THE EROSION OF LAW ENFORCEMENT INTELLIGENCE—CAPABILITIES—PUBLIC SECURITY

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

NINETY-FIFTH CONGRESS

FIRST SESSION

PART 1

July 13, 27, and September 21, 1977

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
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THE EROSION OF LAW ENFORCEMENT INTELLIGENCE—CAPABILITIES—PUBLIC SECURITY

WEDNESDAY, JULY 13, 1977

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2228, Dirksen Senate Office Building, Senator Orrin G. Hatch (acting chairman of the subcommittee) presiding.

Present: Senator Thurmond.

Staff present: Richard L. Schultz, counsel; David Martin, analyst; Alfonso L. Tarabochia, investigator; and Robert J. Short, investigator.

Senator HATCH. I will call the meeting of the Subcommittee on Criminal Laws and Procedures to order.

I have to apologize for being late. I had to give a speech this morning to two or three hundred of our interns on Capitol Hill. It was supposed to take an hour and I cut it short—15 minutes as it was. Then I still had a rough time walking from the Cannon Building over to here.

Let me just begin by saying that today's hearing has to do with the nationwide erosion of law enforcement intelligence capabilities and the impact this erosion has had on the ability of our law enforcement agencies to protect the public. This hearing has been organized by the internal security unit of the Senate Subcommittee on Criminal Laws and Procedures. It represents a continuation of a series of hearings on the same subject held in 1975 and 1976 under the auspices of the former Senate Subcommittee on Internal Security.

The many high-ranking law enforcement officials who testified during the course of these hearings were agreed that there had been abuses in the past and that there was a need for carefully drawn guidelines in order to prevent the recurrence of such abuses. Perhaps it is unavoidable that the pendulum should swing violently after there has been a disclosure of abuses.

The testimony presented by the witnesses, however, suggested that the pendulum had swung so violently that law enforcement intelligence in many areas has been wiped out, or almost wiped out, while in other areas it has been reduced to a state of near paralysis.

Chief Davis of the Los Angeles Police Department, for example, told the subcommittee:

> The municipal intelligence community must be permitted to identify and act against the efforts of those who would pillage, rob, rape, murder and yes, even steal our freedom from the citizens of this Republic. The various restraints on the intelligence function today have caused some police administrators to completely

abandon this vital activity. Still other administrators have reduced the amount of material kept by their organization to the point that it cannot be classified as intelligence.

Capt. Justin Dintino, Chief of Intelligence for the New Jersey State Police had this to say about the present state of law enforcement intelligence:

> The free flow of intelligence between Federal, State, and local agencies is essential to an effective law enforcement operation. To the extent that this flow is restricted, law enforcement is handicapped. Today this flow is terribly restricted, at every level and in every direction: From city-to-city, from State-to-State, from State agencies to Federal agencies, and from Federal agencies to the State and local level. This is a disastrous situation and we've got to find some way of reversing it.

Sgt. Arleigh McCree of the Los Angeles Police Department Bomb Squad, one of the Nation's top antiterrorist experts, told the subcommittee that intelligence about violence-prone and terrorist organizations is almost nonexistent in our metropolitan police departments and that antiterrorist law enforcement activities are now handicapped even when it comes to such routine matters as getting information about telephone numbers from the telephone company.

In general, the erosion of law enforcement intelligence capabilities was attributed by the witnesses to four principal causes: First, the impact of the Freedom of Information and Privacy Acts; second, the general anti-intelligence hysteria in the wake of Watergate and the predominantly hostile attitude of the media toward law enforcement intelligence; third, the growing rash of civil suits against law enforcement agencies, in some cases claiming damages of many millions of dollars; and fourth, the additional restrictions imposed, or threatened, by legislation at the State level.

We have with us today three witnesses who have held high positions in three of the Nation's major law enforcement agencies: Mr. Eugene Rossides, who served as Assistant Secretary of the Treasury for Law Enforcement; Mr. John Olszewski, a veteran of 27 years experience in Law Enforcement in the Internal Revenue Service, who last served as Chief of Intelligence for IRS, and Mr. Laurence Silberman, who several years ago served as Deputy Attorney General, and who has since then distinguished himself as a diplomat and political scholar.

Gentlemen, we are grateful to you for consenting to appear before this subcommittee to give us the benefit of your experience and your wisdom.

In the interest of saving time, would you all rise and be sworn as a group?

Gentlemen, do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. ROSSIDES. I do.

Mr. SILBERMAN. I do.

Mr. OLSZEWSKI. I do.

Senator HATCH. Then we will begin. I think Mr. Rossides is first.

TESTIMONY OF EUGENE ROSSIDES

Mr. ROSSIDES. Thank you, Mr. Chairman. I certainly echo your opening remarks setting the stage and the outlines of the problem.

Mr. Chairman, in response to the committee's request to testify on the erosion of intelligence gathering in the law enforcement community, I would make the following comment: That proper intelligence gathering is a fundamental and necessary function of a law enforcement organization as it is for any serious human endeaver.

Look at any nonenforcement agency of the executive branch of the Government; look at the operations of every committee and subcommittee of the Congress; look at the business and professional community; and look at our educational and charitable organizations. You will see that intelligence gathering is essential to carrying on successfully their activities.

Further, an essential aspect of intelligence gathering is the proper exchange of intelligence among Federal, State, and local law enforcement agencies. It is important to keep in mind always that regarding most criminal activity, the over 400,000 State and local law enforcement officials are our first line of defense and that Federal, State, and local cooperation, including the exchange of intelligence, is essential to adequate law enforcement performance.

While at the Treasury, my responsibilities included direct supervision of the U.S. Customs Service, the U.S. Secret Service, and the Bureau of Alcohol, Tobacco and Firearms. In addition, I was policy adviser to the Secretary on the Internal Revenue Service's law enforcement activities. There were two areas of drug enforcement, Mr. Chairman, that I concentrated on which were at that time within the Treasury's jurisdiction and Treasury's responsibility: Drug smuggling and tax investigations of drug dealers.

It became clear to me at the outset after discussion with various enforcement officials in the Treasury and outside the Treasury that in the drug enforcement area there was a serious lack of intelligence-gathering capabilities. The lack of actual knowledge as to who were the major smugglers and dealers in illegal drugs and their methods of operation was appalling. The amount of resources allocated to intelligence gathering generally was quite small.

Together with the Congress, we increased substantially the resources allocated to intelligence gathering and it was reflected in strengthened enforcement in the drug-smuggling area and in the area of tax investigations of major drug dealers.

Unfortunately in the last few years there has been—as you have pointed out, Mr. Chairman—a substantial erosion of law enforcement intelligence-gathering capabilities. From testimony presented to this subcommittee and from discussions with law enforcement officials, it is clear to me that one of the foundations of adequate law enforcement—namely, intelligence gathering operations—has been eroded and weakened at all levels of goverment.

It is my firm belief that law enforcement intelligence-gathering capabilities can be restored to adequate levels within our constitutional system.

In the area of drug smuggling, Mr. Chairman, I became quickly convinced of the singular importance of an effective antidrug smuggling effort and the need for intelligence gathering in this area when in March 1969, Treasury agents of the Customs Service seized 115 pounds of pure heroin in New York City after an 18-month investigation by two of them.

At that time, Mr. Chairman, the question was: How much emphasis should be placed on internal drug enforcement as opposed to how much emphasis should be placed on smuggling. I felt we should concentrate more on smuggling. If you can get 115 pounds of pure heroin before it is distributed and cut 20 to 1, it is a question of where you put your resources. We felt that this was important—particularly to have the intelligence gathering. You can't really do antismuggling work without additional intelligence.

Thereafter, we improved substantially Customs intelligence gathering in the drug smuggling area but our efforts were impeded by a jurisdictional dispute with Justice's Bureau of Narcotics and Dangerous Drugs. After I returned to private practice in January 1973, reorganization plan No. 2 of 1973, which I opposed as a private citizen, was passed by the Congress in 1973 creating the Drug Enforcement Administration.

Part of that plan transferred Customs drug smuggling investigatory and intelligence gathering responsibilities to DEA in the Justice Department.

My opposition was based in part on the belief that DEA agents could not perform the drug smuggling intelligence gathering operation as effectively as Customs because they could not obtain the cooperation Customs could of the import community and sister Customs organizations throughout the world, and because DEA agents could not reach the level of expertise which Customs agents have in antismuggling operations.

Now, Mr. Chairman, I want to turn briefly to the tax investigations of drug dealers. This is an area which illustrates our problem today in the erosion of the intelligence gathering function.

The area of tax investigations of drug dealers illustrates the importance of intelligence gathering generally and the importance of exchange of intelligence among Federal, State, and local law enforcement agencies specifically.

I say to this committee, Mr. Chairman, as I have testified before, that we will not be able to bring illegal drug operations within manageable proportions without an effective attack on the fruits of illegal drug operations—namely, the huge profits which are taxable—through the use of our tax laws.

Let me outline the short-lived Treasury and IRS narcotics trafficker tax program, one of the most successful law enforcement programs in our history, which was based on proper intelligence gathering activities.

There were three aspects of the program: Target selection; IRS audit investigations; and prosecution or civil litigation.

The target selection process was designed to pool all the available information in this country from all Federal, State, and local law enforcement agencies as to who the major narcotics dealers were. There was no such data bank. There was very little cooperation among the agencies in exchange of information.

Guidelines were issued to insure adequacy and uniformity of response. We wanted the names of alleged major dealers but also details of their assets and standards of living so as to determine whether a tax audit would be warranted. Our aim was to take the profits out of the illegal narcotics trade.

Mr. Chairman, we got cooperation among agencies that had fought, jurisdictionwise, for years. Why? Because the tax function was not an overlap of jurisdiction. They could all validly cooperate with our program of identifying major dealers and information with IRS and not in any way feel that they were giving up drug enforcement jurisdiction.

We set up field target selection committees throughout the country composed of representatives of Federal, State, and local law enforcement agencies for the purpose of giving us the advantages of a combined intelligence operation.

Information on each alleged major narcotics trafficker was pulled together. The field target selection committees would accept or reject potential targets based on information gathered by the various Federal, State, and local enforcement agencies.

Those selected would be sent to Washington for review by a Treasury target selection committee composed of representatives of IRS, Customs, and the Justice Department's BNDD.

The field target selection committee representatives and the Washington representatives except for one person, the Deputy Assistant Secretary for Enforcement, were all career personnel.

Those selected by the Treasury target selection committee from field recommendations would be transmitted to IRS for a full-scale tax audit. It would be an IRS case run by IRS personnel and in accordance with all applicable agency procedures. If criminal action were warranted, IRS would refer the matter to the Department of Justice. Otherwise, civil action would be taken where appropriate.

We stressed the importance of going after the illegal profits for tax revenues due the Government. If a criminal case could be made, fine. If not, there was to be a full civil audit for taxes owed and civil penalties, if any.

The success of the program, Mr. Chairman, was extraordinary. I submit for the record the testimony that I gave before the Senate investigating committee last summer. It details the fact that over a very short period of time 1,800 major dealers were identified and investigations started on most of them, along with 3,000 minor dealers.

The success of this program combined with the minor trafficker program was, in my judgment, the prime reason for the downturn in heroin availability in 1972 and 1973.

I give you this background, Mr. Chairman, because it is the next comment which deals more specifically with the question of the erosion of law enforcement activity.

Unfortunately, in 1973 and 1974, after I had returned to private practice, the then new Commissioner of IRS, who disagreed with the program, ended it despite clear congressional and executive policy and directives in favor of the program.

Without the revival of such a program, with a foundation based on intelligence gathering and the exchange of intelligence among Federal, State, and local law enforcement officials, we will not be able to reduce illegal drug operations in this country to manageable proportions.

We must always keep in mind that the other side of illegal drugs is huge taxable profits which at present we are neglecting.

Thank you, Mr. Chairman.

Senator Hatch. Thank you, Mr. Rossides.

I am happy to have your testimony here today. Certainly all three of you gentlemen have excellent credentials to help us to look into these serious problems.

You said in your statement that from testimony presented to this subcommittee and from discussion with law enforcement officials, it is clear to you that intelligence-gathering operations have been eroded and weakened at every level. Presumably you have had the opportunity to discuss this matter with some of your former colleagues in the Treasury Department and other law enforcement agencies.

Mr. ROSSIDES. I have.

Senator HATCH. Have you encountered occasional or widespread complaints about the erosion of law enforcement intelligence?

Mr. ROSSIDES. I have, Mr. Chairman, both at the Federal level and at the city level.

Senator HATCH. These are complaints by the experts in the field?

Mr. ROSSIDES. Absolutely.

Senator HATCH. By the people who are directly concerned with maintaining good intelligence activities throughout the country for the benefit of the citizens?

Mr. ROSSIDES. Correct. They feel that, in large part, an essential tool of their profession has been taken away.

Senator HATCH. You have given us some broad examples in your statement this morning. Without naming names, could you give us a few examples of this erosion?

Mr. ROSSIDES. I will give you an example of what I feel is probably the most important area of law enforcement in narcotics enforcement. The IRS program of specific tax cases against major dealers has been stopped. This was an attack from within.

We have had attacks on the law enforcement community from without, but—

Senator HATCH. When you say it was an attack from within, what do you mean by that?

Mr. ROSSIDES. The then Commissioner of Internal Revenue, Mr. Don Alexander, simply scuttled the program. He stopped a congressionally authorized program.

Senator HATCH. Do you know any particular reason why he did that?

Mr. ROSSIDES. It has been a puzzle to a lot of people in the law enforcement community. There is no rational reason that I can understand. His testimony has been rather limited, alleging abuses by IRS personnel. I responded that:

> If you are telling us that the IRS personnel's use of statutory authority regarding jeopardy assessments and closing of tax year testimony has not followed the guidelines of the IRS, you should have reprimanded your agents and officials. On the other hand, if you don't agree with the particular regulations, then work to change them.

Senator HATCH. Or at least say that you don't agree with them——

Mr. ROSSIDES. Correct.

Senator HATCH [continuing]. Instead of using the phony excuse that they have been abusive. We can correct abuses if the statute is otherwise valid.

Mr. ROSSIDES. Absolutely. The statute is valid. It is used and it is an essential statute. The idea that when you are pulling in a major narcotics dealer, that the funds that he may have are not subject to a jeopardy assessment analysis is faulty. It is unusual.

Let me give you another example. Others can testify more fully to this. I have heard it from several sources. It was not a question of analyzing what IRS was doing to see how you may improve what they are doing or to stop what should not be done. He just announced, practically the first few weeks that he was there, that he was stopping the Treasury/IRS narcotics program.

Senator HATCH. Did he give one intelligent law enforcement reason for stopping the program?

Mr. ROSSIDES. Not one that I know of.

Senator HATCH. In other words, the only reason, basically, that he has given is that there may have been an occasional abuse by narcotics officers or agents.

Mr. ROSSIDES. IRS officers. That is the only reason. That is his problem of lack of proper supervision of his own bureau.

Senator HATCH. There is no real justification or intelligent observation concerning the inefficacy of the statute or the validity of the statute or the abusiveness of the statute?

Mr. ROSSIDES. That is correct. Mr. Chairman, that is not only correct, but the point is that it is the most important program in the country in order to get at drug operations. You cannot simply do it by straight enforcement of drug statutes. You've got to do it by taking the profits out.

Senator HATCH. For the record, when did he make the determination not to use this procedure?

Mr. ROSSIDES. It started in late 1973. By early 1974 the program was on its way out.

Senator HATCH. In your estimation, what would have been the detriments to our society as a result of that major policy decision, which was made without any logic or any reasonably justified basis?

Mr. ROSSIDES. And contrary to existing authority and statute and policy direction by the Congress, the White House, and the Secretary of the Treasury.

The results have been this, Mr. Chairman: an absolute increase in narcotics use in this country. You can see it in the papers. They talk about even heroin coming back. There is an absolute increase in the amount of distribution of narcotics and dangerous drugs.

Senator HATCH. Did you feel that you were on the way to stamping this out, or at least curtailing it effectively?

Mr. ROSSIDES. To manageable proportions. I would say that you are never going to stop a certain amount of drugs, but we were, for the first time, on the way to bringing it down to manageable proportions.

Senator HATCH. You were effectively reducing the purity of the heroin that was being distributed. That is the test, isn't it?

Mr. ROSSIDES. Oh, yes. And the amount of heroin. The point was this, Mr. Chairman; the criminal community—and there is an organized crime group, there are organized crime groups—we told them that "If you are in the drug business you are going to be audited every year."

You only needed a finite number of agents. It was not a situation where the number of agents increased every year. The number of people in organized crime is a finite number. By putting this stuff in a proper intelligence gathering system and in the computer, you could do it with a handful of agents—say, less than 600.

We are saying to them, "Get out of this business. If you are in this business and you make a dime, we will know about it." It's the only way you can effectively go after the major drug dealers.

Senator HATCH. You referred to field target selection committees throughout the country composed of representatives of Federal, State, and local law enforcement agencies set up as a kind of joint intelligence operation.

Mr. ROSSIDES. Exactly.

Senator HATCH. Many of the witnesses who have testified previously have stated that there is a reluctance—even a fear—of sharing intelligence because of the impact of the Freedom of Information Act and the Privacy Act.

Do you know if any such joint law enforcement intelligence operations exist today?

Mr. ROSSIDES. I do not. I have not been as close to it—there may be some in some situation, but I know that there is very little. There has been an erosion in that area, but I cannot answer you completely. I know that it has been reduced substantially, if there is any going on.

