with or without a
21 warrant, is probable cause defined as a reasonable
22 person would believe that the crime had been committed.
23 The Supreme Court authorized lesser intrusions than a
24 full-blown arrest or a full-blown search in limited
25 circumstances, generally protection of the officer,

1 frankly, upon a lesser standard labeled reasonable
2 suspicion where we would not authorize an arrest or we
3 would not authorize a search. You've got to have
4 something, but not enough to warrant you to believe
5 that this person actually had committed the crime.

6 Now, what we're going to allow then is if
7 the police do not have probable cause but they say,
8 well, we suspect wrongdoing, even if the wrongdoing is
9 not in connection with that First Amendment activity,
10 they are permitted to say, let's investigate where this
11 person goes to church or where he socializes or what
12 political rallies he attends. Even if those rallies
13 are not the subject of the criminal investigation,
14 that's part of establishing the dossier on that
15 individual.

16 Q. Well, there's something else I think that
17 I'm also missing in your criticism of the bill.
18 Implicit in your criticism is that somehow by
19 permitting the computerization of this information that
20 heretofore protected activities will now no longer be
21 subjected to the scrutiny of constitutional privacy
22 protections both at the Federal and the State level,
23 but it seems to me what we're essentially doing here is
24 we're taking information that police and law
25 enforcement agencies are not prevented from obtaining

1 on their own, that they now keep in a hard copy --
2 well, not hard copy but in paper format, information
3 that is obtained legally during the course of
4 investigation of criminal activity and permitting them
5 simply to put that into a data bank, to put that into a
6 computer system. Where in fact although the bill says
7 specifically, "Intelligence information may not be
8 collected in violation of State law," I read that to
9 mean to say that to any reviewing agency or court that
10 this is not an attempt to give blanket authority to law
11 enforcement agencies to violate the Fourth Amendment.
12 In fact, I think that says specifically the opposite.
13 Aren't what we're really doing here by permitting
14 computerization is permitting the advantages of
15 technology for law enforcement to have to be able to
16 readily access that information which is legally
17 obtained, which is obtained with certain constitutional
18 protections already and just share that information
19 among individuals in the agency? Isn't that what this
20 bill really does?

21 A. That's not what I was hearing this
22 morning as I sat and listened to the remarks.

23 Q. Well, yeah, I think what we sometimes get
24 caught up in, obviously law enforcement has an interest
25 in the bill and I think it's to their advantage to

1 point out the necessity for the bill, but I think we,
2 as members of the committee, try to read this
3 legislation critically, and frankly, I don't see that
4 your criticism, particularly in light of the fact that
5 in the other face of the bill and an additional Senate
6 amendment said that you referred to the opportunity to
7 review your information, what if there's stale
8 information that stays in the computer? Criminal
9 justice agencies establish retention schedules.
10 "Intelligence information shall be purged under the
11 following conditions," and we go through a purging
12 amendment.

13 I certainly agree with you with respect
14 to what the legislature has done in the past with
15 respect to CHRIA as it relates to criminal arrest
16 records and criminal convictions, but when it boils
17 down to your position here, what you're trying to tell
18 us is that you think that people who are subjects of
19 criminal investigations, ongoing criminal
20 investigations, should have access to that information
21 that the police have on them. That's just not very
22 practical, and I don't think it's the kind of
23 protection that we want to afford. I think it's a
24 completely different situation than somebody who has
25 already been convicted of a crime.

1 A. I would agree it's a completely different
2 situation. The problem is that, and I guess it's a
3 chicken and the egg problem, to say, well, we can't
4 give people access to it shows part of the danger of
5 the computerization of it, which is the whole premise
6 of permitting computerization in the first instance by
7 the legislature was that it was satisfied that you were
8 not going to have misuse or inaccuracy in the
9 information not as a result of internal auditing and
10 purging, and I suspect that law enforcement has a lot
11 better things to do with its limited resources, as we
12 heard here today, than continue to review past files
13 for accuracy.

14 Q. I would also suggest that they have a lot
15 better things to do than to leave files and files and
16 files in a computer of investigations that were
17 unfounded.

18 A. Well, as I say, we take the position that
19 the computerization as a whole should follow the
20 balance drawn in 1979. Secondarily, the categories
21 that are embraced by this - habits, characteristics,
22 First Amendment activities, even though where those
23 First Amendment activities are not deemed to be the
24 criminal wrongdoing, treatment information that is
25 otherwise deemed confidential by statutes - should not

1 be part of this particular project.

2 Q. That remains my lingering, my only, I
3 should say at this point, concern is the definition of
4 treatment information and how that information can or
5 cannot be obtained, and perhaps that will be something
6 that we will look at.

7 Thank you.

8 A. Thank you.

9 REPRESENTATIVE HAYDEN: Thank you, Mr.
10 Chairman.

11 CHAIRMAN CALTAGIRONE: Representative
12 Piccola.

13 REPRESENTATIVE PICCOLA: Thank you, Mr.
14 Chairman.

15 BY REPRESENTATIVE PICCOLA: (Of Mr. Gildin)

16 Q. Mr. Gildin, first, let me compliment you
17 on your courage for coming here today.

18 A. It's because they didn't tell me the rest
19 of the panel.

20 Q. They wedged you right in there.

21 Secondly, I understand you are a former
22 law professor of our Chief Counsel, Ms. Mary Woolley,
23 and that little bit of information will be put into our
24 computer--

25 A. This is the subjectivity I fear, if she's

1 giving you that information.

2 Q. --because she's now under suspicion of
3 liberal activities, so we will put that -- we'll tuck
4 that little bit of information away. She's now under
5 suspicion.

6 Mr. Hayden covered a lot of what I wanted
7 to do, and I think you answered his questions not to
8 his satisfaction and certainly not to mine. As I read
9 the bill, and I think you said this and I think Mr.
10 Hayden said this, what we're putting into the computer
11 is information, or what we're proposing to put into the
12 computer is information that law enforcement already
13 collects or has the ability to collect, am I correct in
14 stating that?

15 A. It's my understanding that that's
16 correct, although I have some concerns about the
17 specific acknowledgement of First Amendment activities.
18 I would suggest that the general premise, that was my
19 general understanding, as I read that language about
20 permitting intelligence information on political and
21 religious associations simply because someone is under
22 suspicion of some other crime, I have some doubts as to
23 whether that is constitutionally authorized, and to put
24 that expressed acknowledgement of the computerization
25 of that I suspect will be interpreted as saying this is

1 now okay. So I'm not sure that that provision, the
2 same with the treatment provision under the
3 confidentiality concerns, there's a conflict here, at
4 the very least, between constitutional limitations on
5 what I believe law enforcement can do and
6 confidentiality provisions that this legislature has
7 approved and the expressed definitions that seem to
8 permit it in this legislation.

9 Q. Well, let's assume for the moment that
10 they are already collecting that data, and I don't
11 know, I think you were here when Commissioner Sharpe
12 brought his pile of documentation. I don't know if you
13 had a chance to look through it. I did not, but I'd be
14 curious, if you had the chance to look through it, to
15 tell us -- and I don't know what's in it, but I'm sure
16 he would have probably given you access to it, that was
17 I think one case involving a missing child and all the
18 data that was collected manually on that particular
19 case - anonymous tips, et cetera. And I would imagine
20 there would be a lot of information, much of which is
21 probably worthless, most of which, 99 9/10 percent of
22 which probably will never even see the light of day
23 publicly in terms of press notification or come up in a
24 trial. Would I be accurate in assuming that, based
25 upon your experience?