Senator HATCH. What impact have the Freedom of Information Act and the Privacy Act had on joint intelligence operations?

Mr. ROSSIDES. They have thrown a scare into the enforcement agents. I think Mr. Olszewski can give you more details about that. Mr. Silberman, who testified regarding those statutes, would be better able to answer that question.

It is clear that they have been very concerned about those statutes. On the other hand, it is also clear in my mind that we can adjust or amend the statute and have adequate intelligence-gathering within the constitutional framework.

I think Mr. Silberman would be the expert, particularly on those statutes.

Senator HATCH. You mean, to have the benefits of the statutes, but in a way that would be more easily utilized?

Mr. ROSSIDES. Right; in other words, it is not a confrontation where you have one or the other. I certainly feel that we can work out an adequate intelligence-gathering program, and an exchange, without impinging on those rights which we feel are important under the Privacy Act and the Freedom of Information Act.

Senator HATCH. There is a widespread impression that the FBI has at its fingertips just about all of the available information on subversives and on terrorists and other criminal elements.

You made the point that the exchange of intelligence between Federal, State, and local agencies is essential to effective law enforcement. It seems to me that what you were saying, in effect, is that the FBI is not all-knowing.

Mr. ROSSIDES. Correct.

Senator HATCH. You are saying that it simply cannot operate on its own. I think what I am asking is whether that is a correct statement of your position?

Mr. Rossides. Very much so, Mr. Chairman. Let me give you two examples which were under my supervision at the time. They are in regard to terrorism. Alcohol, Tobacco and Firearms, which have responsibilities—coordinate resopnsibilities, and overlapping responsibilities—and work closely with the FBI, has to work closely with State and local police. It is an absolute necessity—particularly in the area of terrorism.

Little was known as to who may be potential terrorists. Further—and I've never wanted to get into too much testimony about it—regarding the Secret Service and the question of Presidential protection and heads of state protection, you have to have it. It is based on proper intelligence-gathering.

The criticism of the Secret Service back at the time of the tragedy of the assassination of President Kennedy was that they had not had adequate intelligence-gathering capabilities. A massive effort was made to improve that. It did improve. We spent a substantial amount of time reviewing and going over Secret Service intelligence-gathering operations. They absolutely had to be based on cooperation with State and local officials.

Senator Hatch. We appreciate your testimony, Mr. Rossides. I think it has been very enlightening and very interesting to me, personally. I am sure it will be as equally enlightening to others in our society.

Mr. Rossides. Thank you.

Senator Hatch. Let's call on Mr. Silberman at this point.

Mr. Silberman, may we have your testimony now?

STATEMENT OF AMBASSADOR LAURENCE H. SILBERMAN

Mr. Silberman. Thank you, Mr. Chairman.

I must say that I am particularly pleased to see this committee start a process of evaluation of past congressional legislation. It seems to me that what you are engaged in is an analytical process of determining what the cost of past legislation is on the impact of law enforcement. By cost I refer not just to direct monetary cost—which I will touch on—but also the cost in terms of impact on ongoing and desirable programs.

Often the Congress, in passing legislation, ignores the impact of legislation and the costs—the tradeoffs. This is particularly true in regulatory legislation. I think that that has been true in this case.

The Freedom of Information Act Amendments of 1974 most importantly—it seems to me—changed the previous law, which exempted from disclosure investigatory files compiled for law enforcement purposes. It changed that to force the law enforcement agencies to make a page by page analytical analysis within massive files in order to make the determination as to what information in that file was mandatory disclosable under the law and what could be exempted.

That process has had, first of all, an enormous financial cost. I refer to the FBI. As Deputy Attorney General, of course, I had supervisory responsibility over the FBI. I should like to touch on that because the FBI is our largest law enforcement agency and has been the major target of Freedom of Information Act and Privacy Act requests and litigation over those matters.

Senator HATCH. Who are most of the people who ask for benefits under the Freedom of Information and Privacy Acts?

Mr. SILBERMAN. Well, I can't be sure who most of them are. There are thousands and thousands. What troubles me is some of them that I will touch on. There are all sorts of people who are just curious as to what the Bureau has in their files that they request.

Senator HATCH. Therefore, their curiosity is costing the American taxpayer millions and millions of dollars—to comply with the Freedom of Information and Privacy Acts, plus costing our agents time?

Mr. SILBERMAN. Exactly right. I am about to tell you what the cost is, exactly.

The Congress, when it passed the amendments to the Freedom of Information Act estimated that the cost would be $50,000 a year for the Federal Government to comply. That was an outrageous and, in my judgment, dishonest estimate which the executive branch, and particularly the Justice Department, seriously quarreled with.

The truth now is out. It is costing the Bureau, in fiscal year 1977, almost $13 million to comply.

Senator HATCH. Are you sure of that? The Congress, at the time that they enacted this law, estimated $50,000 a year as the cost?

Mr. SILBERMAN. That is correct.

Senator HATCH. And it is now costing us $13 million taxpayer dollars?

Mr. SILBERMAN. That is exactly right. Just the FBI alone.

Senator HATCH. Just the FBI alone? Do you have any estimate what it is costing throughout the Federal Goverment?

Mr. SILBERMAN. I couldn't give it to you.

Senator HATCH. It's got to be many times multiplied.

Mr. SILBERMAN. I should think that that would be of interest to this committee.

To break that down, there are 375 persons in the FBI working on Freedom of Information Act and Privacy Act requests. Included within that group are 50 highly trained agents.

I will go into why it is necessary to have highly trained agents perform this function. However, beyond that, there are enormous litigation costs to the Justice Department and to the Government as a whole. The Freedom of Information Act and the Privacy Act matrix requires an adjudication of all sorts of issues by the courts. That has been an enormous expense to the courts and to the law enforcement operation, too.

I think the more important cost is not direct——

Senator HATCH. Have you estimated the litigation costs?

Mr. SILBERMAN. No; I do not have that. The Justice Department ought to.

Senator HATCH. Would that be $50,000 or would that be in the millions?

Mr. SILBERMAN. Oh, it has to be in the millions.

Senator HATCH. So you are saying that on top of $13 million——

Mr. SILBERMAN. That is just employment costs to the FBI.

Senator HATCH. Which is what—65 times $50,000?

Mr. SILBERMAN. I beg your pardon?

Senator HATCH. Is that 65 times $50,000—the original estimate which you characterized as being dishonest? Who made those original estimates and who are you characterizing as being dishonest?

Mr. SILBERMAN. The Congress.

Senator HATCH. You are saying that the Congress people who actually did this—either staff or Members—literally had to know it was going to cost the American taxpayers more than $50,000?

Mr. SILBERMAN. I remember myself telling them many, many times that their estimate was outrageously low and that the cost was going to be enormous because it would be necessary in many of these cases to make a document-by-document analysis of——

Senator HATCH. Of all files?

Mr. SILBERMAN. Every file requested.

Senator HATCH. Therefore, you are saying that it costs $13 million just for the FBI, and that does not cover litigation costs which would be several million dollars. It also does not include the loss of 50 highly trained agents' time, plus 325 other people who work continuously on this problem?

Mr. SILBERMAN. Precisely. Enormous as those costs are they will go up—they will certainly go up, because there is a massive backlog. My understanding is that 200 extra agents have been called in on an emergency basis to try to deal with the backlog. However, you will have to get that information more directly from the Bureau and the Justice Department.

Senator HATCH. I think we may do that. In addition, you are saying that an awful lot of these requests—you cannot estimate the exact percentage—are merely curiosity requests.

Mr. SILBERMAN. There is no question about that. However, I am less concerned about those than some others that I will talk about.

Senator HATCH. OK.

Mr. SILBERMAN. The indirect cost of this process, Senator, is, if anything, more troubling. Your committee has already seen testimony from local law enforcement officials to the effect that they have been deterred in transmission of information to the Federal Government and, I can say, notably to the FBI, for fear that information in the criminal intelligence area, which they do transmit to the Bureau, might well be disclosed in Freedom of Information Act/Privacy Act requests.

There are several reasons to be concerned about that. First of all, with the massive task which the Bureau has it is absolutely inevitable that human error will result in the disclosure of information that should not be disclosed.

Sneator HATCH. Such as what?

Mr. SILBERMAN. Well, Senator, there have already been cases where there has been disclosure of informants' identity. In fact, the Bureau in one case—which I cannot be specific about for obvious reasons—has had to hasten to protect an informant whose life was endangered by virtue of a mistake made in the transmission of information under a Freedom of Information Act request.

The important thing is that these mistakes are inevitable given the scope of the requests and the necessity which Congress placed upon

the Bureau to make a page-by-page analysis of investigatory files in order to determine what should and should not be disclosed.

One of the reasons that it is inevitable that there will be mistakes is that the people doing that analysis are not going to be the same people who are doing the investigation. Therefore, they may not know what kind of information will trigger, in the wrong hands, the disclosure of the identity of informants.

Without informants, criminal law enforcement is impossible. Former associates in the Bureau have told me that informants have been literally frightened by the knowledge that under Freedom of Information Act/Privacy Act requests these risks do occur. As a result, there have been several occasions where informants have requested the Bureau to destroy everything in the file which relates to them. Indeed, their activity in providing information of law enforcement importance has been chilled. I can't blame them.

Senator HATCH. Is the use of informants one of the major effective means of gathering intelligence and creating better law enforcement?

Mr. SILBERMAN. Well, informants have now become unfashionable. They will probably be unfashionable for several years in the Congress and in the press. Indeed, there is even a bill, as I understand it, which strikes me as the height of absurdity, which would require a warrant before the Federal Government can use an informant. They would actually need the authority of a court order.

Without informants there can be no effective criminal law enforcement. Informant is just another word for citizens who are prepared to give information to the Federal Government which will permit the Federal Government to effectively enforce the criminal laws.

Senator HATCH. How will that affect intelligence gathering activities?

Mr. SILBERMAN. Well, it will destroy it. It will certainly destroy it, or seriously impair it at a minmum.

Senator HATCH. In other words, in our rambunctious desire to have everybody have the right to obtain information from the Federal Government we may be destroying our intelligence gathering abilities in this country and creating much greater opportunity for underworld elements to have much greater sway and force in the country.

Mr. SILBERMAN. I think that is correct. I was interested in your reference to pendulums. I am morally convinced that in a few years we will have incidents which will generate such publicity that the Congress will rush to repair the damage that they have already done. However, of course, during that time we will pay a cost.

I may say that I have been informed—and I think reliably informed, of an example of the impairment of the local and Federal law enforcement intelligence gathering which has resulted. During the Hanafi disturbance here in Washington, the District of Columbia police had destroyed their intelligence files at a time when it was desperately important for Federal officials to know information about the Hanafi group—and particularly how many there were, because you can well see that while those hostages were being held it was enormously important to know who else might be out there disposed to aid those who were holding the hostages—but the files had been destroyed. Federal officials were placed in an awful position of not knowing what they should have known.

Senator HATCH. Well, incidentally, just to back you up on that, in the Washington Post this morning, July 13, 1977, Jack Anderson and Les Whitten had an article entitled "Law Enforcement Breaks Down."

They don't talk about the District of Columbia. At least I don't see it immediately. However, they do say that witnesses may charge, for example, that the Hanafi Muslim siege in Washington could have been stopped. They are talking about these hearings.

They will claim that the Washington police had a 15-man intelligence team investigating the Hanafis, but the unit was disbanded because the local authorities were not sure it was legal.

The Treasury's Bureau of Alcohol, Tobacco and Firearms also had enough evidence to arrest one of the leaders for possession of illegal firearms. Treasury agents could have raided Hanafi headquarters. They would have discovered the illegal arsenal that was used to seize three Washington buildings.

In other words, this is just one currently blatant example of what you are saying, Mr. Rossides, and what you are now saying, Mr. Silberman, concerning the breakdown of the ability of law enforcement agencies to do their job for the benefit of all Americans.

Mr. SILBERMAN. That is quite correct. I cannot verify that part of Mr. Anderson and Mr. Whitten's column which relates to information which seems to come from the Treasury Department, but I have heard reliably from the Justice Department sources that the essence of that story is correct.

There are other instances of this. One example I should give you is one that was given to me by former associates in the Justice Department. It is a situation where a businessman faced with criminal activity in his business wished to allow Federal agents to be placed in the business in order to discover the criminal activity. However, he was afraid to do so for fear that through Freedom of Information Act/Privacy Act disclosures it would come out that he had cooperated with the Federal Government.

Without citizen cooperation law enforcement is impossible.

Let me go on to say that I am aware of other instances where, by virtue of the impossible task that has been imposed on the FBI, intelligence information—in one case foreign intelligence information and in other cases criminal law intelligence information—has been disclosed.

In those cases, people cross their fingers and hope that no one will put together the information which is disclosed with other information and come up with a conclusion which would be deleterious to our capability.

There may be those who will say, "Well, there is human error in everything." However, what is so important about this is that this impossible, horrendous task that has been imposed on the Bureau of a document-by-document analysis of each of the files, which are subject to Freedom of Information Act or Privacy Act requests, will inevitably and inexorably lead to these kinds of errors which will identify informants and which will chill the capability of the intelligence operation.

I have been informed by the Bureau, also, that to confirm the information that has come out in this hearing, local law enforcement officers are indeed now very reluctant to transmit information to the Bureau.

The interesting thing that is happening by reason of this is that some information, I am sure, is now being transmitted orally. I think this is a dangerous situation. If everyone is so afraid of putting down information on paper for fear that it will be disclosed in a Freedom of Information Act/Privacy Act request or litigation which that request generates, and they in turn try to deal with it orally, it is almost more dangerous in its impact on citizens than it would be if it was in writing.

Senator HATCH. Well, there is much more chance for error and much more chance for slipping and everything else.

Mr. SILBERMAN. Precisely.

There are certain inherent conflicts and ambiguities between the Privacy Act and the Freedom of Information Act. The thrust of the Privacy Act, of course, is to prevent disclosure. The thrust of the Freedom of Information Act is to provide disclosure. Congress' efforts to meld those two statutes are, in my judgment, less than satisfactory.

That confusion has resulted in even greater chilling of the dissemination of intelligence information.

To take this point to the absurdity which I am afraid the exact language of the statute suggests, my judgment is that there is serious doubt whether a Federal agency can transmit to the Justice Department, legally, information about criminal activity of individuals in that agency.

The Justice Department has gotten around that by calling it a routine use of information, which is one of the exceptions which permits dissemination between agencies. However, I seriously doubt whether that is a routine use.

When we get to the point where there is a serious doubt that can be raised as to the legitimacy of one agency transmitting to the Justice Department information about potential criminal activity within its own agency, then it seems to me we have indeed drafted legislation which causes problems.

Senator HATCH. Isn't that particularly true in financial disclosure regulations?

Mr. SILBERMAN. Yes; that is a very troubling area.

However, as you know, Senator, there are a number of other bills before the Congress which would impose even greater restrictions than now exist. I hesitate to give advice to the Congress, but if I may, I think it is desperately important that there be the most careful kind of analytical study of what has been the impact of existing legislation before we go on to pass new legislation which, although may be fashionable, may well impair law enforcement even more.

That is why, Mr. Chairman, I am so sympathetic to the thrust of this committee, which is to carefully evaluate what the impact on essential activities has been of existing legislation that is only a year or two old.

Senator HATCH. You realize that the advocates of the Freedom of Information Act and the Privacy Act are going to say that they do not require the stringent Bureau analysis and work that has been done, for instance, by the FBI.

Mr. SILBERMAN. I can't imagine how they could make that argument, because they must know——

Senator HATCH. I can't either, but I know that that is going to be made.

Mr. SILBERMAN. You see, under the Freedom of Information Act, information is going to be disclosed which bears on third parties.

Under these two statutes, the Justice Department has to make a judgment in a Freedom of Information Act case whether in disclosing information in your file, which the public has a right to know—not just you, but the public, under the Freedom of Information Act—information relating to me, should be disclosed or whether that is indeed an unwarranted invasion of my privacy.

They have to make these fine judgments which would seriously tax Supreme Court Justice under enormous pressure. I must say that as a potential third party I am pretty nervous about the information that might be in your file which relates to me.

Senator HATCH. I can imagine.

Mr. SILBERMAN. This has caused a real reverse twist. It is what is referred to as "reverse Freedom of Information Act suits" where a third party sues the Government when he finds out about this case to prevent information in—to use my example—your file being transmitted which will bear upon his privacy.

Therefore, we have got ourselves into an awfully difficult business of the most sophisticated evaluations. I am reminded, if I may, of the famous quote from the Caine Mutiny when Keefer, the officer, said, "The Navy was a master plan designed by geniuses for execution by idiots."

I certainly would not be quoted as saying the reverse of that is true in this case, but it comes close.

Senator HATCH. Well, I am sure that we will have some disagreements from some of those who have——

Mr. SILBERMAN. The point I am trying to make is that the kinds of judgments which are required in order to comply with the interrelationships between these two statutes are enormously difficult, sophisticated, and complex.

Senator HATCH. It looks like we have created another quagmire of litigation.

Mr. SILBERMAN. That is another good point.

Senator HATCH. It is occurring all over the Federal Government today because of some of the stupidity of some of the legislation that we have. I am not necessarily calling this stupid. I am just saying that——

Mr. SILBERMAN. No, the ——

Senator HATCH. You have called it dishonest—at least the $50,000 estimate. I think you have been properly critical, but I think with facts concerning the instigation and the application of these acts——

Mr. SILBERMAN. The central thrust of both the Freedom of Information Act and the Privacy Act is laudable. However, it is desperately important that the most careful analysis be done to see whether certain excesses cannot be corrected which have caused a serious diminution in the effectiveness of law enforcement.

Senator HATCH. It is interesting to me that both you and Mr. Rossides are very emphatic as former top law enforcement officials in the Government, that it is a mess. It is going to harm America and it is going to create more activity and more opportunities for the underworld to do more harm in our society.

Let me ask you one question——

Mr. SILBERMAN. If I may, let me tell you something about the underworld which you will be particularly interested in. The Bureau is enormously concerned because certain techniques have developed to, if I may use the term , to "play" the Freedom of Information Act/ Privacy Act on the part of organized crime figures.

Senator HATCH. Does this include foreign espionage agents?

Mr. SILBERMAN. Yes.

Senator HATCH. Would you cover both of them?

Mr. SILBERMAN. Yes. It is a simple technique. Let's suppose that you are the head of a criminal conspiracy and you are concerned about the possibility of informants within your conspiracy—one or more. Therefore, you direct all of them to make Freedom of Information requests for their files.

First that puts the Bureau in a difficult position because they may or may not want to disclose that there is a criminal investigation which would permit an exemption. Suppose they had not started a criminal investigation yet?

Beyond that, there is a separate problem. The informant will not have a file. However, if they respond to everyone and say that the informant does not have a file, that is a dead giveaway that that individual making the request is indeed an informant. In that case, they have to make up a phony file in order to protect his identity. That is tricky.

Senator HATCH. I can imagine.

Mr. SILBERMAN. This is a technique that can be, and I believe is being, used also in the foreign intelligence area. As a matter of fact, there is one example of an East German making a request under the Freedom of Information Act/Privacy Act for his file.

Apparently, the ruling is—and I think probably it is correct—that the law does not limit itself to American citizens. Therefore, I suppose we could get a crazy situation where everyone in the KGB will sit down and write the Bureau from Moscow making a Freedom of Information Act request for their files.

Senator HATCH. You have indicated this, but I do not think you have stated it directly. Has this been a great advantage to the underworld—these two Acts, and the intimidation of the law enforcement officials thereby?

Mr. SILBERMAN. I will answer in this way: I cannot give you a quantitative response to that except to say that I cannot help but believe that anything which improperly diminishes the effectiveness of law enforcement capabilities by striking at the possibility of generating legitimate law enforcement intelligence must aid those forces, both domestically and in foreign intelligence, whose purposes are deleterious to the United States.

Senator HATCH. I certainly appreciate your testimony. I think it has been very helpful to us.

Again, Jack Anderson in his column this morning stated—and I want to know if all three of you are in agreement with this—

that meanwhile up and down the country police are inhibited. They are afraid of stepping too hard on individual rights. They do not understand the new privacy laws. Rather than take the risk they hold back on law enforcement. There is an urgent need for reforms. Investigative guidelines, for example, are desperately needed. Suddenly lawmen have become extremely timid, and the criminals and the terrorists, unfortunately, are catching on.

Do you agree with that?

Mr. SILBERMAN. I would not put it in quite those words, which are a little stronger than I would say, but the essential thought I would agree with.

Senator HATCH. As I notice, all three of you agree basically with the essential thought as written by Mr. Anderson and Mr. Whitten. That is very interesting.

Mr. Olszewski, let us move on to your testimony and listen to what you have to say. We are very deeply appreciative that all three of you could be here today. We are looking forward to hearing what you have to say as well.

TESTIMONY OF JOHN J. OLSZEWSKI, FORMER DIRECTOR, INTELLIGENCE DIVISION, INTERNAL REVENUE SERVICE

Mr. OLSZEWSKI. Mr. Chairman, I thank you for the opportunity to appear and testify before you today.

Mr. name is John J. Olszewski. Presently I am an attorney and a business and government consultant.

From September 1972 to May 1975 I served as the National Director of the Intelligence Division, Internal Revenue Service. Prior to May 1975 I served as assistant regional commissioner. intelligence, Midwest region. For about 10 years, 1961–70 I was the chief, intelligence division, Detroit district, which encompassed the State of Michigan. From March 1949 to 1961 I served in various positions including revenue agent, special agent, group supervisor, assistant chief and adviser to the Philippine Government on the development of a tax fraud program.

During my 26 years in Federal law enforcement I worked closely with many local, State, Federal, and foreign government enforcement officers and officials.

My experience included first-line investigative work as well as management and executive responsibilities.

Since I have been a private citizen engaged in general business and legal matters I believe I can express a more detached and objective opinion regarding matters which your subcommittee is considering, particularly aspects of the Freedom of Information Act and the Privacy Act of 1974.

During the past 2 years I have continued to have contacts with many of my friends and former associates in law enforcement. Information I have received from them indicates that the state of the law is confused. Most enforcement agencies have severely restricted information-gathering activities. Some are said to have even destroyed valuable background data in their haste to comply with aspects of the Privacy Act and avoid possible problems which they perceived in aspects of the Freedom of Information Act resulting from the deluge of inquiries anticipated and brought under these two acts.

Some of the suits brought under these acts have revealed some unwarranted intrusions and abuses caused by poorly conceived intelligence-gathering programs and perhaps overzealousness on the part of some officers. In this respect the two acts have served a public good. However, the solution to a problem should not be one which neutralizes effective enforcement of laws involving the more sophisticated and

planned criminal activities. Rather, in my opinion, the solution should be more effective law enforcement through well-planned information-gathering programs under sound guidelines to protect the right of privacy of the law-abiding citizen and appropriate supervision and continuing review of these activities.

Crime syndicates are not restricted by geographical lines. They are not restricted by State boundaries. As a result, there is absolutely no limitation on communication of intelligence between themselves.

However, today law enforcement officials at the city, State, and Federal levels are reluctant to share and to talk with each other about basic critical information involving organized criminal activity.

Information gathering in matters involving spontaneous crimes such as murder, assault, and robbery does not appear to be as serious a problem as cases involving more sophisticated, planned, well-organized criminal activity, such as: Organized illegal gambling, loansharking, extortion, organized theft rings, narcotics trafficking and financing, smuggling, certain types of securities offenses, organized terrorism, et cetera.

Information about members of these criminal groups at every level is essential to effective law enforcement today, tomorrow, and even years from now. A low-level member of a loanshark syndicate in Chicago, Detroit, or New York may be tomorrow's upper echelon syndicate leader in Las Vegas or Miami.

For example, a major racket figure, said to be currently under investigation in the West, 7 years ago was a midlevel strong-arm man in the Midwest. His background, former contacts, and associates are important factors in today's investigation. Unless this background information over the years is maintained—retained—and is legally available, investigations will be unnecessarily prolonged and are likely to be unsuccessful. Thus, it is the public interest which suffers.

Senator HATCH. Mr. Olszewski, could you hold it for a second?

Mr. Olszewski, I have to leave to go to another committee, but Senator Thurmond, who is the ranking minority member on this committee, is going to take your testimony, because we think it is of such importance—at least until the Judiciary Committee formally begins.

I might mention to all of you gentlemen that we are going to keep the record open regardless. If any of you gentlemen have any addenda you would like to submit in a written statement, we will put whatever you desire into the record. We appreciate your testimony today. I have particularly enjoyed it.

I will turn the chair over to my distinguished senior colleague.

Senator THURMOND [acting chairman]. Thank you, Senator.

You may proceed.

Mr. OLSZEWSKI. Thank you, Senator.

It is essential for police departments and other law enforcement agencies to avoid excesses, bad judgment, overzealousness, and any semblance of unnecessary and unwarranted intrusions into the privacy of the law-abiding citizen.

As a matter of fact, an information-gathering system which is not specifically directed to the criminal, his associates, and his activity is doomed to failure. It will simply be unmanageable, overburdened with irrelevant data, and valuable information about true criminals is likely to be lost and become irretrievable.

If and when such problems occur the solution should be to correct the problem, not to cripple law enforcement.

Today we are faced with a dilemma.

On one hand certain vocal special interest groups loudly proclaimed the need to severely restrict or prohibit information gathering by law enforcement.

On the other hand we have the majority of the general public and business clamoring for more protection against sophisticated theft rings and infiltration of legitimate businesses by organized crime such as banks, security firms, real estate groups, legalized gambling operations, local and State government operations and services and many other activities.

Also, infiltration of legitimate activities by syndicated criminal groups has led to corruption, unfair competition, higher prices and victimization of the general public and defenseless citizen.

If a law enforcement agency does maintain intelligence or background files they become vulnerable to queries under the Freedom of Information Act, and if there is a questionable disclosure to another agency they are vulnerable under the Privacy Act.

Failure to maintain such data leads to a logical question:

How can a bank or businessman protect themselves or their investors from loss through embezzlement or fraud if they cannot go to law enforcement to determine if an applicant for a loan or a job is a thief or embezzler?

Neither can a police department protect the general public from organized auto theft or burglary rings if they cannot query other law enforcement agencies about backgrounds of suspects operating within the various jurisdictions.

Lawsuits aganst enforcement officers are proliferating, as are charges of possible criminal misconduct. This is creating a serious climate of fear. Law enforcement officers are not people of means. As a result many are taking one of three courses of action—

1. They are attempting to buy personal liability insurance, or
2. They are avoiding involvement in duties which may make them vulnerable.
3. If assigned these duties, some will simply avoid inputting data into the record.

Fortunately an organization called Americans for Effective Law Enforcement, through its executive director, Frank Carrington, is attempting to assist enforcement officers to protect themselves.

Failure to provide for the legal sharing of intelligence between police and law enforcement agencies about suspect backgrounds, methods of operations, suspect associates and surveillance data can only result in a drop in effectiveness of law enforcement, continued erosion of the safety and security of the general public. Finally, a demand by law enforcement administrators for more manpower to compensate for their drop in effectiveness.

Without a well planned, effective and continuing intelligence gathering program for syndicated criminal investigations, the problems for the investigators are gigantic.

Without the ability to freely query other law enforcement agencies and to legally share basic background information about persons engaged in syndicated or organized criminal activities, law enforcement is literally "hog tied."

For the most part, law enforcement officers are legally authorized to perform their duties only within their respective jurisdictions. On the other hand, crime syndicates are not restricted by the same municipal or State boundaries.

While I believe information gathering or intelligence activities are absolutely necessary and must be continued in order to protect the general public from sophisticated criminal exploitation, they must be closely supervised by top enforcement officials and responsible civil administrators.

My personal involvement in law enforcement concentrated on crimes of finance, primarily involving Federal tax evasion by any person or entity including syndicated criminals.

These responsibilities included the identification of the criminal as well as the investigation of them.

In those cases which involved possible tax fraud by persons engaged in legitimate business activities the need for information or intelligence gathering activities is minimal or almost nonexistent. The Internal Revenue Service and State tax departments already possess a wealth of information about the ordinary taxpayer. The tax files are full of a wide range of historical personal and financial information reported on hundreds of tax forms and in tax audit or review reports. Where special circumstances arise which involve possible criminal tax activities by persons or companies the Internal Revenue Service has developed guidelines for information gathering on the basis of a special project. These guidelines appear to be reasonable if not too liberal. However, in the area of syndicated or organized crime activities the Internal Revenue Service procedures appear to be overly restrictive.

It is my understanding that even in the area of racketeering and organized crime special authorization must be obtained to gather intelligence. Further, the authority and constraints for retaining such data are such that very little if any information gathering occurs.

Enforcement of laws against the well-organized continuing illegal activities of crime syndicates requires general intelligence gathering on a continuous and long term basis. It cannot be turned on and off like a faucet. Any significant break in the continuity and consistency in quality of the flow of information can seriously jeopardize and doom to failure any planned law enforcement program against the organized or syndicated entrepreneurs.

A question which has been raised in the past is why should the Internal Revenue Service gather information against a narcotics financier or trafficker or any gambler, large or small. After all, the mission of the Internal Revenue Service is to collect taxes, "not to cure social ills." Based upon my 26 years of experience in the Internal Revenue, I can recall only one instance where a gambler reported his income from illegal sources. I do not know of any instance where a narcotics trafficker, financier, loanshark operator, swindler, extortionist, operators of organized theft rings, professional arsonist, et cetera has reported his income from these sources. It is an accepted fact that these untaxed dollars run into the billions of dollars.

In my opinion sound criminal enforcement programs must be continued against these profitable but illegal activities by the Internal Revenue Service as well as the general police agencies. If in the process, the criminal tax enforcement effort results in a partial cure of a social

ill along with the recovery of tax evaded revenue, it is the law abiding public who become the beneficiaries.

Until 1975 Internal Revenue Service, Intelligence maintained an information gathering and retrieval system.

It was relatively new. It was growing in effectiveness, but it had some problems—a few, but highly publicized problems. These developments caused an overreaction by management, along with severe restrictions and limitations on intelligence gathering.

As a result I am advised that in many areas information gathering to identify tax evaders who are engaged in illegal activities may be at a standstill.

As stated previously, information gathering activities cannot be turned on and off like a faucet. It requires: The right personnel; Training, Skill, Judgment, Continuity of files and personnel, Retention of historical files, Careful screening, Continuous analysis, Strict Security, Close control and review.

Abuse.—What should happen if an abuse occurs? Do what a businessman would do. First, identify the cause; and second, take corrective action.

If a company's sales decline they find out why. If it is the sales manager, they find a new one. They don't discontinue sales.

The record of law enforcement including the Internal Revenue Service, Intelligence Division, is replete with cases involving major syndicated racketeering which were successfully prosecuted only because of the availability of hard intelligence obtained over many years.

Failure to provide for effective but well controlled information gathering and retrieval systems, will provide an impenetrable shield for the sophisticated syndicated criminal.

I can think of no better or simpler example than the apparent failure of the wagering tax law passed by Congress in 1974. The Treasury-Internal Revenue Service enforcement program can only be characterized as a failure. In my opinion it is a failure because top Internal Revenue Service officials do not appear to know how to plan and/or manage the program. Of equal significance, they are not allowing the necessary general intelligence gathering about the various criminal groups of gamblers in order to identify and select the best targets for tax enforcement purposes.

Illegal gambling syndicates do not file tax returns which reflect gross receipts, expenses, and net income. They do not, as do legitimate businessmen and corporations, keep records identifying their customers and employees. In my opinion the Government has an absolute obligation to the taxpaying public to enforce the laws, including taxes, against the criminals as vigorously as they do against the ordinary citizen taxpayer. Failure to do so, in my opinion, is misfeasance if not malfeasance. I do not believe it can be done without a sound, well planned, and effective information or intelligence gathering program.

The example I cited related only to illegal gambling activities but it can be translated in terms of any syndicated, organized illegal activity. There is no doubt that abuses can develop and hazards to law enforcement officers increase in these matters. Nevertheless, effective law enforcement requires the risk. Furthermore our citizens are entitled to the protection and security which the results can produce.

Failure to plan, organize, and execute such programs merely shifts greater burdens upon the ordinary citizen and honest taxpayer. Whether they are willing or able to carry this already overwhelming burden is for the Congress and the executive branch of our Government to decide.

Senator THURMOND. Mr. Olszewski, I want to thank you for a very fine statement. I have a number of questions I would like to ask you, but unfortunately, I have to go to another meeting now. If it is agreeable with you, I will submit the questions in writing, and you can answer them and we will incorporate the questions and answers into the record.

Mr. OLSZEWSKI. That is perfectly agreeable.

Senator THURMOND. Again I want to thank you. The hearing will stand adjourned.

[Whereupon, the hearing was adjourned at 12:40 p.m., subject to the call of the Chair.]

[The questions submitted to Mr. Olszewski and his answers to them follow:]

Question. Mr. Olszewski, I take it for granted that after 26 years in the field of law enforcement, you have many friends in different agencies with whom you meet from time to time and that, when you do get together, there is a natural tendency to swap information about problems of law enforcement—so that, even though you have been out of the business for several years, you have a pretty good current knowledge of what is going on today?

Answer. Yes, I have continued many of my associations and contacts with law enforcement officers at the local and state levels as well as with representatives of various federal agencies.

Question. And the fact that you are no longer a government employee makes it possible for you to testify far more freely than if you were still an official of the Internal Revenue Service?

Answer. I believe so. A person who is an official or head of a law enforcement agency has an obligation to publicly follow the policy which may be set by his executive superior or the political official who may have the responsibility for overall policy. Today, I am no longer bound by these considerations. As a private citizen I not only have the right to speak out but I believe I have an obligation to share my long experience and expertise for what I perceive to be the general public good.

Question. You said that some law enforcement agencies and police departments have dismantled or even destroyed their information and background files. Is this information you have received from your friends in the field of law enforcement?

From your knowledge, is the dismantlement and destruction of information and background files a widespread phenomenon?

Answer. I don't recall specifically who told me about the dismantling or disposal of local and state information and background files but I understand this has occurred. However, this also has been stated in testimony before your own Subcommittee by Frank J. McNamara. I also know that the Internal Revenue Service, Intelligence Divisions—Information Gathering and Retrieval System was suspended in 1973 and to my knowledge has not been reinstituted as a uniform positive program. Others, such as the Illinois Bureau of Investigations, are said to have destroyed their crime computer indices. Files of information are not of much use if one cannot effectively retrieve the information.

I don't know how widespread the actual dismantling process has spread, however, the extensive withdrawal from this activity and severe restrictions in most major law enforcement jurisdictions is almost as serious a threat to effective law enforcement as is the total elimination of a program.