1 A. I can't say anything about the file that
2 the Commissioner has gathered in that particular case.

3 Q. Okay, well, I sort of would be curious to
4 see what you object to the police or law enforcement
5 having that would be contained in that kind of a file,
6 if you ever have the opportunity to review it.

7 A. Let me simplify my position. My
8 objection -- and not my objection, the objection of the
9 ACLU -- flows from the specific definitions in
10 terminology that this legislature adopted in crafting
11 the balance in 1979 sensitive to the fact that you had,
12 with respect to treatment information, medical
13 treatment information, confidentiality problems. With
14 respect to associations, which is part of the
15 definition of intelligence information, you have First
16 Amendment concerns under those circumstances. I'm
17 certain that if this legislature was inclined to take a
18 careful look at the amendment in light of 11 years of
19 experience with computers, perhaps some compromise can
20 be crafted that will recognize perhaps some of this
21 data is helpful and objective and does not unduly
22 invade the privacies.

23 It's not inconceivable that somewhere
24 between the definition of criminal justice record
25 information or criminal history record information as

1 presently defined and the exclusions for intelligence,
2 investigative information, and treatment that better
3 legislation can be crafted to take into account this
4 balance, but all we have here is an attempt to sweep
5 away the considered judgment of the legislature as to
6 three categories which include within them certain
7 information of the most private nature, perhaps
8 constitutionally protected conduct and confidential
9 medical information. All those protections are swept
10 away in this proposal.

11 Q. Well, I disagree with you and I think Mr.
12 Hayden alluded to this, and I don't think anything that
13 we've enacted is swept away because Subsection 4 says
14 intelligent information may not be collected, not
15 simply inserted into the computer, may not be collected
16 in violation of State law, so if we've created a
17 confidentiality relationship, I don't think that can be
18 collected lawfully, at any rate, by law enforcement.
19 In other words, for example, the old case of the
20 break-in at the Ellsberg psychiatrist's office, that
21 would remain unlawful, would it not?

22 A. Presumably. I'm not sure if it's a State
23 agency that is treating an individual that may have
24 some law enforcement functions that also has
25 information in the course of those functions on

1 rehabilitation and treatment, whether that conflict
2 exists. Frankly, I'm more disturbed if that is
3 interpreted that way and it's made clear through some
4 sort of amendment to the language that no previous
5 confidentiality provisions are compromised by this,
6 that makes me more comfortable. I'm still quite
7 disturbed by the expressed sanctioning on intelligence
8 gathering on First Amendment activities with no thought
9 that those First Amendment activities themselves are
10 part of the unlawfulness. I'm not sure how you can
11 reconcile the no collection where it's prohibited by
12 State law with the expressed notion of computerizing
13 First Amendment activities not because the individual
14 is the violating the law in the course of those First
15 Amendment activities but simply because there's some
16 reasonable suspicion, albeit not probable cause, that
17 he's guilty of some crime.

18 Now, maybe the intent, I don't know what
19 the intent of that was. It certainly is a matter of
20 legislative construction. I would read that as a
21 reasonable individual to say, well, while they're
22 prohibiting what's prohibited by State law as a general
23 matter, they're telling me expressly go ahead and
24 collect information on someone's religious and
25 political activities if they're suspected of some

1 crime.

2 Q. And you're suggesting we expressly
3 prohibit that now in terms of the collection?

4 A. Well, I certainly say don't -- if you
5 presume that the collection is presently prohibited,
6 don't include language that expressly authorizes
7 computerization of what--

8 Q. I'm not assuming anything. I'm asking
9 you as presumably an expert in this field, do we
10 expressly prohibit under the conditions set forth in
11 Subsection 6 the collection of that data, leave aside
12 whether we put it into a computer or not?

13 A. I believe that the United States
14 Constitution and perhaps the Pennsylvania Constitution
15 prohibits it. I don't know what -- I've not researched
16 what legislation has been passed. I think it's clearly
17 prohibited by the First and 14th Amendment of the
18 United States Constitution and our First Amendment,
19 Article I, of the Pennsylvania Constitution.

20 Q. Then the old movies of the FBI going to
21 the Mafia wedding and writing down the license plate
22 numbers, that's unconstitutional?

23 A. I've got problems with that, and I think
24 the ACLU has problems with investigation of religious
25 activities, participation at rallies, and there

1 certainly should not be an encouragement of collection
2 of that data. Again, keep in mind how this legislation
3 is worded. Not where they're suggesting that these
4 First Amendment activities or professed First Amendment
5 activities are in themselves the criminal activity, but
6 the chilling effect that this sort of encouragement
7 would have I think justifies a closer look. I have a
8 difficult time seeing the utility of this information
9 as balanced against not only generalized privacy
10 concerns but specific free speech, free association,
11 and freedom of religion concerns.

12 Q. Well, leaving the collection aside, I
13 think your main concern is the automation through
14 computerization, and as I read this bill, you really
15 have to have a two-pronged test before you can automate
16 it. First of all, there has to be reasonable suspicion
17 of criminal activity.

18 A. Yes.

19 Q. And secondly, there has to be a
20 restriction in terms of the system in which it is
21 inputted, into which it is inputted, I guess, so that
22 it cannot be accessed by any other individuals inside
23 or outside of agency. So that--

24 A. Although there is sharing, as we heard
25 today, I don't mean to interrupt, sharing with other

1 law enforcement agencies inside and outside the State.

2 Q. That's correct, but it must be verified
3 before it is shared, is that not correct?

4 A. Verified in what sense? I don't know
5 that you can verify things such as habits,
6 characteristics, and the like. Verify that that was an
7 accurate transmittal of the information in the paper
8 record, perhaps. No verification of the underlying
9 information. I mean, the notion here that nothing is
10 happening other than computerization I think is missing
11 part of the point. I know that the original battle
12 appeared to be over creating a central repository for
13 this information, and that was part of the original
14 evil, I suspect, that underlies Section 9106 that we
15 are concerned about the notion of creating the central
16 files, as we've seen in some of these movies concerning
17 Latin American countries. Of course now we just have
18 shifted it over to say, well, we won't put it in a
19 central file, but given the fact that these computers
20 interface, de facto you've done the same thing.

21 Q. I'm not much of a computer expert, so I
22 can't -- I don't even know what you mean when you say
23 interface.

24 A. Well, one need only listen to the
25 testimony this morning, which is, yes, we won't create

1 a central computer file, but we can share this
2 information with our fellow States and fellow
3 municipalities through their computers as well as.