Where an information gathering program has been discontinued, at least the officers know where they stand. Where the program ostensibly is continuing but is under the threat of law suits under the Privacy Act or disciplinary action for a miscue, it is doomed to failure and costs the public far more than the tax dollars invested in the program. The hidden cost is inefficiency, demoralization

of enforcement agencies and an increase in the type of sophisticated criminal activity that corrupts the entire law enforcement process.

Question. You said at one point that law enforcement officers today are fearful of discussing or disclosing information about activities of criminals with other law enforcement officers. Did you mean by this that officers of one agency are sometimes fearful of discussing such intelligence with fellow-officers in the same agency—or did you mean there is a reluctance to discuss such intelligence with members of other agencies?

Answer. I'm sorry I failed to clearly state the point. What I meant was that law enforcement officers are fearful of disclosing information regarding suspect criminals and their activities to officers of law enforcement agencies other than their own. It is Sec. 552A 3(i) which sets forth possible criminal penalties for violation of this provision of the Privacy Act.

If criminal charges are lodged against a law enforcement officer under this Act I believe that officer is on his own. He must personally bear the cost of his defense and probably sustain serious financial loss. Law enforcement officers may be some of the most sincere, dedicated and committed citizens but they do not number among our most affluent members of our society. They simply cannot afford the mental or financial costs.

Question. How serious would you say the cutback on the sharing of intelligence has been?

Answer. In my opinion the cutback in the sharing of Intelligence between agencies cannot be measured with any degree of accuracy. No one will ever know how many cases will never be detected, investigated or prosecuted. The ones who most easily will be able to measure the effects of the restrictions are the syndicated criminals who can count the increase in their gross receipts, the size of their cash reserves, investments or hidden bank accounts. Perhaps the individual victims of the sophisticated criminals may also be able to calculate their individual losses—but I doubt that the general public, political scientists or students of criminology, will ever be able to measure the true cost of this most unfortunate development.

Question. You spoke about certain pressure groups pushing for further restrictions on the gathering of intelligence by Law Enforcement. One of the arguments advanced by these pressure groups is that such restrictions are necessary to protect the democratic right of dissent. And yet, looking back over the past several decades, I truthfully cannot think of a single dissenter who stayed his criticism or muted his voice because of the non-existence of the Freedom of Information Act or the Privacy Act. And, if I understand the thrust of your presentation, the primary beneficiaries of our privacy legislation, as it is now written, have not been our dissenters but our mobsters and drug traffickers and other criminal elements?

Answer. This is exactly what I mean—the true beneficiaries in the decline of effective law enforcement are the organized, syndicated criminals. I must hasten to add that a relatively few, and I must emphasize a few, well intentioned dissenters may have been improperly abused by some law enforcement information gathering activities. However, the solution to these problems, as I said in my statement is not to discontinue all information gathering—but to correct the misuse or abuse of the process where it may be found. If an auto manufacturer finds a fault in a number of vehicles caused by their manufacturing process, they don't discontinue manufacturing cars—they correct the error. The public is entitled to the same types of protection. Correct the mistake but don't disarm or emasculate law enforcement.

Question. You said that the information gathering and retrieval system which IRS maintained until approximately 1975 has now been dismantled, or partially dismantled—and that, as a result of this, in many areas the investigation of tax evaders engaged in illegal activities may be at a standstill. Who was responsible for these restrictions—and what rationale was advanced in their defense?

Answer. I don't wish to get into personalities. This, in my opinion, serves no purpose. However, top management officials in the I.R.S. were responsible for the severe restrictions imposed upon the Intelligence Division. While some modifications in the program may have been warranted, it appeared to me and to many of my associates that the approach taken to the process was a severe overreaction. An axe was used when a more logical instrument would have been a scalpel.

I understand that one of the reasons stated for resricting companion enforcement programs was that the I.R.S. tax sanctions should not be used to solve

"social ills." While this proposition may have merit to some, if a social ill also produced huge—but untaxed profits and income, in my opinion, the public could receive a double benefit by the detection, apprehension and prosecution for exstantial tax evaded revenue. As I stated previously, I do not know of a major social evil; and secondly, the I.R.S. would have the opportunity to retrieve substantial tax evaded revenue. As I stated previous ly, I do not know of a major narcotics traffickers or financier who reported his income from this source.

Another reason I recall was that the agents could work more general program cases. A general program case is one which involves allegations against the ordinary taxpayer, businessman or corporation as opposed to a racketeer type taxpayer. It is the general program tax case which is generally easier and simpler to work. These taxpayers generally file returns and their sources of income are readily traceable—unlike a racketeer or narcotics financier who deliberately conceals his activities.

Question. One of the law enforcement witnesses who testified last year confirmed to the subcommittee that there was several years ago a centralized computerized intelligence operation dealing with organized crime, which serviced state and local police—and that this operation had to be abandoned in 1974 when LEAA withdrew its financial support. He said that he has heard reliably that LEAA withdrew this funding because they were apprehensive—apparently about possible difficulties under the privacy act. Do you know anything about this matter?

Answer. I'm sorry, but I do not know anything about the rationale applied by LEAA in the evaluation of its program priorities.

Question. It is my undersanding that under the restrictions imposed on I.R.S. Intelligence, I.R.S. agents today can put into their files only information bearing directly on tax matters. Doesn't it frequently happen that, in gathering information dealing with various criminal activities, or information pointing to the intention to commit a criminal act? Was I.R.S. in the old days able to pass such informationon to other law enforcement agencies and what is the situation today?

Answer. There is no question that trained and skilled agents assigned to gather intelligence at times obtain information relating to various criminal activities, some of which may be directly tax related and other information which may only be remotely tax related. For example, an agent may learn from an informant that a business place is to be "torched" that night. On the surface that may not appear to be tax related. However, the arson may be planned by a professional arsonist who receives substantial pay for the job. Also, property and possibly peoples lives may be in immediate jeopardy. There has been a serious question whether I.R.S. agents could transmit this information to the appropriate local authorities.

In fact, I understand that a year or so ago an I.R.S. special agent testified before the "Vanik Committee" that information he possessed regarding a possible murderer was not transmitted to a local prosecutor because of I.R.S. restrictions on sharing information its agents gather. I'm sorry I cannot be more specific but I believe that the details are recorded in the Congressional Record.

In the past—prior to 1975, the practice within the I.R.S. was different. I was advised by a Department of Justice attorney that failure to communicate such information to the appropriate law enforcement agency could be construed as obstruction of justice or even a misprison of a felony. As a result the information was probably transmitted.

Question. Based upon your long experience can organized crime investigation be successfully investigated without a planned intelligence gathering program?

Answer. Absolutely not. Organized or syndicated or accidentally. It is organized, well planned, concealed and carefully executed. Without an effective information gathering and retrieval program the possibility of detecting and combatting these activities is at best remote if not impossible. Two of the most effective federal law enforcement agents also had very effective net works of informants. One of the agents was probably the most effective F.B.I. agent in

Detroit. This agent is now on the shelf in Oklahoma. The other was an Intelligence Special Agent in Chicago. Their work, while at times it was very hazardous, in my opinion and within my personal knowledge, was outstanding and produced outstanding results.

One might ask—why should the I.R.S. be interested in this type of activity? The answer is simple. It is because the I.R.S. has a responsibility to identify significant areas of tax noncompliance and to correct this deficiency, it is necessary to gather intelligence. I can think of few profit producing activities where tax evasion is more profitable or more rampant than organized or syndicated criminal activity. Illegal gamblers, narcotics financiers, extortionists, loanshark artists, organized prostitution rings, illegal gamblers are all notorious tax exaders. To ignore this group of flagrant tax evaders, in my opinion, creates another—unofficial, special interest group who are exempt from taxes.

The attitude seems to be—why work the tough cases when we have so many ordinary taxpayers whose tax returns can be questioned?

Failure to gather, maintain and systematically evaluate information makes a sound enforcement program against organized crime impossible.

Question. Have the restrictions and legal problems which appear to have been created by the Freedom of Information Act or Right to Privacy Act completely stymied law enforcement?

Answer. I really don't know—but I suspect that there are a number of dedicated public servants in law enforcement who are doing their utmost to comply with the letter of the law and to find some way to do the job under severe restrictions. This is not only unfair but it ignores the rights of the majority of citizens to be protected against the lawless. Unfortunately there are few advocates for the right of the general public—the majority. Again, in my opinion, if some of the major obstacles to effective law enforcement are not removed the cost to the taxpayer and society will be tremendous if not devastating.

Question. Isn't it possible that you may be exaggerating the results arising from the problem?

Answer. I suppose some may reach this conclusion and raise that accusation. I can assure you I am not knowingly misrepresenting or overstating anything. It is impossible for me, a private citizen, to assess or measure the results of the corruption, tax evasion, improper contracts in private and public industry. But this I know from 26 years of public service, someone pays and pays dearly for the illegal activity and corruption produced by all forms of syndicated crime. Unfortunately I believe that someone is you—me—and every other law abing citizen who does his best to comply with the law.

Question. If information gathering systems were to be reimplemented wouldn't this result in an increased cost to law enforcement and the public?

Answer. It could, but it should not. In fact an allocation of existing resources to a well planned information gathering system should result in more effective law enforcement at a reduced cost.

Question. When you talk about information gathering are you talking about wire tapping?

Answer. No. Absolutely not. Based upon my discussions with officers who have participated in court authorized wiretaps, they are not necessarily the most efficient or effecive use of manpower. Rather, every member of a law enforcement organization is a potential source of intelligence. The use of existing resources is probably the best solution. While wiretapping may be necessary to the successful investigation of specific crimes and for national security, I do not believe it should be a tool for general information gathering.

I hope I have not created the impression that an effetive information gathering system is easy to achieve. It isn't But neither is it costly or necessarily violative of right to privacy. Guidelines, controls and a system of procedural reviews are all a necesary part of the picture. I believe that reasonable and acceptable guidelines can be devised and followed which can protect the interests of the general public and the individual.

THE EROSION OF LAW ENFORCEMENT INTELLIGENCE—CAPABILITIES—PUBLIC SECURITY

WEDNESDAY, JULY 27, 1977

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 9:31 a.m., in room 2228, Dirksen Senate Office Building, Senator Orrin G. Hatch (acting chairman of the subcommittee) presiding.

Staff present: Richard L. Schultz, counsel; David Martin, analyst; Alfonso L. Tarabochia, investigator; and Robert J. Short, investigator.

Senator HATCH. The Senate Subcommittee on Criminal Laws and Procedures will now come to order.

The Senate Subcommittee on Criminal Laws and Procedures is meeting this morning to take further testimony on the erosion of law enforcement intelligence gathering capabilities and its effect on the public security.

Testimony taken to date has established that there has been a serious falling off in the intelligence function. Many major police departments have completely destroyed or impounded their domestic intelligence files and wiped out or drastically reduced their intelligence units.

A serious chill has been placed on the exchange of intelligence between Federal, State, and local law enforcement agencies primarily by the Freedom of Information Act and the Privacy Act. Law enforcement has been further handicapped by restrictions on the use of traditional intelligence gathering techniques.

Informers, for example, used to be a major source of intelligence. However, because of the impact of the Freedom of Information Act and because of the fact that the names of many informers have already been made public, law enforcement agencies are finding it extremely difficult today to locate public spirited citizens who are willing to take the risk of serving as informants.

The basic philosophical question that confronts us is how to strike a balance between the constitutional right to privacy and the rights of our citizens to be protected by the State against criminal and violence prone elements.

The evidence presented to date strongly suggests that in our excessive zeal for privacy we have so impaired the capabilities of our law enforcement agencies that they are no longer able to effectively protect the public.

One of the problems we shall be examining today is whether their ability to protect the President has also been jeopardized.

Our witnesses today are Mr. Stuart Knight, Director of the Secret Service, and Mr. Glen King, executive director of the International Association of Chiefs of Police.

Gentlemen, will you rise to be sworn?

Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. KNIGHT. I do.

Mr. KING. I do.

Senator HATCH. We will begin this morning with Mr. Stuart Knight, who is the Director of the Secret Service.

We are delighted to have you here. We feel particularly honored that you would be with us to help us become more enlightened on this problem. The more we get into it, the more we are finding that it is a crucially serious problem for all Americans.

The funny thing is that the people who have the obligations and the duties of protecting us in this society all seem to be unanimous that we are faced with some very serious problems in this area—unless something is done to alleviate the excessive zeal for privacy that we seem to have in this area.

Mr. Knight, we are grateful to have you and Mr. King with us today. I have heard Mr. King before. I want to welcome you, also.

We will begin with you, Mr. Knight, and then we will move to you, Mr. King.

STATEMENT OF H. STUART KNIGHT, DIRECTOR, U.S. SECRET SERVICE

Mr. KNIGHT. Thank you, Mr. Chairman.

I have a brief statement. With your permission, I would like to read it for the record.

As you know, the U.S. Secret Service protects the President and others, including the Vice President and visiting heads of state and government. The Secret Service also has the responsibility for the protection of the major candidates for the offices of President and Vice President of the United States.

The Secret Service obtains information concerning individuals and groups who may be a potential threat to the safety of the President from the law enforcement community. The President's Commission on the Assassination of Former President Kennedy, more popularly known as the Warren Commission, suggested that the Secret Service increase its efforts to identify persons and groups who could compromise the safety of the President. Also, it recommended that other agencies furnish intelligence data to the Secret Service to enhance Presidential security.

For a number of years, the Secret Service received substantial quantities of information from other agencies having intelligence gathering capabilities. In recent months, however, the amount of information received by the Secret Service has diminished considerably. While it is difficult to evaluate the quality of the information, it does appear that the material we are currently receiving is less specific and not as complete as it was formerly.

The decline in the quantity and quality of intelligence data is a matter of concern to us. We are a recipient of intelligence information

and rely on other agencies to supply the necessary intelligence to perform our protective mission.

While we have observed that the quantity and quality of such intelligence has declined, any reason which we may assign for this phenomenon would be speculative. The intelligence agencies themselves would be the committee's best witnesses in that regard. I only note that the Secret Service has experienced a sharp decline in the amount of intelligence data being received compared to an earlier period.

We would prefer, Mr. Chairman, to answer questions relating to specifics on the type of information being received in executive session. I would be most happy to answer any other questions you or the members of the staff may have.

Senator HATCH. Thank you, sir.

You point out in your statement that the President's Commission on the Assassination of Former President Kennedy, more popularly known as the Warren Commission, suggested that "the Secret Service increase its efforts to identify persons and groups who could compromise the safety of the President and recommended that other agencies furnish intelligence data to the Secret Service to enhance Presidential security."

Then you say in your statement that not only are you getting less information but that the quality of this information has deteriorated. What this adds up to is that the recent trend in the matter of intelligence has run completely counter to the recommendation of the Warren Commission. Would you agree with that?

Mr. KNIGHT. That is correct, Mr. Chairman.

Senator HATCH. Do you have any other comments to make in that regard?

Mr. KNIGHT. I think we have to differentiate between the receiving of information and the accumulation of that information. There is no question in my mind—none whatsoever—that the law enforcement community, when it has the information, gives us that information they feel is necessary for us to carry out our responsibilities.

I am not for a minute implying or inferring that any law enforcement agency is not being cooperative. What disturbs me is the problem of them not being able to give us information simply because they do not have that information any more. I want to draw that distinction between——

Senator HATCH. You feel that they used to have that information?

Mr. KNIGHT. They did, formerly. We received the greatest of cooperation because everyone recognizes our awesome responsibility. Therefore, it is not a matter of their reluctance to give us information that they have. We just feel that they do not have the information to give us that they did formerly.

Senator HATCH. To what reasons do you attribute that?

Mr. KNIGHT. Well, as I say, that is speculative and hearsay on my part. However, I am sure—having read previous hearings from this subcommittee—that there is a reluctance on their part because of the Freedom of Information Act, the Privacy Act, and guidelines that are established for them by whatever controlling bodies they function under, whether it be a legislative guideline or a mayoral guideline or whatever.

Senator HATCH. Have you found that those guidelines generally are more restrictive or less apt to provide for an aggressive intelligence-gathering service than heretofore?

Mr. KNIGHT. I think in general terms that is true, Mr. Chairman, realizing that guidelines by their very definition are subject to interpretation. I think that in an effort to be most circumspect many agencies put the broadest interpretation on the guidelines so that they will be certain that they are living within them.

Senator HATCH. So many of them are intimidated by the guidelines today, to the point where they really are not doing what they used to do to provide the information to your service?

Mr. KNIGHT. I think that is a fair statement, Mr. Chairman.

Senator HATCH. You say that you have been receiving far less information. Would you be prepared to venture an estimate of the magnitude of the falloff in information? Do you get 20 percent of the information you used to get—or 40 percent, or 50 percent? Approximately how much?

Mr. KNIGHT. After discussion with people in my organization who handle this, their best estimate is that we are now receiving only 40 to 50 percent of the information we received previously.

Senator HATCH. Would the falloff be even higher, possibly?

Mr. KNIGHT. My guess is that it would be closer to 40 percent than 50 percent.

Senator HATCH. That is quite a falloff, though.

Mr. KNIGHT, Yes, indeed.

Senator HATCH. That could seriously jeopardize the work that you have to do?

Mr. KNIGHT. That is a source of concern to me.

Senator HATCH. In this particular day and age, maybe you should describe for the record some of the things that your particular service does.

Mr. KNIGHT. I am not sure I understand what you mean.

Senator HATCH. Could you describe for the record some of the things that your service is responsible for?

Mr. KNIGHT. We are responsible for 18 permanent protectees. They include the President, members of his family, the Vice President, and so forth. In addition, by statute, we are responsible for the safety of visiting heads of state and heads of government.

Last year, for example, there were 89 visits to this country by heads of state and heads of gevernment. I am sure you are familiar, also, with our criminal duties regarding the counterfeiting and forgery of Government obligations. This is a large portion of our responsibility.

Senator HATCH. Right.

What you seem to be saying to me is that we could have some international incidents if some of these people who come to this country are not protected as adequately in the future as they have been in the past because of the falloff in intelligence-gathering information.

Mr. KNIGHT. Yes, sir.

Senator HATCH. If that occurs, that could be an embarrassment to everybody in America, not to mention the fact that it would be tragic if it did occur.

Mr. KNIGHT. Right.

Senator HATCH. Last but not least, you seem to be indicating that maybe even the President himself may be in much greater jeopardy today because of the up to 40-percent falloff in intelligence information that we have heretofore had in the past.

Mr. KNIGHT. I think that is a fair statement, Mr. Chairman. As I indicated to you, it is a source of concern to me. My people are dedicated to the preservation of the safety of the President and the other people we protect. We have spent many hours discussing current problems that we did not have perhaps 2 years ago, vis-a-vis the receipt of intelligence information.

Senator HATCH. I have been calling this up to a 40-percent falloff. Actually, it is up to about a 60-percent falloff.

Mr. KNIGHT. Yes; we are receiving about 40 to 50 percent of what we formerly received.

Senator HATCH. I misconstrued that. Do you mean it is actually only 40 percent of what you used to get to protect these very important 18 lives, plus the visiting Heads of State?

Mr. KNIGHT. Correct.

Senator HATCH. As I recall your testimony, you say that there has also been a serious falloff in the quality of your intelligence—for much of which you have to rely upon others to obtain.

By that I presume you mean the completeness and precision of your intelligence. I know it is harder to make a percentage estimate on this point, but isn't it possible that the erosion in quality may have reduced the overall effectiveness of your intelligence input by, let us say, another 25 percent, or even more?

Mr. KNIGHT. I am sure you recognize that an assessment or an evaluation of the quality is purely a subjective judgment. We find that the reports are not as complete. They are not as thorough. They are not as full of detail as they were formerly.

To assign a percentage to that would be extremely difficult. However, I would not argue with your assessment.

Senator HATCH. So you do not blame that on competency. You still have as much competency in the intelligence-gathering sector as you have had in the past. You are not blaming it on reduced personnel, are you? Or a lesser budget?

Mr. KNIGHT. No, sir.

Senator HATCH. Basically, you are coming down to just two things: the Freedom of Information Act and the Privacy Act, which have caused a super-conservative approach to intelligence gathering operations.

Mr. KNIGHT. I think the Freedom of Information Act and the Privacy Act are contributing factors. I think also we have to look at the atmosphere in which these people now have to operate in terms of guidelines that may be imposed upon them and the attitudes of the various organizations to which they report.

Senator HATCH. Where do these attitudes and guidelines come from? Do they still come back to these two acts and the overinterpretation of them? Are they coming from a change or shift in Government emphasis?

Mr. KNIGHT. I think there is a change and shift in Government emphasis.

Senator HATCH. What do you think is bringing that about?

Mr. KNIGHT. A reaction—an overreaction in my opinion, but a reaction nevertheless—to some of the alleged misuses of intelligence information in the past.

Senator HATCH. You seem to be saying that there is an overreaction by the public, which brings influence to bear upon the Congress, and which in turn produces acts like the Freedom of Information Act and the Privacy Act, which overreact to prevent good intelligence-gathering procedures.

Mr. KNIGHT. Yes, sir.

Perhaps I could cite a specific example with which I am personally familiar. Prior to September of 1975, I and my organization were under a great deal of inquiry as to why we maintained files on people we deemed to be a potential source of danger to the President.

A great deal of rhetoric was spent on that subject matter. Then, in September of 1975, as you will recall, in California we had Sarah Jane Moore and Squeaky Fromme. We had neither of those ladies' names in our files. The question after September was: Why did you not have those names in your files? Why were you not aware of these people? That is a 180-degree turnaround from the period preceding September.

In many respects we know that this is almost a no-win situation, because you are first accused of maintaining too many files on too many different people. Then, when an incident occurs and you do not have that information in your file, you are accused of being inept because you did not have them in your files.

Senator HATCH. I would say so.

Yet, you have indicated that we have a 60-percent falloff in the quantity of information, and a fairly high—25 percent or more—falloff in the quality of information.

Mr. KNIGHT. Yes, sir.

Senator HATCH. If I put that together just in my own mind it would seem to me that you come up with something in the neighborhood of a 75-percent falling off in total intelligence information which the Secret Service has had heretofore to protect the President and others, under its obligation.

Mr. KNIGHT. Yes, sir. I think that the rationale for us accumulating information is that the responsibility of my organization is to prevent something from happening; not to solve something after it has occurred.

Senator HATCH. So yours is a preventative agency?

Mr. KNIGHT. Exactly. It strikes me as commonsense and logic that if we know what is going to happen and who is going to do what and when and where, we can then take steps to nullify and negate those operations. Without that information we cannot take steps to nullify them. That is where I have a concern.

Senator HATCH. Would it be a reasonable assumption that the law enforcement community generally does its level best to cooperate with the Secret Service, because the community itself realizes the tremendous obligation that you have? Because of those obligations, it would certainly produce a high degree of motivation on their part, it would seem to me, to protect the President and foreign dignitaries and these other top-level people that you have an obligation to protect.

Mr. KNIGHT. I do not think there is any question that everyone—and perhaps Mr. King can speak to that in greater detail later—will cooperate with us to the utmost. The point is, they cannot give us information that they do not have.

Senator HATCH. They do not have the information any more because of these overreactions caused by public sentiment?

Mr. KNIGHT. Precisely.

Senator HATCH. And caused by the Congress and caused by these acts?

Mr. KNIGHT. Precisely.

Senator HATCH. If the law enforcement community, which has to cooperate with you, and which does because it is highly motivated to protect the President and the 17 other people you watch and the foreign dignitaries who come to this country—if they are as highly motivated as you and I certainly believe, then I think that it would be a reasonable assumption that if the Secret Service suffers from an erosion of law enforcement intelligence, that other law enforcement agencies, including Federal, State, and local law enforcement agencies, have probably suffered even more erosion because of the not-so-high motivations that they may have in their own areas as contrasted and compared to the motivation to help you.

Mr. KNIGHT. Yes, sir. If I may, I would like to take 1 minute to explain to you my feelings about guidelines for the collection of intelligence.

Senator HATCH. I would be happy to hear them.

Mr. KNIGHT. I feel very deeply that we in the law enforcement community have the right to expect that the people who are in the policy-making positions have the right to establish guidelines for us as to how we should function.

More than that, I think they have an obligation to establish guidelines under which we should operate. I also think that before those guidelines are drawn up and promulgated we in the law enforcement community have an obligation to them to point out our problems and what their actions will do so that they can make an informed decision as to what the guidelines will be.

There is no question in my mind that I and my organization are going to live and follow both in the spirit and in the letter of any guidelines that are set down. The American people are going to live with the results. So I think that it is incumbent on us to make certain that the people who make these decisions recognize what they are about.

Senator HATCH. You seem to be indicating that we need some sort of a balance that we presently do not have in order to be able to effectuate the important security work that you have to do.

Mr. KNIGHT. Right.

Senator HATCH. When the President of the United States has made arrangements, say, to visit a certain city, how does the Secret Service go about making arrangements to accompany and protect him?

Mr. KNIGHT. We send people out in advance, depending upon such factors as how long he will be there and so forth. Since we relied so heavily in the past on the intelligence information, we felt that we could adequately perform our function. Now, with the paucity of information we are receiving, we are only left with one alternative, and it is a poor alternative, at that. We really do not know what might occur. We feel that we must increase the number of people traveling with the protectee. That is a very, very poor second, or alternative, or option that we exercise.

Senator HATCH. It is in these huge crowded situations that the President travels in.

Mr. KNIGHT. Yes, sir.

Senator HATCH. What happens if the President wants to visit, say, a large city like Chicago, where the intelligence files have been locked up or destroyed, or otherwise done away with, for more than 2 years? How can the Chicago police cooperate with you without their files?

Mr. KNIGHT. They can only then rely on what we would term "institutional memory"—what their personal recollections are. This is not the greatest source of information.

Senator HATCH. I would hate to have the President protected based upon the memory, in a city like Chicago, of the men within the institution. Memory is not the type of thing that brings all of the information back.

Mr. KNIGHT. You are absolutely right.

Senator HATCH. Unless it is a computer, and the information has been plugged into it. Then again, because of the interest in protecting informants and so forth, they are not putting a lot of this information in writing any more?

Mr. KNIGHT. Correct.

Senator HATCH. When the Secret Service does not have adequate intelligence about a city—let's say the city of Chicago, or any other city for that matter—that the President is about to visit, how do you come up with the information to correct the deficiency? Or do you?

Mr. KNIGHT. We don't, really.

Senator HATCH. In other words, you have to hope and pray when the President goes to a major city like Chicago that, by adding more Secret Service people, their eyes are somehow going to pick up the people who might have a potential to harm the President.

Mr. KNIGHT. That is correct. However, I do not want to leave you or the public record with the impression that the President is vulnerable.

Senator HATCH. Well, you do everything you possibly can, I am sure of that.

Mr. KNIGHT. Absolutely.

Senator HATCH. I am sure of that, and I commend you for it. I think, from what I have seen, that it is just tremendous what you do. You are, however, as you indicated, probably 75 percent strapped today as compared with 3 or 4 years ago.

Mr. KNIGHT. Correct.

Senator HATCH. That is an incredible problem, it seems to me—especially with the violence that has increased in this country. I just look at New York during this last blackout period. If that had continued for a few more days it would have been one of the most colossal messes in the history of the world.

If you have to assign large numbers of additional agents to compensate for inadequate intelligence, doesn't this place a serious strain on the capabilities of the Secret Service?

Mr. KNIGHT. Absolutely. We divert those agents from other functions and the performance of other duties.

Senator HATCH. Let me ask that in another way. Are there some cities within the United States that you might just recommend to the President that he not visit because of the inadequacy of avail-

able intelligence about violence-prone individuals and organizations?

Mr. KNIGHT. That is a possibility, Mr. Chairman.

Senator HATCH. Have you ever recommended that the President not visit certain cities?

Mr. KNIGHT. Yes; we have, but I prefer not to name the cities. I do not think it would be appropriate.

Senator HATCH. You will notice I asked the question in that way. We do not want this to be a political interrogation, because what we are trying to do is to point out the pros and the cons in this area that might ultimately wind up helping the intelligence-gathering people to protect our country, to protect our President, and to protect the American citizens better.

Right now, what we are hearing is that we do not have nearly the protections today as a result of these two acts and as a result of the interpretations that are forced upon the intelligence-gathering sectors because of the two acts and the attitude of the people in this country. Somehow or other, we have got to awaken the people in this country to the fact that they are being bereft of some of the benefits that they have had in the past, and that they might not want to lose, just because of an overreaction caused by some very bad things that have occurred in our society.

Well, there has been a lot of talk about adequate guidelines to govern intelligence gathering. Would you be prepared to tell this subcommittee what your personal perceptions are in this matter with regard to guidelines?

Mr. KNIGHT. Well, as you indicated in your opening remarks there is a delicate balance between the rights of the citizens, and the responsibility of law enforcement which I am keenly aware of and I treasure individual rights as you do. On the other hand, we have, in my opinion, an awesome responsibility.

It is very difficult for me—and we have been searching for this for decades—to establish a checklist, if that is the word, of the types of intelligence information that we feel we need. Intelligence is an incremental thing. What may be insignificant today may become extremely significant tomorrow by the addition of another piece of information.

To summarize, in response to your question, it is not an easy question to answer. I think what we have to do—and I have said this before publicly—is recognize some of the abuses that have occurred in the past. People need to trust those in law enforcement, having learned from the past. We are only trying to do our job and carry out our responsibilities. My job, as mandated by Congress, is to do the best we can in an imperfect area.

Senator HATCH. Well, if you believe in guidelines, I guess you would also have to believe that the law enforcement agencies concerned should be consulted with regard to guidelines and should have some input with regard to the formulation of these guidelines.

Mr. KNIGHT. Yes, sir.

Senator HATCH. Do you feel as though you are not being consulted as a result of some of the stringent interpretations of the Freedom of Information and Privacy Acts in our country today?

Mr. KNIGHT. Exactly. And I see this forum as a vehicle through which this can be done.

Senator HATCH. The subcommittee has heard that in many parts of the country the current criteria or guidelines, except in the cases of a handful of organizations like the Weather Underground, prohibit any intelligence entry about an individual on the basis of mere membership in an organization. There has to be an indictment or a conviction before they can make an entry. This applies even to violence-prone organizations like the Palestine Liberation Organization or a number of other organizations that you could mention or I could mention here today.

In your opinion, is this a valid guideline in seeking to protect the President and foreign dignitaries? Is it enough for the Secret Service to have the names only of those who have been indicted or convicted—or do you think you ought to know the identity of as many members as possible of such organizations?

Mr. KNIGHT. I am not certain that we need to know the membership of every organization. That would be a monumental undertaking I am not sure we are capable of handling. What we would be interested in are those who appear to be prone to violence and have the capabilities of carrying out that violence. This is the sort of information which we previously received and which we are not now receiving.

In other words, reporting after the fact is a bit late sometimes.

Senator HATCH. Yes. Especially if it involves some of the top leaders in our Government, which you are sworn and dutybound to protect.

Mr. KNIGHT. Yes, sir.

Senator HATCH. After President Kennedy was killed, it was not a great thing to find out that maybe it was Oswald who did it?

Mr. KNIGHT. No.

Senator HATCH. It would have been better to have known about that before hand?

Under present guidelines or criteria, would it not be extremely difficult for the Secret Service or other agencies to use electronic surveillance against domestic radical organizations, even where there is some reason for fearing that they may be planning some violence against the President or foreign dignitaries?

Mr. KNIGHT. My understanding is that it would be. Now, we are not in that business, as I explained to you before. We are the customer of these other agencies.

Senator HATCH. You rely on information that is provided by other intelligence gathering organizations and law enforcement organizations within the Government and elsewhere—even State and local?

Mr. KNIGHT. Yes, sir.

Senator HATCH. You say in your statement that you can only speculate on the reasons for the decline in quality and quantity of the intelligence information available to the Secret Service. I must say that I find this statement a little bit surprising. Many of the law enforcement officers who have testified before the subcommittee have stated flatly that they do not send any intelligence to Washington now, except in rare cases. They seem to say that it is because they are afraid that this information and their sources will be revealed under the Freedom of Information Act and the Privacy Act. Those who have appeared have agreed—and I think to a man—that their own ability to gather intelligence has been badly eroded by the hostile

attitude of the media toward all intelligence gathering activities and by the restrictive guidelines under which they have had to operate. These include a virtual ban on electronic surveillance; a ban in most cases on taking photographs of demonstrations; and the increasing difficulty of getting information from private citizens because they fear that their names will have to be made public.

Surely these matters must have been mentioned to the Secret Service by some of the members of the law enforcement community with whom you work.

Mr. KNIGHT. There is no question about that, Mr. Chairman. My only point in saying this is that these are the things that are reported to us by others. As you have indicated, the best witnesses are those people themselves. You have already taken that testimony.

Senator HATCH. Then, if I understand what you are saying, when you say it is only speculation, you are trying to be totally accurate with semantics. You are saying that you believe that this is what is causing the erosion and this is what is causing the falloff—these two acts and the opinion of the public. You have made that point pretty strongly here.

That is basically what the law enforcement people have told you all over the country: If something is not done about this to balance it out, your work is going to be—as it already is—seriously jeopardized?

Mr. KNIGHT. That is correct.

Senator HATCH. Although you do not want to indicate to the public or anybody else that the President's life could be in danger on various trips or various occasions, you have acknowledged that there are some cities that you just plain hope he never goes to?

Mr. KNIGHT. Correct.

Senator HATCH. You have also acknowledged that although you are going to do everything you can to protect him, you are seriously hampered in some ways because now it is a matter of adding staff and depending upon oral memory in some of these areas to which the President or other people are going—including foreign dignitaries. This may be a pretty defective way of giving you the assets necessary to provide the protection you are supposed to provide.

Mr. KNIGHT. Correct.

Senator HATCH. What, it seems to me, your testimony adds up to is that the Secret Service has suffered and has been badly hurt by the erosion of law enforcement intelligence, and that this greatly complicates your task.

Would it not be a matter of simple deduction that this intelligence erosion increases the danger to the President of the United States and to the foreign dignitaries as well?

Mr. KNIGHT. Yes, sir.

Senator HATCH. That is just a matter of outright fact?

Mr. KNIGHT. Correct.

Senator HATCH. That is a pretty pathetic thing in a Nation that reveres, loves, and stands up for the President of the United States.

Has the Secret Service called the facts which we have been discussing to the attention of the President and of the administration and of the people around the President?

Mr. KNIGHT. Yes, sir.

Senator HATCH. He understands these problems?

Mr. KNIGHT. Yes, sir.

Senator HATCH. I have one final question. I take it for granted that your statement today was submitted to the Department of the Treasury for review.

Mr. KNIGHT. Correct.

Senator HATCH. Did the Treasury Department alter or delete from your statement in any significant way?