4 Q. That's dissemination, is it not?

5 A. Yes, it is.

6 Q. So it must be -- before it's disseminated
7 the agency has to verify it?

8 A. Not verify it in the sense that you would
9 be able to verify criminal records, no. It's not
10 objective information capable of that verification,
11 using again the definitions set forth in the
12 legislation. I don't know how someone can verify that
13 this was someone's characteristic or that this is
14 someone's habit. When that information is collected in
15 the course of intelligence gathering, which does not
16 mean the police officer's information based upon his or
17 her firsthand knowledge, but came to this agency in any
18 way. Again, I urge careful attention to the language
19 of those definitions to really appreciate what's at
20 stake here. It's very easy to say on a generalized
21 data basis what's wrong with investigative information
22 when we verify that it's true, but we're not verifying
23 that it's true, we're verifying that it's received from
24 some source of an unknown origin, unlike the sort of
25 public records that went into the criminal history

1 records information definition.

2 Q. Well, obviously, we're not putting it
3 through the scrutiny of our system of juris prudence to
4 determine whether it's a true fact or not but it's
5 simply an item of information that may or may not lead
6 to another piece of information that may lead to the
7 solving of a particular crime.

8 A. There's no question. What you would
9 verify was that, yes, we did receive this information
10 from some source concerning this habit, practice,
11 characteristic, possession, association or financial
12 statement. That would be your verification. The local
13 collecting agency would say, yes, we did receive this
14 information. No assessment as to its reliability,
15 simply the fact it has been received. And then when we
16 transfer it to the computer we say, yes, the
17 information we have in our paper record is now in the
18 computer.

19 Q. In addition, the information that is
20 stored in the computer has to be stored on the basis of
21 categories that would give rise to prosecution for a
22 State offense misdemeanor or felony or a Federal
23 offense for which more than a year in prison can be
24 received. Does that not provide even more safeguards
25 to the kinds and the manner in which the information is

1 obtained?

2 A. All that does is to suggest that we're
3 not going to computerize until someone is reasonably
4 suspected of such an offense, as I understand that
5 particular provision. It doesn't require that the
6 information concern that, necessarily. Again, it's the
7 diluted standard. I think it's misleading to suggest
8 that, well, reasonable suspicion is well recognized as
9 the standard upon which all law enforcement activities
10 take place. That's quite incorrect. Probable cause,
11 the heightened standard -- the average standard is the
12 one under which we operated until Terry v. Ohio for
13 those select minimal intrusions justified in that case
14 by protection of the officer, not generalized effort to
15 ferret out crime. If we're talking about general
16 criminal investigation, the probable cause standard is
17 required for a search for that sort of information.

18 Q. But this reasonable suspicion test isn't
19 being devised or isn't being used in this bill as the
20 threshold even to collect the information, simply the
21 test to put it onto a computer. The information is
22 there.

23 A. I understand that, and I'm suggesting
24 that that threshold standard is too low to merit the
25 need and to offer that sort of protection.

1 Q. Now, do you concur with what the Attorney
2 General and the Commissioner of the State Police said
3 this morning that many of these criminal conspiracies,
4 many of these organizations are already using computers
5 on their side?

6 A. Oh, I can't speak to that.

7 Q. Do you know that?

8 A. I don't know that.

9 Q. You don't know that?

10 A. I only know what I read in the newspaper
11 about it and saw on TV, but it's not part of my
12 occupation, so I can't say.

13 Q. So you have no reason to doubt what they
14 said?

15 A. I have no reason to doubt what they
16 said. I don't understand why that -- I think you're
17 talking about apples and oranges at that point in time.
18 The interests are, quite frankly, different. The
19 suggestion that this is going to be--

20 Q. Well, I hope the interests are different.

21 A. Well, the notion that this is going to be
22 the panacea and solve the drug war I think is fanciful,
23 frankly.

24 Q. No, I would not subscribe to that notion,
25 but it seems to me that, and maybe this sounds like

1 rhetoric to you, I don't know, but I've always thought
2 the criminal justice part of State government is to be
3 comparable to the defense budget at the national level,
4 and it seems to me if the other side is using a weapon,
5 we should use the same weapon, and I think that in and
6 of itself, given all of these protections that are
7 contained in this legislation, I think that in and of
8 itself is sufficient to make us move forward on this
9 legislation expeditiously, but we thank you for your
10 counter-viewpoint.

11 A. Thank you.

12 CHAIRMAN CALTAGIRONE: Thank you very
13 much.

14 We'll next hear from the District
15 Attorneys Association.

16 If you'd like to introduce yourself for
17 the record.

18 MR. EAKIN: My name is Michael Eakin.
19 I'm District Attorney of Cumberland County,
20 Secretary-Treasurer of the State District Attorneys
21 Association. To my right is Gary Tennis from the
22 Philadelphia District Attorney's Office, who is
23 probably one of the most knowledgeable people on
24 legislation involving law enforcement that our
25 organization has access to. To my left is Chris

1 Copetas, who is the First Assistant District Attorney
2 of Allegheny County.

3 I first apologize for not having written
4 remarks to give the committee, but given the relatively
5 short notice under which we were called and the
6 budgetary restrictions in my office, I didn't have
7 someone to type something up at the last minute.

8 I am quite flattered to be called a part
9 of the law enforcement lobby. It's flattering because
10 we're here not because we're lining our pockets or
11 trying to make a profit but because we're trying to do
12 our job and I hope a job that is worth doing and to do
13 it better.

14 I received a piece of mail yesterday from
15 the Broward County Sheriff's Department, which I
16 apparently left back at my seat, inviting us to a
17 seminar in Florida for law enforcement in the 90's,
18 what is our strategy, what is our plan, what is our
19 technology, and knowing that I was coming here today,
20 it sort of invoked a little vision.

21 I had a vision of Captain Kirk and the
22 Enterprise ferreting out crime in the universe a
23 thousand years from now, and on the screen his
24 attention is drawn to an alien vessel approaching and
25 he says, "Spock, what is that vessel? Look it up on

1 the computer." And Spock says, "I can't, Captain,
2 we're in the Pennsylvania zone," and he reaches below
3 the computer and pulls out a humongous box of 3" by 5"
4 cards having silhouettes of alien vessels and starts to
5 leaf through them. He says, "Well, I found it.
6 Fortunately, it's only the 100th card." Well, the
7 Captain says, "I now have reasonable suspicion this is
8 a hostile vessel in that it's taken two shots across
9 our bow by now. What are the habits and
10 characteristics of the people that belong to that
11 vessel?" "Just a second, Captain," as he roots down on
12 the next floor to come up with another box that applies
13 to the known habits, characteristics, et cetera, and
14 weaponry of this vessel.

15 The point being, when in the history of
16 mankind are police going to be allowed to utilize the
17 technology of computers? It would be very nice in many
18 ways if we could go back to the 1950's, to the 1920's,
19 to the 1800's. The advances of technology have caused
20 many problems, not just for the legislature and not
21 just for law enforcement but for society in general,
22 but the point is we can't go back. The question before
23 this committee and before this legislature is not do we
24 expand what law enforcement has access or the right to
25 collect but by what means do they analyze it, what

1 means do they store it? How do they use it? Do they
2 use it on 3" by 5" cards or do they use it in state of
3 the art machinery that merely allows them to make the
4 most sense out of it? That's the goal of the bill, and
5 if anything, the bill restricts the type of thing that
6 law enforcement is allowed to collect. It certainly
7 doesn't expand it.

8 The need, I suggest, is much greater than
9 any fear of intrusion of private lives, as mentioned by
10 Mr. Gildin, of bugs and wire taps and such. Well,
11 those things are available to law enforcement
12 currently, with restrictions. People just can't go out
13 and tape your conversation. There are very strict
14 hurdles that must be jumped before that can be
15 accomplished lawfully. The same as in existence in
16 this bill. We're not asking for something that would
17 allow us willy-nilly to go out and start following
18 people to their church and because their religion
19 doesn't suit my religion I will go out and therefore
20 harass or prosecute them. There has to be some reason
21 to do it. At the same time, if there's a racially
22 motivated killing, the fact that a suspect, and not
23 just an individual but a suspect, attends area nation
24 meetings would certainly be something that law
25 enforcement ought to be able to pass on to the next

1 jurisdiction without jurisdiction having to call every
2 other jurisdiction in the country to find out is this
3 so, is this not so? The bill restricts secondary
4 dissemination of it, but that restriction is something
5 that is right and it is something that's in existence
6 now. This bill doesn't create something that is
7 nonexistent there.

8 The bill is very restrictive. There was
9 a question earlier asked of the Attorney General. I
10 think in the remarks of District Attorney Ron Castille
11 that I believe has been disseminated or if not will be
12 on behalf of our association includes on the last page,
13 an analysis of the Pennsylvania bill versus the Iowa
14 bill, and Iowa is generally recognized as being if not
15 the most restrictive certainly one of the most
16 restrictive bills in the country, and on many points
17 the Pennsylvania bill goes beyond that in protecting
18 the citizenry from intrusion.

19 The bottom line is that at some point
20 police ought to be allowed to use computers. I see no
21 reason that day ought not to be today rather than a
22 thousand years from now. This is not the horse and
23 buggy age, this is not 1950, and to say that the
24 well-trained policeman, knowing what the law is,
25 knowing what the restrictions are, cannot use this in a

1 fair and efficient means is simply not consistent with
2 reality.

3 MR. COPETAS: This is a very easy topic,
4 Mr. Chairman, to defend. I'm not going to rehash all
5 the things that have been said here. I think
6 everything here is pertinent, I think everything that
7 has been said has been said. I'm curious though, a
8 rhetorical question, why we in law enforcement are so
9 proud to say this is the most restrictive bill, even
10 more restrictive than Iowa, who used to be the most
11 restrictive, if we have it passed.

12 Allegheny County strongly urges and
13 supports passing this bill.

14 Thank you.

15 CHAIRMAN CALTAGIRONE: Questions from
16 members?

17 REPRESENTATIVE HAYDEN: A question, Mr.
18 Chairman.

19 CHAIRMAN CALTAGIRONE: Representative
20 Hayden.

21 REPRESENTATIVE HAYDEN: A question
22 directed to Mr. Tennis.

23 BY REPRESENTATIVE HAYDEN: (Of Mr. Tennis)

24 Q. Gary, I don't know if you were with the
25 DA's office I guess it would have been in the

1 mid-'80's?

2 A. Yes.

3 Q. I'd like to address the issue raised by
4 the professor about the political association concept,
5 somehow the notion that this is going to give unbridled
6 authority to law enforcement agencies to follow people
7 around. I think I remember an incident, I think it
8 involved the city of Philadelphia's police department
9 in the mid-'80's in which apparently there was some
10 intelligence gathering information related to people
11 who they suspected were involved, I don't know if I
12 have the right law enforcement agency, it sounds like
13 an old FBI number but maybe it wasn't, people who they
14 thought were involved with activities in protest of
15 American policy in Central America. Do you remember
16 that situation?

17 A. Yeah, I remember. I don't remember
18 whether that was the FBI or which group it was.

19 Q. Or the police department. But it seems
20 to me that in that situation I recall a legal
21 settlement of that case in which the city of
22 Philadelphia paid a sum of money, anyway, to a number
23 of the groups. It seems to me that there are Federal,
24 and I know that was a Federal case that was brought in
25 Federal court, it seems to me that there are still

1 Federal protections that exist either in the Federal
2 civil rights laws or in other particular statutes which
3 would protect against those kinds of abuses. It would
4 appear to me that this bill certainly does not permit
5 any preemption of Federal legislation. Obviously, it
6 couldn't in a constitutional area, but if you could
7 address that freedom of assembly and First Amendment
8 issues briefly, if you would?

9 A. Certainly. Right now the protections are
10 mostly Federal protections and Federal and State
11 constitutional protections to that kind of activity.
12 Under present State statutory law, there are no
13 restrictions. There are no State statutory
14 restrictions at all under the law now as to our ability
15 to gather intelligence information on someone involved
16 in First Amendment activity. This CHRIA bill, in House
17 Bill 1141 and Senate Bill 635, for the first time puts
18 State statutory restrictions that are consistent with
19 the Federal and the constitutional restrictions on our
20 ability to collect that information. Now, the only
21 time we can collect that information is if the subject
22 is one where we have a reasonable suspicion that the
23 subject is involved in criminal activity, and basically
24 I think that there's kind of a very subtle mixing of
25 arguments by the ACLU in this situation.

1 No one says that anybody's First
2 Amendment rights should be infringed in any way at any
3 time. All we're saying is that if there's a reasonable
4 suspicion of criminal activity, that we should be able
5 to gather whatever information is relevant to our
6 investigation so that if someone is involved in First
7 Amendment activity, they're still free to be involved
8 in it, but we're free, if it's relevant to the criminal
9 activity, to collect that information and to be able to
10 have in our record, for example, in an interracial
11 motivated killing the suspect attends KKK meetings,
12 because that would be relevant to the investigation.
13 So there's no infringement, there's no impingement, and
14 in fact, this bill actually should be supported by
15 those of a more libertarian bent because it does, for
16 the first time, put restrictions, State statutory
17 restrictions, that don't exist at the present time.

18 Q. Thank you.

19 REPRESENTATIVE HAYDEN: Thanks, Mr.
20 Chairman.

21 CHAIRMAN CALTAGIRONE: Thank you.

22 Any other questions?

23 Representative McHale.

24 BY REPRESENTATIVE McHALE: (Of Mr. Tennis)

25 Q. How are you doing, Gary?

1 A. Pretty good.

2 Q. Gary, I approached this legislation with
3 an open mind, having not been all that familiar with it
4 before the hearing this morning, and I'm generally
5 supportive of the legislation. I think that the intent
6 of the legislation, which is to bring the storage and
7 retrieval of information into computer age, is a
8 sensible approach to law enforcement. I listened very
9 carefully, however, to the gentleman who spoke on
10 behalf of the ACLU and although I think some of his
11 arguments were stretching things a bit in terms of
12 fears that are not likely to materialize into real
13 world concerns, one concern that I do have is with
14 regard to Subsection 6 as it appears on page 2, and I
15 agree with most of what's there but have one sticking
16 point that causes me some difficulty. That's the
17 section that's designed to protect First Amendment
18 freedoms of expression and association, and it reads,
19 "Intelligence information may not be collected or
20 maintained concerning participation in a political,
21 religious or social organization or the organization or
22 support of any non-violent demonstration, assembly,
23 protest, rally or similar form of public speech," and
24 that's fine up to that point, and I'm even willing to
25 accept the second half of the statement which goes on

1 to read, "unless there is a reasonable suspicion that
2 the subject of the information," quote, "is or may be
3 involved in," end of quote, "criminal activity."