Mr. KNIGHT. No, sir.

Senator HATCH. Therefore basically, although it was a very short statement, that—combined with the answers to some of these questions here today—comprises basically the way you feel as the head of this very important service?

Mr. KNIGHT. Yes, sir. It certainly does.

Senator HATCH. All I can say is—as a U.S. Senator concerned about intelligence gathering and concerned about the safety of the President and these other dignitaries that you have to surveille and take care of—I am more concerned than I have ever been.

I think that in this day and age when our population is exploding and we have all kinds of dissidents and problems throughout the country, your job is even going to be worse in the future unless we can solve these problems. Would you agree with that?

Mr. KNIGHT. Yes; I would, Senator.

Senator HATCH. Would you recommend to Congress that we do something to balance this situation up?

Mr. KNIGHT. Well, as I indicated to you earlier, I think—and I am not certain whom, but I am certain—that someone has the right and the obligation to tell us, the practitioners, how we should do our business in this area.

Until that is made clearer than it is now, I think we will have a continuing confusion and misunderstanding and misinterpretation—which I feel is the primary cause of what we are discussing here today.

Senator HATCH. What really seems to be the case is that the law enforcement officials are choosing to take the safer way rather than to take the other side of the coin, which might be very much more effective in helping to protect the President, the 17 other dignitaries, and of course the foreign dignitaries who come to this country, because the safer way will not get them into political difficulties.

Mr. KNIGHT. Exactly. Yes, sir.

Senator HATCH. All I can say is that I am very grateful that you have taken the time to come down here today and that you have been so willing to answer questions.

I have not been surprised with your testimony, except for the fact that I did not think it would rise to as high as a 75-percent fall-off in what heretofore was your ability to protect the President and other dignitaries. If that is so, then something needs to be done. Congress has got to grab the bull by the horns.

If I understand you correctly, you hope that the law enforcement agencies—including your own—will be consulted if guidelines are in fact to be set and to be established.

Mr. KNIGHT. Mr. Chairman, if we have made nothing else for the record except your last statement, I would be most appreciative.

Senator HATCH. We appreciate your coming. I want to congratulate you for being as candid with this committee as you have been. Hope-

fully we will be able to help you. If nothing more, I think it is about time the media starts telling the people in this country that we have an obligation to protect our President, the other dignitaries that the Secret Service works with, and of course the foreign dignitaries who come to this country in the very best and most plausible and effective manner that we possibly can.

I commend you for the good way that you do it, within the framework of the tools you are left to work with.

Mr. KNIGHT. Thank you, Mr. Chairman.

Senator HATCH. Thank you for coming.

We will now turn to the testimony of Glen D. King, who is the executive director of the International Association of Chiefs of Police.

TESTIMONY OF GLEN D. KING, EXECUTIVE DIRECTOR, INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

Mr. KING. Thank you, Senator Hatch.

I appreciate the opportunity to appear before the Senate Subcommittee on Criminal Laws and Procedures to express the beliefs of the International Association of Chiefs of Police (IACP) regarding the erosion of the police function through restrictions on the intelligence-gather process.

The IACP is a membership organization with more than 11,000 members from 64 nations. The majority of its membership, however, is from the United States and is directly affected by the legislative and judicial restrictions placed on its collection of intelligence data.

The critical question before this subcommittee is to determine how the fundamental liberties of the people can be maintained in the course of the Government's effort to protect their security. The delicate balance between these basic goals of our systems of government—Federal, State, and local—is often difficult to strike but it can, and must, be achieved. A government must protect its citizens from those individuals and groups who engage in violence and criminal behavior, or in espionage and other subversive activities. Intelligence has successfully prevented dangerous and abhorrent acts, such as bombings, and aided in the arrest and prosecution of those responsible for such acts. It cannot be denied that abuses and the invasion of personal privacy have occurred in the past. However, the solution to these problems is not to pass legislation that limits law enforcement's intelligence-gathering capabilities. Rather, the solution is to set forth a workable set of guidelines that will enable law enforcement agencies to protect the citizens from the inherent dangers resulting from subversive activities as well as preserve an individual's right to privacy. The dangers to a local community and the fundamental freedoms of our society come not from criminal intelligence activities, but from poorly regulated and supervised intelligence activities. Voluntary self-regulation of police criminal intelligence operations can restore public confidence in the ability of a law enforcement agency to maintain order while observing the values of free dissent and personal privacy.

The importance of intelligence cannot be overstressed. Without intelligence-gathering capabilities, we are inviting the onslaught of

subversive activities as well as the erosion of law enforcement capabilities. The New Jersey Supreme Court stated in *Anderson v. Sills*[1] that:

> The police function is pervasive. It is not limited to the detection of past criminal events. Of at least equal importance is the responsibility to prevent crime. In the current scene, the preventive role requires an awareness of group tensions and preparations to head off disasters as well as to deal with them if they appear. To that end the police must know what forces exist; what groups or organizations could be enmeshed in public disorders. This is not to ask the police to decide which are "good" and which are "bad." In terms of civil disorders, their respective virtues are irrelevant, for a group is of equal concern to the police whether it is potentially the victim or the aggressor. The police interest is in the explosive possibilities and not the merits of the colliding philosophies. And it must be evident that a riot or the threat of one may best be ended with the aid of private citizens who because of their connections with the discordant groups can persuade them from a course of violence. Hence a police force would fail in its obligation if it did not know who could be called upon to help put out the burning fuse or the fire.

Due to the nationwide mobility of organized crime figures, terrorist groups, and subversive organizations it is imperative that State and local law enforcement agencies be able to maintain unencumbered channels of intelligence communications amongst themselves as well as with Federal agencies. Effective prevention of illegal and disruptive activities requires the exchange of intelligence information between the different law enforcement agencies. Without such an intelligence exchange system, a duplication of effort presents itself as well as promotes ineffective crime prevention.

Although neither the Freedom of Information Act (FOIA) nor the Privacy Act of 1974 apply directly to State or local law enforcement agencies, both acts have impacted strongly on the intelligence-gathering capabilities of State and local law enforcement agencies.

The impact comes from four major sources. They are: (1) Confusion over the interpretation of the acts as well as the extent to which they require agency adherence; (2) State and local laws enacted pursuant to the FOIA and Privacy Act; (3) Lawsuits brought against law enforcement agencies under the acts; and (4) adverse media coverage of law enforcement intelligence activities.

As you know, the 1974 amendments to the FOIA changed the then existing law which exempted from disclosure law enforcement files compiled for investigatory purposes or investigatory files compiled for law enforcement purposes. The restrictive guidelines of the 1974 amendments have forced local and State agencies to perform exhaustive analyses on the files to determine what was disclosable. State and local law enforcement agencies have been deterred in the transmission of intelligence information to Federal agencies for fear that the Federal agencies will be required to disclose the information under the FOIA. The use of informants and confidential sources has been chilled for fear their identities will be disclosed.

Police intelligence access to Federal records has also been restricted by the Privacy Act of 1974. The act prohibits the disclosure of any information on an individual maintained by a Federal agency in a system of records unless permitted by a specific exception. Although there is an exception for certain law enforcement purposes, a significant amount of confusion has developed regarding implementation of the act. Many law enforcement intelligence officials are of the opinion that it has restricted access to needed intelligence data.

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[1] *Anderson* v. *Sills*, 56 NJ 210, 222, 265; A2d 678, 684–5 (N.J. 1970).

Furthermore, the confusion as to law enforcement agencies' capability to gather and exchange intelligence information is heightened due to the lack of uniformity in the various interpretations of the acts. There is no general consensus by the Federal agencies as to what may and may not be disclosed. This further leads the State and local agencies to be hesitant to release information to the Federal agencies for fear of disclosure.

I believe the best method for me to convey this to the subcommittee is through specific examples.

The Dade County Public Safety Department has, on numerous occasions, provided Federal law enforcement agencies with what it considered confidential information only to have it disclosed by the Federal agencies. As a result, Dade County is reluctant to pass intelligence information to such agencies.

The Arizona Department of Public Safety is extremely careful in disseminating information to Federal agencies, fearing that confidential sources may be revealed. Conversely Arizona has had difficulty in gaining intelligence information from Federal agencies.

Other State law enforcement agencies have encountered what they consider to be crippling obstacles in their attempts to pursue effective intelligence operations. The Federal agencies have either refused to provide certain information or curtailed certain intelligence operations creating a detrimental backlash for the State and local law enforcement agencies.

For example, the Organized Crime Division of the Michigan Department of the Attorney General believes that Federal agencies have overreacted to the passage of the FOIA and Privacy Act with regard to the exchange of intelligence information. The attorney general's office has found that, if an area is gray as to whether information may be disseminated, a Federal agency will not give it out.

The Michigan State Police Department has been subjected to two lawsuits. In one of the suits the Human Rights Party sued the Michigan State Police in the Ingham County circuit court. The suit sought to disband the subversive activities unit, the Red Squad, authorized by act 40, the Subversive Act, passed by the Michigan Legislature in 1950. The court found that the unit's activities were unconstitutional, and the State police were ordered to "cease and desist" carrying out the 1950 law and to reassign all employees assigned to the squad. The court further ordered that the intelligence files should be destroyed after giving the subjects an opportunity to request release of their files. Upon such a request the court would review the files in camera and determine whether they could be released.

In the other suit, which is still pending, a Wayne County circuit court has ruled that all subjects of the same intelligence file must be notified of the existence of such files. In the interim, the court has ruled that the file be saved and turned over to the court.

Until litigation on this case is completed, the Michigan State Police is caught in the middle, not knowing what to do with the files.

The Dallas County Organized Crime Division states that it has been very cooperative in allowing Federal law enforcement agencies open access to their files. However, the same division has indicated that when it attempts to acquire intelligence information from the same Federal law enforcement agencies they continuously encounter delaying and overly cautions screening tactics with, in many cases, numerous

pages removed from the intelligence files. Such tactics create not only hardships on State and local law enforcement agencies but open the door to possible misinterpretations of the gaps in the provided information.

The Kalamazoo Police Department has also experienced an inability to obtain intelligence information from a Federal agency. Apparently, the Federal agency would not release the data because it was unable to document the source of the information, although it continued to maintain the data in its files. The Kalamazoo Department feels that, coupled with their information, the Federal agency's intelligence information would have enabled the department to proceed with law enforcement action against a subversive group.

Conversely, it appears that some Federal law enforcement agencies have curtailed certain intelligence operations thus affecting directly State and local intelligence operations.

For example, the Washington State Patrol reports that, because the FBI can no longer conduct surveillance operations except in open investigative cases, the patrol no longer has access to information it was once provided by the Bureau. Specifically, on two occasions, organized crime figures traveled into the State of Washington, and the police agencies knew nothing of their presence until after their departure from the State. Prior to the enactment of the FOIA and Privacy Act, the FBI would have monitored the movements of these figures and notified the State of Washington of their activities. As a result of this cutback, the State of Washington is forced to monitor the movements of organized crime figures as well as the normal activities Washington monitors. Washington currently has an intelligence field force consisting of six persons. In essence, the free flow exchange of intelligence information is no longer done on a nationwide scale.

Following the passage of the FOIA and the Privacy Act, many States enacted similar legislation. The Michigan Legislature passed a disclosure bill that mirrors the FOIA. Although the dissemination of intelligence information is discretionary on each State agency, the act requires an agency to justify any exclusion from disclosure of requested information.

Massachusetts has enacted a Fair Information Practices Act which does not exclude access to intelligence information in one's file. Therefore, a person may have access to intelligence information contained in his or her file.

Texas and Florida have no restrictive laws at the present but legislation has, in the past, been introduced in the State legislature. This fact alone has had a "chilling effect" on intelligence-gathering in that the mere threat of legislation has caused law enforcement authorities to be more cautious in their intelligence operations.

Although Missouri has no restrictive legislation, it provides a case development of the problems facing intelligence operations if there were restrictive legislation. In St. Louis there are 98 independent police jurisdictions. If there were legislation restricting the gathering and dissemination of intelligence information among these separate jurisdictions, all investigative operations would come to a halt.

The effects of lawsuits and harassing inquiries seeking access to intelligence files are extremely detrimental to intelligence operations. The time and expense incurred in answering inquiries and preparing for litigation are astronomical. In addition, such expenditures cut into

the time and money which would normally be used for intelligence operations.

In Dade County, Fla., for example, the public safety department has been subjected to two lawsuits within the last year in which the plaintiffs sought access to their intelligence files in the midst of an ongoing police investigation.

The St. Louis Police Department has been subject to litigation to obtain intelligence files. The Church of Scientology, the Socialist Worker's Party, and the ACLU have attempted through litigation or via subpenas in other suits to gain access to intelligence data and files.

The Arlington, Tex., police have also been subjected to demands by Church of Scientology for intelligence files; however, to date, there have been no lawsuits.

The Seattle, Wash., police department is currently being subjected to two lawsuits requesting access to intelligence information. In one of the pending cases, the Church of Scientology has requested access to files containing confidential information supplied by the Los Angeles Police Department that was gathered during an investigation of the church. The other suit has developed via a joinder of claims in which the ACLU, the American Friends Service, the National Lawyers Guild, Coalition Against Government Spying, and others are seeking to obtain intelligence files. This same coalition of groups has sponsored a seminar for private individuals instructing them on the methods of obtaining law enforcement intelligence files. As a result, the department has been the subject to approximately 60 letters from private citizens requesting disclosure of their respective files. These requests were undertaken notwithstanding a State public disclosure law which exempts intelligence files from disclosure.

The Arizona Department of Public Safety has been faced with a more serious problem. Within the last 2 years, the department has been subject to four subpenas for the release of intelligence files to be used in other litigation. To date, the department has been protected from disclosure of these files following an *in camera* inspection. Requests such as these arise because Arizona has no statute that exempts intelligence files from public access.

The department has not been the subject of direct lawsuits. These subpenas have arisen out of third party civil suits; for example, an organized crime figure sued his employer for defamation, the result of information which he complained was derived from an intelligence file maintained by the department. He, therefore, subpenaed the file to prove his claim.

The department does, however, face the danger of having to provide access to the intelligence files if a case ever reaches the Arizona Supreme Court. The court through prior comment has indicated that, if it were to rule on the issue of access to police intelligence files, it would consider them public records on the basis that there is lacking a State law which exempts their disclosure.

The court's comment was a "side bar" comment, made off the record, pertaining to another case involving investigative files, on which it declined jurisdiction.

The Michigan office of the Attorney General has stated that courts have ordered intelligence files impounded. The locking up or impounding of files may render past intelligence efforts fruitless, as well as the future use of the files impossible. The use of these files even for back-

ground checks for prospective employers is impossible if said files are impounded or locked up.

The Alliance To End Repression has been joined by the ACLU and the Better Government Association in a pending lawsuit against the city of Chicago. Although the suit was brought under a civil rights violation and not the FOIA, Chicago's intelligence unit has been greatly affected. Many of the files have been ordered released, and the media has gained access and published much of the information contained in the files.

Raw intelligence data is being printed out of context leading to many harmful misinterpretations. Prior to the suit, there was a free exchange of intelligence information; however, until the suit is settled, all the information is locked up, and there is virtually no exchange of intelligence data among the different law enforcement agencies.

The suit is a result of information gathered by a grand jury investigation that was conducted in 1974. Prior to this investigation, Chicago intelligence units had successfully infiltrated many subversive groups enabling the police to investigate and prevent numerous subversive activities. With the publication of the results of the grand jury investigation, many informants and confidential sources were revealed. Even more important, Chicago was subjected to a rash of bombings once these sources were disclosed.

These examples reveal the problems faced by various law enforcement agencies in coping with the time-consuming and harassing demands for disclosure of intelligence information. As Director Knight stated in his testimony earlier, it has had the effect of causing a great number of police agencies across the country to either restrict in a very major way their intelligence-gathering capability, or it has caused them not to disseminate to other law enforcement agencies which have a direct specific need for the data collected and the information they have.

The media can have a substantial effect upon a law enforcement agency's intelligence operations in that the press can direct an agency's attention from intelligence activities to answering harassing, and oftentimes invalid charges. The demoralizing effect upon an intelligence unit's personnel is all too readily understood. Furthermore, press leaks concerning ongoing intelligence operations, whether true or false, may jeopardize the effectiveness of surveillance in that it may warn those individuals or groups who are the subjects of the surveillance.

The Arlington, Tex., Police force has been challenged by the press as to the need for intelligence surveillance on a local university campus. This reporting may very well have compromised this surveillance.

The Seattle Police Department often finds itself in the position of being judged by the media as to whether it was proper for the department to conduct certain intelligence-gathering operations.

As I previously stated, the Chicago intelligence unit is being adversely affected by information being published as a result of the pending suit.

As a result of the electric atmosphere surrounding all intelligence operations, a great loss of effectiveness has occurred. State and local law enforcement officials are keenly aware of the FOIA and Privacy Act and their effects on State and local intelligence operations. Fur-

thermore, due to existing legislation, the threats of restrictive legislation being enacted, adverse publicity from the news media, and possible repercussions resulting from lawsuits, law enforcement officials are not taking full advantage of intelligence opportunities.

Law enforcement has improved tremendously in recent years. The caliber of its personnel, the quality of its technology, and the scope of its research have enabled us to reach a state of professionalism unmatched by any opposition. As professionals, it is our obligation to the people we serve to share our expertise so that our common goals may be realized more efficiently and expediently. In the case of terrorism, we have no other option but to unite our efforts.

Public and private protective services now stand at a critical crossroads in policy and tactics. Are we to continue an essentially passive response to terrorist actions? Or are we now able to develop more active tactics and tactically relevant policies which can work to shift coercive pressures back upon potential or active terrorists? If more active tactics are in prospect, what forms are they to take? What limits exist upon their use? What is the base in data and general experience upon which these tactics are to be developed and applied?

Critical in development of more active tactics against terrorism in its various forms—including kidnap/hostage actions, hijacking and piracy, and mass murder—is the need to establish one information exchange which can assemble, collate, and rapidly evaluate the extraordinarily varied kinds of information which are now coming into existence on the subject of terrorism.

All of law enforcement must cooperate by sharing methods such as investigative procedures and negotiation skills, by sharing intelligence information such as origins and histories of terrorist groups and profiles of individuals involved, by sharing research such as psychological studies of terrorist motivations and propaganda methods, and by sharing what we know and what we've done to counteract the most potentially devastating threat to our country's freedom from fear. We can no longer tolerate the possibility of violence, the indiscriminate destruction of lives and property, nor unlimited demands resulting from rampant terrorist activities.

Therefore, IACP suggests that this subcommittee encourage the establishment of a facility to be made available to law enforcement personnel in all parts of the United States which could promote the exchange of terrorist-related information. Such a facility could preclude costly and time-consuming duplication of efforts by hundreds of concerned law enforcement agencies in various parts of the United States. In spite of some excellent efforts being made in the form of research and publications, there is still an obvious need for an active and perpetual source of information and counsel. Therefore, we believe that the establishment of such a facility would not be a redundant effort but instead would complement all present efforts in our country to combat the increasing seriousness of the impending terrorist threat.

The establishment of an intelligence clearinghouse of this nature would also contribute to the development of uniform response methods between local, State, and Federal authorities, resulting in more expeditious management of crisis response and related decisions. It would enable greater cooperation between jurisdictional authorities and could reduce the formalities between them which often preclude

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the expeditious exchange of information and expertise needed during a crisis situation. The efforts of the law enforcement profession must be supplemented by input from many sources. The medical profession, through the analyses of its psychiatrists, the academic environment, through the research of its behavioral scientists, the legal profession, through its understanding and interpretations of the limitations of legal response measures, and the political realm, through its legislative power, can all contribute to the understanding and combating of the terrorist threat. Calling on the expertise of these professions must not be after the fact; however, a proactive unification of efforts is necessary so that, in time of need, the desired expertise will be available to the law enforcement groups charged with the responsibilities of coping with crises.

IACP has long considered the possibility of an information exchange among law enforcement and other groups relative to terrorist threats. For obvious reasons, suggested mechanics of such an exchange facility will not be discussed at this time. We have made every feasible effort to serve our membership in response to the threat of terrorism, but we are ever cognizant to the fact that our present programs can serve only a portion of the need within the law enforcement field. Therefore, in view of previous testimony and the facts available, we feel that the creation of a coordinating body to synthesize and disseminate pertinent information under proper constitutional guarantees and specific guidelines is imperative to the advancing of law enforcement efforts to combat the terrorist threat.

We do not oppose the need to protect the constitutional right to privacy. But the protection of constitutional rights does not necessitate the curtailment of intelligence-gathering operations. What we need is a balance permitting intelligence operations as well as protecting each individual's right to privacy. Unfortunately, the FOIA and the Privacy Act do not strike this balance. Both of the aforementioned acts restrict intelligence-gathering operations to an extent that often renders intelligence operations ineffective. These acts have resulted in the inhibition of intelligence-gathering operations. Law enforcement officials are afraid of stepping on individual rights to privacy. Many officials do not understand the privacy laws. Rather than risk the effects of intimidating lawsuits, media scrutiny, and legislative regulation, law enforcement officials are limiting the scope of intelligence operations to a point where they have become less than adequate to protect the citizens of our country.

I will sum up the general tenor of my statement by saying that it is my absolute conviction that law enforcement in the United States has been directly affected in a very adverse way by restrictions placed upon its intelligence-gathering capabilities.

It would be, I think, impossible for us to overemphasize the importance of intelligence data to the daily routine ongoing operations of any police agency.

With adequate intelligence data a law enforcement agency can protect the citizens. Without adequate intelligence data I think it is entirely impossible for it to do so.

Senator HATCH. So we move from the President and all of the important dignitaries and the foreign officials down to the people level? It is very difficult to do what the law enforcement agencies have been heretofore able to do to protect them?

Mr. KING. Mr. Chairman, I think we have become so preoccupied with providing absolute protection to the potential criminal that we have created a condition that is highly restrictive of the ability of our law abiding good citizens to move.

Senator HATCH. Mr. King, would it be an exaggeration to state that your organization is probably in a better position than any other organization to know how the law enforcement community feels about the erosion of their intelligence capabilities and about the increasing restrictions under which they have to operate?

Mr. KING. I think that is an accurate statement, yes.

Senator HATCH. What your testimony adds up to is that the greater majority of the senior law enforcement officers who are members of your organization feel that they have been badly hurt by the destruction and impounding of records and by the restrictive guidelines, and that this seriously reduces their ability to protect the public.

Mr. KING. There is that very general feeling. My executive committee in response to this—in the early part of last year our association sent our president to San Francisco to testify in a trial underway at that time, involving the acts that we are talking about here. Efforts were being made to extend the effect of the Act to information received from local law enforcement agencies by the Drug Enforcement Administration. That effort was denied by the court and the confidentiality of the information was protected.

It is a very fair statement that the municipal police chief and the county police chief and the State police head are very sensitive to the possibilities that exist here. It does have a very real and a very direct effect upon not only their willingness to but, as Director Knight has indicated, upon their ability to cooperate with the Federal agencies.

Senator HATCH. Would you agree with the general proposition that law enforcement agencies, in discharging their duty to protect the public, can perform no better than the intelligence available to them permits?

Mr. KING. I think that is entirely true. The public perception at times notwithstanding, it is not violence like you see on television with Starsky and Hutch that solves cases. It is not the use of superior reasoning power that you read about in Sir Arthur Conan Doyle with Sherlock Holmes that solves them. Most of the time the criminal cases in law enforcement are solved by information received by the agency—by the totality of this information and by specific information received on a specific criminal offense.

I think it is entirely true to state that the overall efficiency of the agency is more determined as a law enforcement function by its ability to have adequate intelligence data than by any other thing.

Senator HATCH. Would you also agree that without an exchange of intelligence between Federal, State, and local agencies the intelligence capabilities of all of our law enforcement agencies are bound to suffer drastically?

Mr. KING. I think they have suffered drastically. I think they exist now to a much more limited degree than they did earlier. You identified from Director Knight's testimony the fact that the law enforcement agency is going to be more willing, more anxious, and more eager to cooperate with the Secret Service probably—in the performance of its function—than with any other because of the nature of the job that it does and because of the criticality of it.

It is going to make special efforts to have all of the information the Secret Service needs to help protect dignitaries.

Senator HATCH. Yet Director Knight indicates that they get about 25 percent the quantity and quality of the information that they used to get to protect the President.

Mr. KING. That is correct. If you carry that thought just a step further, other agencies with less critical kinds of responsibility are going to be getting even less.

Senator HATCH. Yes, sir. I have to presume that, in order to protect the public, you are getting even less than the 25 percent that the Secret Service—with which everybody wants to cooperate because of the sensitivity of protecting the President and other dignitaries—would get.

Mr. KING. It is much more difficult for me to assign a percentage figure to it because we are speaking of so many agencies involved. Some law enforcement agencies have almost completely lost their ability to collect intelligence data. Other agencies have been able to—in a variety of ways—continue to collect it on a relatively effective level.

I think, however, that the average of the 17,000 estimated municipal law enforcement agencies in the United States would not be—I think it would not be far off to say that they have lost between 50 and 75 percent of their total intelligence-gathering capabilities.

Senator HATCH. Basically, you are confirming what Director Knight has just told us—that there has been a monstrous loss of intelligence-gathering capability in this society upon which he relies, and the same thing holds true even for the general police and security work that has to be done in this country to protect the public.

Mr. KING. I do agree with the Director, yes.

Senator HATCH. Do you agree with the statement made to the subcommittee by Captain Justin Dintino, chief of intelligence of the New Jersey State Police, wherein he said that:

> Today this flow is terribly restricted at every level and in every direction—from city to city, from State to State, from State agencies to Federal agencies, and from Federal agencies to the State and local level. This is a disastrous situation and we have got to find some way of reversing it.

He was referring to intelligence-gathering information.

Do you agree with that?

Mr. KING. I do agree with that, yes.

Senator HATCH. The subcommittee has heard that in a majority of our States today it is impossible to get permission to employ electronic surveillance, even in cases of kidnapping and drug trafficking. Is that accurate?

Mr. KING. There is a very major problem here, I am reasonably sure the figures are accurate that I will quote. I think police agencies and police officials in 29 States now have the ability in varying degrees to employ electronic surveillances. This means that in 21 States there is no ability at all in existence for the agency to use electronic surveillance.

In several of the States where agencies can use this there are very restrictive guidelines established which effectively rule it out as a tool of investigation.

Senator HATCH. Doesn't this prohibition deprive the law enforcement community of one of its most effective weapons in combating violence, crime, and other wrongs to society?

Mr. KING. I am convinced that it does, yes.

Senator HATCH. This subcommittee has heard—and I would like to know whether your background and information bear this out—that as a result of the Freedom of Information Act and the release of police records in response to civil suits, it has now become extremely difficult for law enforcement agencies to find members of the public who are willing to come forward with information or serve as informants. Is this true?

Mr. KING. That is entirely true.

Senator HATCH. You have indicated that intelligence is the chief weapon for handling crime in our country today. It is not the Sherlock Holmes-Perry Mason syndrome of being able to come up with some very effective solution at the last minute: It is a lot of dogged police work, day in and day out, generally helped by informants.

Mr. KING. I was a detective in my department for years. I have worked in that area and I have observed it. I think it is a completely safe statement that a very great majority of all criminal cases solved are solved on the basis of the information obtained—the information that the agency has to bring to bear on it.

That information comes, Senator, from not only persons who are directly involved in the criminal community themselves—although this normally is the most effective source of information to a police agency—but it comes from citizens who also have information of one kind or another that might be helpful to the department.

Under the conditions that exist at the present time we are seeing a very great reluctance on the part of either of these to furnish information to the police because of a belief that that information—or their identities—and the fact that they have furnished that information might become publicly known.

Senator HATCH. Well, if we do not have assess to the informants that we have had in the past—and these sometimes just consist of people within the organization, or people who have observed, or people who do not like what is going on—does this not also deprive our law enforcement agencies of what has up to now been one of their most effective instruments in the prevention of crime?

Mr. KING. Yes, it does.

Senator HATCH. The subcommittee has also heard that, primarily as a result of the Privacy Act, telephone companies in most cases will not provide information about telephone numbers even in cases involving kidnapping or bombing without a court order.

One of our witnesses made the point that, by the time you get a court order and get the information, the people you are looking for have frequently moved on. Have you heard complaints about this, in effect, from your members?

Mr. KING. Yes, I have. I think it is easy to understand the reluctance on the part of the private business organization, the telephone company, in furnishing this. They are not at all certain that they will be able to cooperate with the law enforcement agency to provide the information needed without making themselves vulnerable to civil suits, to expenses of trial, and to payment of redress to people who consider themselves aggrieved.

Senator HATCH. What this all adds up to, as we have listened to you two fine gentlemen today, is that there has been a tremendous erosion, it seems to me, in our intelligence-gathering systems, to the point where not only are some of the top level people in government in greater jeopardy than they used to be, or at least not as well protected as they used to be—and not only are foreign dignitaries coming to this country less protected than they used to be—not because of lack of effort or lack of ability or lack of funding—but the average person in society, the American citizen, is a big loser in this process because we cannot get the intelligence-gathering information that we have heretofore had, because there has been almost a 75 percent erosion—50 to 75 percent erosion—in the ability to get that information.

Mr. KING. I think that is completely correct. I think the ability of the law enforcement agency to collect needed intelligence information directly relates to the level of crime.

Senator HATCH. One other thing that seems to come through in these hearings—and maybe this is one of the more valid reasons for these hearings—I think there are many valid reasons because we are listening to the top people in this area and the country, of whom you are two—is that many law enforcement officials feel intimidated by these rules—the restrictive rules.

Mr. Knight has testified that he wished that somebody could give him the guidelines that they could go by, because nobody really knows what they are. Nobody knows what the courts are expecting. Nobody knows what kind of violations they are going to be accused of in trying to do normal and effective police or intelligence work.

Consequently, many of our law enforcement officials are intimidated to the point where they are reluctant to discuss the matter of erosion of intelligence or even give the facts. If I did not miss Mr. Knight's point today, I believe—and Mr. Knight, you can correct me if I am wrong—that it is an unnerving thing to even come in and testify to this subcommittee, as the head of the Secret Service, and have to admit that you do not have nearly the capability because of the lack of intelligence-gathering systems and information caused by that which you testified to, to protect the President of the United States.

That is unnerving, is it not?

Mr. KNIGHT. Yes, sir.

Senator HATCH. Well, it is unnerving for me to hear it. You two gentlemen are two of the top people in the country in this field. I do not think you have any real axes to grind. I think the fact is that every witness who has testified here has come in and said that this is a pathetic set of circumstances, that we are deliberately restricting the ability—binding the arms—of the law enforcement officials to the extent that they do not have the ability to prevent difficulties in our society that they had just a few years ago.

We have had witnesses testify here that the Hanafi Muslim problem would never have occurred had it not been for these two acts, had it not been for the intimidation of law enforcement officials.

On the other hand, I do not think anybody in society wants to have unlimited rights of law enforcement officials to enforce the law to the detriment of the rights of the individual citizens. If I have heard anything here today it is that we have got to have some sort of a balance. We have got to have some sort of guidelines. We have got to

help the law enforcement people to be less intimidated. We have got to find some way whereby we can truly stop terrorist and other criminal activities and elements within our society in advance of the act rather than after the fact.

I think both of you have given great service here today.

We will certainly try and see that what you have said will be promulgated among our brethren in the Senate, and hopefully the whole Congress. Maybe we can work to try and alleviate some of the major difficulties with which you are confronted every day in your effective law enforcement work.

We appreciate both of you coming in today. We appreciate your testimony and we will certainly try and disseminate it.

Thanks very much.

Mr. KNIGHT. Thank you, Mr. Chairman.

Mr. KING. Thank you, Mr. Chairman.

Senator HATCH. With that, we will stand in recess.

[Whereupon, at 10:39 a.m., the subcommittee stood in recess, subject to the call of the Chair.]

THE EROSION OF LAW ENFORCEMENT INTELLIGENCE—CAPABILITIES—PUBLIC SECURITY

WEDNESDAY, SEPTEMBER 21, 1977

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:08 a.m., in room 4200, Dirksen Senate Office Building, Senator Strom Thurmond [acting chairman of the subcommittee] presiding.

Staff present: Richard L. Schultz, counsel; David Martin, analyst; and R. J. Short, investigator.

Senator THURMOND. We had a little delay. I had something come up this morning.

The subcommittee will please come to order.

The purpose of today's hearing is to take further testimony on the erosion of law enforcement intelligence and the impact this has had on the public security.

The hearings held to date have established that there has been a disastrous erosion of law enforcement intelligence and law enforcement intelligence capabilities in recent years.

The subcommittee has been told that in many cities and States law enforcement intelligence files built up through many years of effort have either been destroyed or locked up.

Major intelligence units have been disbanded or suffered manpower reductions which make them completely ineffective.

There has been a near freeze on the exchange of information between Federal, State and local law enforcement agencies.

Telephone and utility companies, which used to cooperate on a routine basis with law enforcement agencies, now require a court order before they will provide any information.

Paid informants are much more difficult to come by and volunteer informants are becoming an endangered species because of the fear that names will be disclosed in consequence of the Freedom of Information Act or the Privacy Act.

Mr. Stuart Knight, Director of the Secret Service, told our subcommittee in a recent hearing that there has been a quantitative falloff of approximately 50 to 60 percent in the amount of intelligence his agency receives, and that there has, on top of this, been a qualitative falloff that may account for a further degradation of as much as 25 percent. He said that there were some cities which the Secret Service had recommended that the President not visit. This is how bad things have become.

At today's hearing we shall be looking into the erosion of law enforcement intelligence as it has affected the activities of the Drug Enforcement Administration. Our witness today is Mr. Peter Bensinger, Administrator of the Drug Enforcement Administration.

Mr. Bensinger, we are glad to have you with us.

Will you rise and be sworn?

STATEMENT OF PETER BENSINGER, ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION, ACCOMPANIED BY GEORGE R. BROSAN, FORMER DIRECTOR CHIEF OF FREEDOM OF INFORMATION ACT AND PRIVACY ACT SECTION, DRUG ENFORCEMENT ADMINISTRATION, AND GORDON FINK, ASSISTANT ADMINISTRATOR FOR INTELLIGENCE, DRUG ENFORCEMENT ADMINISTRATION

Mr. BENSINGER. Thank you, Mr. Chairman.

I would ask, if I could, that the Director Chief of our Freedom of Information and Privacy Acts Section in the Drug Enforcement Administration, Mr. George Brosan, join me at the witness stand. Perhaps he could take the oath with me.

Senator THURMOND. We would be pleased to have him do so.

Both of you will please raise your hands and be sworn.

Do you swear that the evidence that you give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BENSINGER. It shall.