4 I'm worried that the second half of that
5 sentence could, in the wrong hands, take away many of
6 the freedoms expressed in the first half of that
7 sentence. Specifically, the terminology that bothers
8 me is "involved in." That strikes me as being a very
9 broad description of relevance. The first half of the
10 sentence protects First Amendment freedom, and I think
11 most of us would want to see those freedoms protected.
12 The second half qualifies those protections by saying
13 that even if it is a political, religious, or social
14 organization or even if it is a non-violent
15 demonstration, the information can be stored and
16 retrieved so long as it is, quote, "involved in," end
17 of quote, criminal activity. It's reasonable suspicion
18 that it is or may be involved in criminal activity.

19 I can think of very few nonviolent First
20 Amendment demonstrations for the best of causes where
21 an argument couldn't be made that perhaps among those
22 who are participating in that demonstration there is
23 some information that, let's say, among a distinct
24 minority of those who are protesting where the
25 information could not conceivably be involved in

1 criminal activity. There are extremists in almost
2 every -- reflecting almost every viewpoint. I'm
3 worried about that. Is there -- a long question here,
4 but is there better terminology, more restrictive
5 terminology, perhaps a more accurate terminology that
6 can be used to qualify the use of power in this phrase
7 other than a broad definition of "involved in criminal
8 activity"?

9 For instance, let's say we have a protest
10 with regard to our policies in Central America. That
11 protest is perfectly lawful, it's an expression of
12 opinion with regard to what our policy should be in
13 Central America, it involves a thousand people, and
14 let's say there is a reasonable suspicion that 10
15 people among those 1,000 might be willing to express
16 their viewpoint in a violent and unlawful way. You
17 have 10 extremists among a thousand demonstrators. I'm
18 worried that the presence of those 10 extremists or the
19 threat of that presence could be used under the
20 definition here "involved in criminal activity" to
21 produce a chilling effect on the 990 demonstrators who
22 clearly were just expressing their First Amendment
23 point of view. I'm not sure how I've articulated that,
24 but "involved in" does not strike me as being a
25 carefully or artfully drawn or sensitively drawn

1 exception to the First Amendment.

2 A. As I recall, this particular item was put
3 in in our negotiations with Senator Lewis' staff. It
4 was a provision that was insisted on by their staff. I
5 think maybe some of the key terminology there is with
6 "reasonable suspicion." "Reasonable suspicion" has
7 been defined and it, of course, has become a term of
8 art in the course, and reasonable suspicion has been
9 defined as that kind of suspicion that's based, it
10 can't be just an objective idea, it can't even be,
11 well, we think those 10 may be wanting to get involved
12 in violent activities, it has to be based on objective,
13 articulable facts that someone could come in--

14 Q. I understand that, Gary, and you've got
15 me on that. I accept that. I think that's a
16 reasonable definition. I like, because of existing
17 case law, the accuracy, the protection that is provided
18 by a standard of reasonable suspicion. I understand
19 that term and it is fully acceptable to me. But it's
20 the second half of that clause, reasonable suspicion is
21 or may be involved in. I frankly don't know what
22 "involved in" means?

23 A. Yeah, and I'm trying to think about how
24 to address your concern. When I see the term "involved
25 in criminal activity," it means they are doing -- that

1 we have a reasonable suspicion that they are committing
2 crimes.

3 Q. But that's not what it says.

4 A. Well, involved in--

5 Q. It says, " the subject matter is involved
6 in," is or may be. For instance--

7 A. The subject of the information.

8 Q. Right.

9 A. Yeah.

10 Q. That's a pretty broad definition.

11 A. Well, we'd have to have, and if there
12 were 10 extremists, I think also we would be
13 restricted. If we were concerned about 10 extremists
14 that they would be involved in, for example, bombing a
15 defense building because of their feelings about our
16 involvement in Central America, I think we would have
17 to have, first of all, articulable, objective facts
18 that we could rely on, and I think our investigations
19 and intelligence gathering in this situation would have
20 to be limited to the individuals that we were concerned
21 about. The addition--

22 Q. All right, if you could stop there,
23 that's what I'm getting at. If it said what you have
24 just articulated, I'd feel a lot more comfortable, but
25 it doesn't say that. You indicated that the scope of

1 the information would have to be related to the people
2 who were involved in or likely to be involved in that
3 kind of criminal activity, but that's not what it says
4 now, and that's precisely what concerns me.

5 A. Yeah. I guess that's how I read it. I
6 don't, you know, the other point I wanted to make was
7 that be under present law there are no statutory
8 restrictions whatsoever on our ability to collect any
9 of that information. So whatever restrictions exist in
10 this subparagraph are restrictions that don't exist
11 under State statutory law. Whatever we get here are
12 additional brand new restrictions that have never
13 existed. Now, they may exit under--

14 Q. Constitutional law.

15 A. --Federal statutory law or constitutional
16 law, and if this doesn't go as far as Federal
17 constitutional law, Federal statutory law, then it's no
18 harm done because we're already covered under the
19 Federal statute. The Federal statute would have to
20 preempt if it provided those kind of rights of privacy.

21 Q. I guess, and I don't mean to belabor
22 this, but what concerns me is I think the relative
23 looseness of that terminology "involved in," because
24 when I think of protests that occur on a regular basis,
25 and I could give you example after example, but one

1 might be helpful. For instance, let's say there's a
2 protest intended to communicate a very strong
3 opposition to the use of laboratory animals for testing
4 purposes, where virtually everyone participating in
5 that protest believes in the peaceful expression of
6 that opinion, fully within the protection of the First
7 Amendment, and that protest is simply an opportunity
8 for those law-abiding citizens to express their point
9 of view and the hope that it becomes statutory law.
10 But mixed in with that group of people you have perhaps
11 reasonable suspicion to believe that there are a very
12 limited number of individuals who not only want to
13 express that point of view but who are willing to
14 express it in a violent way, or perhaps there is
15 reasonable suspicion to believe that a distinct
16 minority of those protesting already expressed that
17 point of view in a violent and criminal way. I'm
18 worried that the presence of such extremists, who can
19 be found in virtually any organization, no matter how
20 respectable that organization might be, would serve as
21 a basis for the collection of information that would
22 have a chilling effect on the First Amendment freedom
23 of the vast majority of law-abiding citizens. And I
24 guess what I'm saying--

25 A. I think that if somebody has as part of

1 their group and it's contingent in their group that's
2 committing acts of violence, and, you know, certain
3 kinds of acts of violence, let's say they're bombing
4 experimental laboratories or whatever, and it's going
5 to be something of sufficient criminal activity that
6 law enforcement needs to go in and have a look to see
7 what's going on, then law enforcement is going to try
8 to determine, well, who's involved? Who's involved in
9 wanting to commit that violence? And it seems to me
10 law enforcement has a legitimate obligation there or
11 responsibility to have a look into and see exactly
12 what's going on. Is this across the board for the
13 organization? Is it just three or four people? You
14 need to go in and know who are the criminals and who
15 aren't. And that would be something that the police or
16 the district attorney's office would have to go in and
17 have a look to see what was going on in order to know
18 who would be the proper subjects of further
19 investigation.

20 MR. EAKIN: I agree with Gary that if in
21 fact this is held to be inconsistent with Federal
22 protections it's going to fall, but the way it's worded
23 says that it's the subject of the information that has
24 to be involved in criminal activity, not the group,
25 political religious or otherwise, that is involved in

1 criminal activity. So if the police believe that the
2 animal rights group as too broad a term is involved in
3 criminal activity because a minority of its members get
4 disorderly at Hegins during the pigeon shoot, that may
5 be enough to suggest that the organization, in their
6 minds, is involved in criminal activity. But to put
7 this information in the computer, they have to have a
8 reasonable suspicion that the individual, not by reason
9 of affiliation but the individual, him or herself, is
10 involved in the criminal activity.

11 BY REPRESENTATIVE McHALE: (Of Mr. Eakin)

12 Q. Okay, where does it say that?

13 A. Right there.

14 Q. Where does it make reference to the
15 individual that he or she has to be?

16 A. "Unless there is a reasonable suspicion
17 that the subject of the information." That's the
18 individual.

19 Q. All right. Well, that's important. I
20 don't think that's necessarily clear. When you say
21 "subject," you're using that as a term of art in the
22 sense of a criminal investigation, in terms of what
23 you're saying. Now, you mean a person, a subject is a
24 person. I think that could be read to be interpreted
25 as subject matter. See what I mean?

1 A. Well, the paragraph itself deals with
2 information concerning participation in a political,
3 religious, social organization, not the existence or
4 the philosophy of the political, religious -- in other
5 words--

6 Q. You just hit on my concern, and I think
7 you did so inadvertently. That's precisely what I'm
8 concerned about. You interpret that phrase, "subject
9 of the information," to mean a person. The subject. I
10 read that initially to mean the subject matter of the
11 information, the topic of the information.

12 A. But again, the paragraph as a whole deals
13 with putting into the computer information concerning
14 participation in the organization, not information
15 about the organization.

16 Q. Well, let me ask you, did you mean what
17 you said, when you say subject, when you read that
18 paragraph and you see the word "subject," do you mean a
19 person or do you mean a topic?

20 A. A person.

21 MR. TENNIS: I read it as person.

22 MR. EAKIN: Until now I had not even
23 considered it to be interpreted otherwise. If the word
24 "individual" were substituted for subject, perhaps it
25 may be clearer.

1 REPRESENTATIVE McHALE: I think it would
2 be substantially clearer.

3 MR. EAKIN: But I would suggest that that
4 is -- if that's the concern that that is the term, it
5 ought to be modified not involvement in the criminal
6 activity, perhaps.

7 REPRESENTATIVE McHALE: If it said
8 individual there, I, frankly, would, and this whole
9 line of questioning would have been a whole lot
10 shorter, because then we would have been talking about
11 a person who is or may be involved in criminal
12 activity. My worry is that an entire subject matter of
13 a demonstration which in its extreme form might go
14 related to some limited type of criminal activity would
15 fall under the chilling effect of this kind of
16 information gathering, and I think that interpretation
17 is not at all farfetched in terms of the language as it
18 currently appears.

19 MR. EAKIN: I would think that had that
20 been the goal of the drafters, they would have deleted
21 the words "participation in" early in that paragraph.
22 It would then read, "Intelligence information may not
23 be collected or maintained concerning a political or
24 religious," et cetera.

25 REPRESENTATIVE McHALE: Could I ask you

1 to do this, in closing? In light of the fact that you
2 apparently have a very specific interpretation of the
3 word "subject" as it is used in that paragraph, and in
4 light of the fact that I believe how the word subject
5 is interpreted has a profound meaning within the
6 context of the First Amendment, could you come up with
7 some other language that might be inserted in that --
8 at that point in the paragraph that would make it clear
9 that you're not talking about the general subject
10 matter, you're talking about the subject of an
11 investigation, a person, as opposed to a general topic.

12 MR. EAKIN: I agree--

13 REPRESENTATIVE McHALE: Because that
14 would go a long way toward addressing my First
15 Amendment concerns.

16 MR. COPETAS: I agree. I don't see any
17 problem with changing it to individual.

18 MR. TENNIS: We could do something along
19 the line of unless there is reasonable suspicion that
20 the person or persons who are the subject of the
21 information is," and that should--

22 REPRESENTATIVE McHALE: Well, I would
23 avoid the use of the word "subject."

24 MR. TENNIS: Well, we have to somehow
25 reference them into the information. That would be the

1 only--

2 REPRESENTATIVE McHALE: Well, Gary, I'm
3 not sure this is the place for us to try and draft it,
4 but I think we now understand what my concern is. I
5 would hate to see a worthy cause be chilled within the
6 context of the First Amendment because of some
7 extremists who might be willing to express that point
8 of view in a violent and unlawful way.

9 MR. TENNIS: But, again, this puts
10 restriction -- right now we can do, under State
11 statutory law, we could do anything we want. This does
12 put additional restrictions. This does nothing but
13 restrict law enforcement in new ways, as far as that
14 particular provision.

15 REPRESENTATIVE McHALE: I understand
16 that, but I think you can have what you want and you
17 and I can be on the same side by simply interpreting
18 that clause as the speaker to your left has in fact
19 interpreted it, and by making that clear in language
20 that is at present more than a little bit unclear.

21 MR. TENNIS: Okay.

22 REPRESENTATIVE McHALE: Thank you, Mr.
23 Chairman.

24 CHAIRMAN CALTAGIRONE: Thank you,
25 gentlemen.

1 We have a little bit of a problem in that
2 the room has to be occupied for a luncheon at 12:00
3 o'clock. Now, we could do one of two things with the
4 police chiefs. If you'd like to submit your written
5 testimony for the committee, we can take it now and
6 conclude the hearing, or we could come back at 2:00
7 o'clock, is that right, David?

8 MR. KRANTZ: No, you can go on with
9 another witness.

10 CHAIRMAN CALTAGIRONE: Can we finish it
11 up with the police chiefs?

12 MR. KRANTZ: Yeah.

13 CHAIRMAN CALTAGIRONE: Okay, well, then
14 we'll finish it.

15 If the police chiefs would like to please
16 come forward to present your testimony, and the
17 sheriff.

18 MR. DOMZALSKI: Good morning. My name is
19 the David Domzalski, Assistant City Solicitor and
20 Police Counsel for the Police Department of
21 Philadelphia.

22 MR. EBERSOLE: My name is Craig Ebersole.
23 I'm Chief of Police of East Cocalico Township, West
24 Cocalico Township, and Adamstown Borough in Lancaster
25 County.

1 MR. RAGER: I'm Paul Rager. I'm Chief of
2 Police of Manheim Township and East Petersburg Borough
3 in Lancaster County, Pennsylvania.

4 MR. DOUGHERTY: Howard Dougherty, Police
5 Chief of Lemoyne Borough, in Cumberland County.

6 MR. GURAY: My name is Gus Guray. I'm a
7 Lieutenant in the Philadelphia Police Department.

8 MR. RAGER: Rather than cover all the
9 testimony that I've provided in writing, I'll be brief
10 and try and highlight some of the important points.

11 In addition to the chiefs who have been
12 introduced, Chief Rod Hartman of New Holland Borough
13 and Earl Township is present here and he's President of
14 the Lancaster County Chiefs of Police, and also present
15 is Karen Deklinski, the Executive Director of the
16 Pennsylvania Chiefs. All the chiefs present here are
17 members of the Pennsylvania Chiefs, and we are speaking
18 also on behalf of the Pennsylvania Chiefs.

19 We're here today to support the proposed
20 amendments to the Criminal History Records Act,
21 commonly referred to as the CHRIA amendments. We
22 believe that intelligence and treatment information do
23 need additional safeguards regarding storage and
24 release and that reasonable restrictions can only guard
25 against abuse. Such restrictions are contained in the

1 amendments. We do not believe, however, that
2 investigative information needs to be placed in that
3 same category with those same restrictions.

4 Section 9102 of the act describes
5 investigative information, and Section 9106 of the act
6 prohibits the storage of certain investigative
7 information.

8 If we interpret these sections very
9 strictly, what they basically do is prohibit police
10 departments from using the word processing capability
11 of our automated criminal justice information systems
12 to create the investigative report. If we deliberately
13 interpret that section we can say that we can enter
14 that information and create the investigative report,
15 that we can strip the names, the words, the phrases,
16 the other indices out and store them then in the
17 computer and before we erase the investigative report
18 we can make a hard copy or a paper copy to store in the
19 manual files. That's what we're currently facing, and
20 some departments may be doing that. Again, strict
21 interpretation, we can't even do it; liberal
22 interpretation, we use it to create the investigative
23 report but we have to erase it and get rid of it.

24 Within my own agency, I would like to
25 replace the microfilming of old investigative reports

1 by storing those reports on computerized optical disks.
2 Again, some claim that this is storing those records or
3 reports electronically and therefore prohibited because
4 of the current restrictions in the Criminal History
5 Records Act.

6 I find it interesting that in this
7 electronic and computer age Pennsylvania's law
8 enforcement agencies are relegated to fighting crime
9 with antiquated manual information systems. It is my
10 understanding that Pennsylvania is the only State in
11 the nation that has a computer storage prohibition such
12 this.

13 I find it particularly disturbing when we
14 learn that members of the criminal community are able
15 to more fully and easily use computer generated
16 information than are we in the law enforcement
17 community. For example, in the 1980 report of the
18 Pennsylvania Crime Commission entitled, "A Decade of
19 Organized Crime," it is related on page 121 how a
20 computerized pimp used the computer to screen out
21 violent and financially risky customers as well as weed
22 out any potential customers filling the stereotype
23 description of a law enforcement officer, and ladies
24 and gentlemen of the committee, that was back shortly
25 after the initial adoption of the Criminal History

1 Records Act and the prohibited use of the computer by
2 law enforcement.

3 The removal of the prohibition for the
4 electronic storage of investigate information contained
5 in the CHRIA amendments is a step in the right
6 direction, but it really does not go far enough. The
7 proposal contained in the amendments provides that
8 investigative information is restricted to authorized
9 employees of that agency and cannot be accessed by
10 individuals outside of that agency. Crime does cross
11 local municipal boundaries and there is a need to share
12 information contained in investigative reports with
13 police investigators and officers of neighboring police
14 jurisdictions. The proposed amendment prohibits our
15 electronic sharing of that data, relegating us to
16 making hard paper copies of the reports which can
17 either be handed to each other or mailed to each other.

18 I would just like to digress from this
19 and give you an example of what I'm talking about. For
20 a number of years Chief Ebersole's department, which is
21 the northern boundary of Lancaster County, and my
22 department, which is located in the center of the
23 county, we're on this shared computer information
24 system and we were just using indices, names that we
25 were permitted to do. His department had an incident

1 that they were interviewing this subject who was a
2 suspect in the incident and he gave an alibi. They
3 went to the computer and found out that when he said he
4 was doing something else, he was in fact involved with
5 my police agency, but he couldn't determine what it was
6 because we're prohibited from putting the investigative
7 report into the computer. He now has to call me. We
8 had three options: We read the entire report over the
9 telephone, I make a photocopy and give it to one of my
10 patrols to run and meet one of his patrols halfway in
11 between, or we mail it to him. Luckily today -- well,
12 then we didn't have FAX machines. Today now we can FAX
13 it.

14 What I'm trying to explain to you is by
15 prohibiting our electronic transfer, you're still
16 relegating us to the so-called horse and buggy days
17 because we're going to provide that information, we
18 need to use that information, it's just that we can't
19 use the modern means to do it.

20 I'd like to also point out something
21 that's been overlooked in the testimony of everyone
22 else. Our investigative reports are released through
23 the district attorney's office through formal and
24 informal discovery procedures under the Rules of
25 Criminal Procedure to the attorneys, the defense

1 attorneys, and ultimately I would assume to their
2 clients, which means the criminal gets to read the
3 investigative reports. That means that we in the
4 police, law enforcement agencies, are reluctant to put
5 certain information that I am hearing there's a
6 reluctance to have us have that information in the
7 investigative reports. I'm telling you now we're
8 reluctant to put some of that information in there now
9 simply because those reports ultimately get in the
10 hands of the criminals.

11 The other thing is that I think we have
12 to recognize that law enforcement agencies across the
13 country are concerned about the rights, the
14 constitutional rights, of the innocent citizens that we
15 protect. And contrary to what the individual from the
16 ACLU said, I think that we try to address those rights,
17 maybe from a different viewpoint, but I think that we
18 are concerned about that, and for that reason we have
19 said here that intelligence data and treatment data
20 need to have some restrictions, but we feel that the
21 restrictions go too far with investigative data.

22 Most experts agree that if the police are
23 to have an impact on crime, then we must utilize
24 current state of the art information processing
25 equipment as well as share information. Within

1 Lancaster County, we have recently upgraded our shared
2 police computer system and software. That upgraded
3 system currently has the capability of storing and
4 sharing our investigative reports, but we cannot use
5 that available capability until the law is changed, and
6 even if the law is changed, your current amendment
7 still prohibits us from using it that way. We would
8 only be able to use it individually, we'd have to run
9 off hard copies and mail them.

10 Please do not handcuff us in our efforts
11 to attack crime. Allow us to use the tools currently
12 available. Minimally, we ask for the passage of the
13 CHRIA amendments. Hopefully, you would remove
14 investigative information from the sharing restrictions
15 and allow us to more fully cooperate and share
16 investigative data thereby using the full potential of
17 the computers and existing police computer software
18 currently available to us.

19 I thank you for your time, attention, and
20 opportunity to appear before you.

21 CHAIRMAN CALTAGIRONE: Thank you, Chief.

22 MR. DOMZALSKI: The only comments that I
23 would add to the chief's comments with respect to
24 investigative reports, they do form the basis of what a
25 court system utilizes in the prosecution and defense.

1 The basic investigative report used by the Philadelphia
2 Police Department is received by the district attorney,
3 is received by the public defender, and is received by
4 the court system. Computerized access to this can
5 prevent delays in court cases whereby everybody in the
6 criminal justice system can access those reports,
7 thereby avoiding continuances.

8 Another factor that hasn't been mentioned
9 yet with respect to the improvements that these
10 amendments will bring is budgetary considerations.
11 Exhibit A of the testimony that we have prepared in a
12 report from the consultant that computerization of the
13 basic incident systems of the Philadelphia Police
14 Department that responds to 1.5 million calls for
15 service annually would promote savings in the employee
16 and fringe benefit area of \$8 million to \$10 million a
17 year. This is basically reallocation of police
18 personnel currently tied to desk jobs to be put back
19 out on patrol, and I think those considerations have to
20 be taken.

21 Other than that, we agree wholeheartedly
22 with what the chief said and with what the Attorney
23 General has testified to and we'd really ask this
24 committee to urge all members of the House to support
25 this legislation and to put it into law.

1 Thank you.

2 CHAIRMAN CALTAGIRONE: Thank you very
3 much. Very well put.

4 MR. GURAY: There's one area which I
5 don't think was maybe adequately addressed today, and
6 it relates to the remarks made by the gentleman from
7 the ACLU. The current law was adopted in 1979, however
8 since 1979 many unforeseen changes in technology have
9 been introduced which now make the current law, Section
10 9106, obsolete. I believe that individual liberty is
11 no longer adequately protected and the ability of
12 police departments and other criminal justice agencies
13 to economically provide services and enforce the laws
14 of this Commonwealth are hampered.

15 To illustrate this point, the first IBM
16 personal computer, which we're all familiar with, which
17 has spawned much of the change of technology, was not
18 released until August 1981. Practical word processing
19 systems as we now know them, which are now commonplace
20 in any office, were still at least year or two in the
21 future when our current law was enacted in 1979. This
22 legislature could not anticipate the possible
23 investigative reports for arraignment, discovery, and
24 trial which could benefit the courts, defense, and
25 prosecution alike. Thus, the current law only permits

1 the automation of names, words, phrases or other
2 similar index keys to serve as indices to investigative
3 reports.

4 Ironically, one of the most important
5 changes in computer technology since 1979 has been the
6 development of relational data based management
7 systems, which provide immense power through
8 sophisticated use of the indexed information
9 permissible under the current law. It is now possible
10 to index virtually any kind of information and
11 cross-index it or link it to any other information.
12 These systems were first introduced by IBM for even
13 their large mainframe computers in 1981 and are now
14 commonplace for the personal computer user. Relational
15 data bases coupled with so-called four generation
16 languages was developed in the mid-1980's enabling the
17 casual computer user to compile and research through an
18 infinite variety of seemingly unrelated facts.

19 Finally, since the current law was
20 enacted, there has been vast progress in
21 telecommunications capabilities that enable persons to
22 remove the access information stored on computers. It
23 is important to realize that because of the
24 technological limitations in 1979, the use of computers
25 and the data they contained were managed and controlled

1 in a centralized manner by data processing
2 professionals. Thus, the current law does not demand
3 standards for data entry, tracking disseminated
4 information, removal of useless information, security,
5 training, and supervision. In many ways, these are
6 essential to the proper safeguarding of individual
7 rights. We're essentially now unregulated.

8 The present bill before the committee
9 does provide these and other protections. In fact, an
10 automated system regulated by the provisions of this
11 bill provides for a greater protection against abuse
12 than does a legally permissible manual paperbase
13 system. This is especially apparent in the area of
14 intelligence information.

15 Thank you.

16 CHAIRMAN CALTAGIRONE: Are there any
17 other comments?

18 (No response.)

19 CHAIRMAN CALTAGIRONE: Questions?

20 REPRESENTATIVE McHALE: Mr. Chairman,
21 just one.

22 Gentlemen, I think you were present when
23 I had what I hope was a constructive dialogue with Gary
24 Tennis concerning the meaning of "the subject" of the
25 information as it's contained in Subparagraph 6 on page

1 2 of the bill, and I had very little objection to the
2 meaning of that phrase as interpreted by the witnesses
3 who appeared before the committee. My concern was that
4 the language now contained in the bill might not
5 accurately say what they would like it to say. If that
6 section read as follows, it now reads, let me give you
7 the current language, it now reads, "unless there is a
8 reasonable suspicion that the subject of the
9 information is or may be involved in criminal
10 activity." If that phrase were to read as follows:
11 "unless there is a reasonable suspicion that the
12 intelligence information is directly relevant to the
13 activity of an individual who is or may be involved in
14 criminal activity," would that change cause you any
15 difficulty?

16 MR. DOMZALSKI: As long as you made it
17 plural, Representative. Individual or individuals.

18 REPRESENTATIVE McHALE: Okay, I thought
19 about that as well. Then that change--

20 MR. DOMZALSKI: I think basically the
21 word "subject" is a law enforcement type of term of
22 art.

23 REPRESENTATIVE McHALE: I understand.

24 MR. DOMZALSKI: And usually relates to a
25 particular individual or group of individuals.

1 REPRESENTATIVE McHALE: The subject of
2 the investigation. The subject has been arrested.

3 MR. DOMZALSKI: Subject. Target.

4 REPRESENTATIVE McHALE: Once it was
5 described that way during testimony I think we suddenly
6 had a flash from the sky in terms of how some of the
7 Representatives from the law enforcement community were
8 interpreting that phrase, "subject of the information."
9 But I don't think it's farfetched at all to think that
10 a layperson or a judge might at some point in the
11 future interpret that phrase "subject of the
12 information" to mean a topic, an issue. The subject
13 matter, rather than an individual. So I'm concerned
14 that we find language -- whether it's the language that
15 I quickly drafted or some other language -- that would
16 accurately and clearly limit the gathering of
17 information to individuals who are or may be involved,
18 based on a standard of reasonable suspicion, in
19 criminal activity. I would not want to see perfectly
20 law-abiding citizens come under this kind of scrutiny
21 simply because a distinct minority of individuals,
22 perhaps an infinitesimally small percentage of
23 individuals, involved in that protest might be involved
24 in some kind of unlawful activity.

25 MR. DOMZALSKI: I would agree with you

1 wholeheartedly, sir, and I would submit that the law
2 enforcement community also doesn't want to impugn on
3 those person's rights.

4 REPRESENTATIVE MCHALE: Well, let me
5 think about this and perhaps either in committee or at
6 some point on the floor we can draft language that
7 fully satisfies your concern while making it clear that
8 "subject," as originally placed in the bill, meant a
9 person and not a subject matter or a topic of public
10 discussion.

11 Thank you, Mr. Chairman.

12 CHAIRMAN CALTAGIRONE: Thank you.

13 Thank you, gentlemen. We appreciate your
14 testimony.

15 There is a citizen that would like to
16 submit some testimony for the record. If you'd like to
17 give it to the court reporter, we can certainly put
18 your testimony in the public record, and with that we
19 will adjourn the hearing for today. Thank you.

20 (See Appendix for a copy of the testimony
21 from Ida Vonara, which was added to the record at the
22 request of Chairman Caltagirone.)

23 (Whereupon, the proceedings were
24 concluded at 12:20 p.m.)

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing of the within cause, and that this is a true and correct transcript of the same.

Ann-Marie P. Sweeney
ANN-MARIE P. SWEENEY

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