Mr. BROSAN. It shall.

Senator THURMOND. Please take your seats.

Mr. Bensinger, we can put your whole statement in the record and let you highlight it, or if you want to delivery it word for word you may do that.

Mr. BENSINGER. Mr. Chairman, I appreciate the opportunity of appearing. I will try to summarize it if I could, sir, and save time. I would be happy to respond to any questions.

Senator THURMOND. Without objection, then, your entire statement will be printed in the record. You may now proceed.

[Material follows:]

PREPARED STATEMENT OF PETER B. BENSINGER, ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION, DEPARTMENT OF JUSTICE

Mr. Chairman, I would like first to thank you for this opportunity to appear here to discuss an issue that has been of increasing concern to the Drug Enforcement Administration. My testimony here today reflects DEA's personal concerns and does not necessarily reflect Departmental views.

DEA, as I know you are aware, is mandated to enforce the Federal drug laws and to bring drug violators to justice—an evidence-gathering function that requires the undercover penetration of criminal organizations.

Our mission, consequently, is highly intelligence-oriented. And our success, therefore, is affected by what we are here to discuss today: the erosion of the law enforcement intelligence-gathering capability.

Unfortunately, at least as it relates to DEA, the issue does not appear to be one that can be precisely assessed. Many factors come into play, and the difference in the quality and quantity of our intelligence over the past few years, especially regarding the effects of the Freedom of Information and Privacy Acts, cannot be measured: exact criteria to do so—even if we could isolate out the other factors—elude us.

The matter can be appraised indirectly, however; and with this approach we have, I believe, some indications.

Perhaps the best accounting is contained in the results of a survey of our field offices conducted by our Office of Intelligence in Headquarters. These offices, when requested to assess the impact of the FOI Act, almost universally noted three actual or potential effects, which in fact may or may not be directly attributable to the FOI Act: (1) the decline of the information flow from particular sources, such as businesses, banks and telephone companies; (2) the reluctance of persons to become informants; and (3) a real concern on the part of foreign, State, and local law enforcement agencies regarding our ability to safeguard the data they may provide.

(*1*) *The decline of information flow from particular sources*

Although no major DEA sources of information have yet been reported as closed, the flow appears to be contracting, particularly relating to that intelligence which previously was provided on a voluntary basis. Most notable has been the lessening of intelligence from members of the private sector, such as telephone companies, banks, hospitals, utility companies, hotels, pharmaceutical companies, and small private businesses. These people had previously been more willing to cooperate.

Moreover, much of the information previously provided in response to simple requests must now be subpoenaed—a situation made all the more difficult by the increased tendency of businesses served with such a subpoena to immediately notify the affected customer that he or she is under investigation, thus further compromising the case.

The more restrictive actions of the business community may be reflective of their increasing recognition of their responsibility to protect the privacy of their customers.

(*2*) *The reluctance of informants*

Although to date informant reluctance to cooperate with DEA has been neither universal nor serious, our field personnel fear that such cooperation may diminish in the future as the Act becomes more publicized and as informants and potential informants become concerned—often without reason—that their identity may be indirectly determined through information gained through Freedom of Information inquiries.

We expect the most substantial impact to be on our long-range intelligence collection activities, rather than on "short-term arrest" investigations: it is the long-term intelligence probe that places the violator—who might learn an informant's identity through peripheral enforcement activity—in a position to retaliate against the informant.

Similarly, State and local authorities have expressed concern that DEA may not be able to adequately safeguard the identity of their informants. Consequently, they are growing increasingly reluctant to share these individuals with DEA or to identify the sources of any information they may provide.

(*3*) *The concern of foreign, State, and local law enforcement authorities*

We have also noted that State, local, and particularly foreign officials are becoming as concerned to protect their written records as they are their human sources.

For instance, in one case, the federal narcotics police of a European country required written assurances from DEA Headquarters that we would safeguard the confidentiality information provided by them. In another case, Canadian legislation paralleling the U.S. Privacy Act caused the actual withholding of information essential to a U.S. indictment.

This last concern was very clearly brought out during the proceedings of the landmark case involving the Church of Scientology: the case that put DEA's authority to withhold certain kinds of information to the test.

The Church of Scientology, as you will recall, is a scientific-religious movement that was organized in the early 1950's. During the 1960's, the Church began to expand worldwide. Meanwhile, authorities in several foreign countries, as well as some U.S. State and local police, conducted drug investigations of a few individual Scientology members.

Beginning in May 1974, DEA received approximately 15 separate requests from various individuals acting, or purporting to act, on behalf of the Scientology organization. Those records that met the disclosure requests, we described generally to the requestors. The actual documents, we explained, could not be

released because, as investigative records, they were exempt from mandatory disclosure. Dissatisfied with this response, the members appealed to the Attorney General, who in turn supported DEA's position.

Ultimately, 24 documents remain in dispute, 15 of which were withheld in their entirety and nine of which were only partially withheld. Still dissatisfied, the members took DEA to trial January 7–9, 1976, in Federal district court.

It was during this trial that the "third-party rule" with respect to Freedom of Information Act (FOIA) requests, was tested. This rule, affirmed by the Governments' witnesses, refers to the unwritten but nevertheless virtually universal understanding among law enforcement agencies that information provided by one agency to another is supplied on the understanding that it will not be revealed without the prior approval of the supplying agency.

Regarding this policy, Commander David C. Dilley of Scotland Yard testified that his government provides us with information "* * * on the understanding that it will be treated with the utmost confidentiality, and not (be) released to any other agency without prior reference to ourselves." Witnesses of France and Great Britain added that if DEA were required to disclose information furnished it under the "third-party rule," their law enforcement agencies were certain to cease all cooperation with DEA.

If DEA were required to disclose this type of information, Commander Dilley stated that:

* * * I am empowered to say on behalf of the Commissioner of Police that if there cannot be a question of complete confidentiality, then no information at all, can be passed to DEA.

Mr. Le Mouel of the French National Police testified that his government would take similar action.

It is important to point out that on the basis of all of the evidence, the court ruled in support of DEA. Had the ruling been otherwise—that is, had it been established that we were obligated to disclose information provided to us by foreign, State or local authorities—I think I can safely say that the impact of the Freedom of Information Act on DEA's effectiveness would have been devastating.

The decision, incidentally, was appealed, and now has been brought before the Ninth Circuit. As it is, we can only guess to what extent our foreign colleagues are "playing it safe" and, when in doubt of the provisions of our complex law, relaying intelligence to us in a very conservative way.

How justified their fears are—and those of cooperating individuals and those of other law enforcement authorities—I believe can be partially assessed by looking at current FOI requests, and the problems they invoke.

Approximately 40 percent of the requests made to DEA under the Freedom of Information Act are from convicted felons who wish to know what we have on file concerning them. Many of the remainder are employment-related.

The less frequent but more troublesome type of request is that made by a drug violator who wishes to know more about DEA's activities and procedures. Let me cite some recent examples:

An inmate in a federal penitentiary made a request for a list of all radio frequencies used by DEA. Only after DEA was able to make an "equity" argument—showing harm to the agency's operations and the possibility of injury to law enforcement personnel—was this request denied. Another inmate later wished to know the type and "n" numbers of all DEA aircraft—a request also denied under the "equity" argument.

An attorney whose client is unknown to DEA made a request for all training material that we use to instruct our special agents and local police. This material—which explicitly outlines the procedures used to investigate drug offenders—will be released.

The president of a drug manufacturing firm which was denied a renewal license began submitting FOI requests to DEA. In the meantime, the firm made internal improvements and, after approximately 12 months, was reinspected and the license was renewed. At that time the manufacturer ceased making the requests which totaled 20.

Perhaps most troublesome was the request made by a subject who had been informed by a friend that he was suspected of dealing in drugs. When the request was processed we ascertained that this subject, at the time he made the request, had been under active investigation and had been expecting to receive a shipload of hashish from a foreign country.

The subject was arrested before our FOI unit could comply with the request. Significantly, the defendant admitted to having made the FOI request specifically to determine whether or not we were investigating him.

To return to the original issue—the erosion of the law enforcement intelligence-gathering capability on DEA's effectiveness—I cannot, as I stated earlier, respond with a simple statistic.

I realize that weighing the need for adequate law enforcement-related intelligence against the demands of a free society is at best a difficult job. No doubt, when the Congress passed the FOI and Privacy legislation, the intent was to strike a middle ground: to enable law enforcement authorities to work effectively, while ensuring the freedom of our citizens.

Both as head of a law enforcement agency, and as a free citizen, I am pleased that this Subcommittee is doing what it is doing today. I wish to extend to you my support, and that of my people.

Mr. Bensinger. Thank you.

I have a particular interest in the subject on which you are asking me to testify because of my experience in the criminal justice system, which started as an assistant to the director of public safety back in Illinois. It included appointments to the Illinois Youth Commission, director of the department of corrections of the penitentiary system in Illinois, as well as executive director of the Chicago Crime Commission. That is the oldest nonpolitical, nonprofit, nonpartisan, privately funded agency which looks at criminal justice systems in Chicago, Cook County, in Illinois as well as organized crime nationally.

For approximately the last 19 months I have been the Administrator of the Drug Enforcement Administration. I have had a concern for the last decade, particularly in a professional capacity, with the effectiveness of that very system and law enforcement.

As you know, DEA is responsible for the enforcement of the Federal Controlled Substances Act. Our mission is to bring the principal drug violators and criminal organizations to the appropriate prosecutorial and judicial functions. We are an investigative agency. We have some 2,000 agents who gather evidence, develop conspiracy investigations, prepare for prosecution and conviction, of individuals who we believe are in violation of the statutes we are empowered to enforce.

Our mission is highly intelligence oriented. We deal with information from a variety of sources, which we need to build and use to affect the most effective enforcement investigations that we can in fact pursue.

By that I mean that we are not just trying to make arrests for arrest's sake, Mr. Chairman. We are not trying to just get into the arrest business because an individual may be selling heroin at the retail level, on a street corner. We are going after the major criminal organizations that not only span city and county and State lines, but which span international jurisdictions.

The information and the informants who provide us with information varies. In many cases we have defendants who, in turn, provide information leading to the conviction of so-called kingpins in the narcotic field.

I think the Government has legitimate and proper interest in having an openness in Goverment and in having information made available. I concur with that and the Justice Department concurs with that. There has to, however, be a balance between the quantity and quality of information available and its accessibility.

I wish I could give you an accurate criteria of where to start and where to stop, but I cannot. It is difficult to do so. We have admin-

istered the Freedom of Information Act and the Privacy Act in the Drug Enforcement Administration, I think, effectively and to the letter of the law.

These acts can have an impact on information from sources such as businesses, banks, and phone companies, from informants, and from foreign, State, and local law enforcement agencies.

In our testimony we have highlighted certain areas which are of concern to the overall Drug Enforcement Administration with respect to long-term investigations and with respect to some of the attitudes of foreign police officials, and with respect to, for instance, a very extensive court case involving the Church of Scientology. In that case the court ruled favorably in the favor of the Drug Enforcement Administration.

This case, I might add, as was pointed out in the testimony, is under appeal in the Ninth Circuit. The principal officers of the New Scotland Yard and the French National Police as well as the Royal Canadian Mounted Police did make formal representations to us with respect to the confidentiality of information.

There is concern, I think, in the law enforcement community and constituency generally, nationally, that there may be a reluctance to share intelligence. How accurate that expression of concern is is hard to judge.

We have not seen, as Stu Knight testified, a decline in intelligence to the Drug Enforcement Administration charted by information that we turn over to associated agencies and data which we collect from our own agents and in fact informants.

We are concerned, however, that 40 percent of the requests made to DEA under the Freedom of Information Act, for example, are from convicted felons. One of the purposes of the act, and rightly so, was to enable people to correct their records.

We have had over 2,000 requests. Mr. Brosan has represented to me that less than 5 requests made under the Privacy Act actually resulted in a change of records due to an error of information.

I think one of the problems we are facing is the legal constraint that is placed upon our agency to respond within 10 days. This really is a problem that is not just faced by myself as Administrator of DEA. I know that the Department of Justice is studying this provision of the law as well.

The act says that we have to have a response within 10 days. Mr. Brosan can elaborate on this. However, many of the requests we receive involve literally hundreds of pages of documentation and information from a wide variety of information locations in our own agency. To make a determination within 10 days that there is or is not demonstrable harm in the release of that data may force us to come to a conclusion with respect to a request that really requires more time and more detailed study.

I realize that we are weighing the need for adequate law enforcement intelligence against the demands for a free society. It is a difficult job. As head of a law enforcement agency and as a free citizen I recognize the objectives of both of these fundamental issues.

I would be happy to answer questions, Mr. Chairman. I do stand by my testimony and have, as well, the head of our Freedom of Information and Privacy Section, George Brosan, who was previously a

Deputy Chief Inspector of our agency and a criminal investigator with some experience in this field.

Senator THURMOND. Thank you, Mr. Bensinger, for your testimony.

I have a number of specific questions that I would like to ask you based on what you have told us today and on testimony from the law enforcement officials who have testified previously.

My first question is: Has the Tax Reform Act of 1976 hampered the exchange of law enforcement information between the Drug Enforcement Administration and the Internal Revenue Service? If so, in precisely what ways has it operated to restrict the exchange of information?

Mr. BENSINGER. I believe it has had an effect on the exchange of information. The passage last year of the Tax Reform Act of 1976 required new regulations reflecting the act. Three problem areas have surfaced.

There is a restraint upon the Internal Revenue Service's personnel. First, I think the IRS must notify taxpayers or tax nonpayers that it has served an administrative subpena on a financial institution for their records, the nature of the case under investigation, and further administrative and judicial means immediately available to the subject of the investigation to intervene in the service of the subpena.

I cannot comment, sir, upon the propriety of the Internal Revenue Service's administrative matters. However, if there is a target of a narcotics investigation, for example, who is also under investigation for tax matters and a civil investigation and we have got a criminal investigation going on there could be an adverse effect to this premature disclosure of an investigation which we separately are engaged in.

In addition, I met with the Commissioner of the Internal Revenue, Jerry Kurz, on Monday of this week, with other criminal justice personnel from the city of New York and the U.S. attorney there. The line in which an exchange between Federal agencies of nontax return information can be exchanged is less than clear, I think.

We do not want to see anyone's tax return. We do not feel that is our business from an investigative standpoint or anyone else's. However, during the course of an investigation, on a background basis, there may be information known to revenue agents which could provide insight into a major narcotics case.

Normally, this type of information is exchanged between Federal investigative agencies. Other provisions of the IRS Code and the activity of the Tax Reform Act of 1976 relating to foreign bank accounts may be affected by the overall broad antidisclosure provisions.

The Internal Revenue Service cannot now pass this to the appropriate Federal agency. A question regarding the use of foreign bank accounts or trusts is now included in the basic Form 1040 package sent to U.S. taxpayers. However, when it is answered it is, of course, confidential tax-provided information on that return. If there is an individual with large bank accounts overseas which may have been swollen by narcotics profits, that information is not passed on to our Agency.

Senator THURMOND. Thank you.

Mr. Bensinger, I want to ask for your comment on some testimony given to this committee this last July 13 by Mr. Eugene Rossides,

former Assistant Secretary of the Treasury for Law Enforcement, and Mr. John Olszewski, formerly Chief of Intelligence at the Internal Revenue Service.

Mr. Rossides expressed the conviction that we will never be able to bring illegal drug operations under control without an effective attack on the fruits of illegal drug operations—that is, without taxing the huge profits of the traffickers.

In line with this belief, Mr. Rossides, while he was at the Treasury Department, instituted a Treasury-Internal Revenue Service Narcotics Trafficker Tax program involving the Treasury Department, Internal Revenue Service, Customs, and BNDD. He described this as one of the most successful law enforcement programs in history. Information was pooled, targets were identified, and the Internal Revenue Service would then run tax audits on them. In a short period of time, he said, they were able to identify 1,800 major dealers and some 3,000 minor dealers, and my investigations were started on most of them.

Unfortunately, Mr. Rossides told the subcommittee, in 1973 and 1974, the new Commissioner of the Internal Revenue Service, who disagreed with the program, ended it despite clear congressional approval and Executive directives.

Do you share Mr. Rossides' belief that the termination of the cooperative narcotics traffickers program described by Mr. Rossides has seriously affected your ability to deal with the drug problem?

Mr. Bensinger. Let me make two points, Mr. Chairman.

First, with respect to Mr. Rossides' testimony that we do need an impact on the financial gains from illegal narcotic trafficking to have a major impact, I agree with that. I would add that President Carter, in his message on August 2, acknowledged that and asked the Department of Justice and the Department of the Treasury to study whether legislation should be introduced that would seize and appropriate to the U.S. Government illegal funds which were made from illegal narcotic transactions.

A determination has not been made by both of these Departments, one in which I serve. However, I am encouraged by the President's comment on this serious problem.

I would also say that the President, in that same message, made reference to the Tax Reform Act of 1976 and asked us, in Justice, to consider whether there was any erosion of law enforcement effectiveness because of the Tax Reform Act of 1976 and whether amendments would be appropriate, still providing privacy to individuals and meeting the constitutional requirements of our Government and our law.

With respect to the narcotics tax program, it did lapse into a rather nonactive state in 1973, 1974, and 1975. However, in 1976 it was reactivated. The memorandum of understanding was signed between the Commissioner of the Internal Revenue Service and myself at DEA—which we would like to submit for the record, if we could, separately, although I do not have a copy with me—in July of 1976. We have reinstituted a program by which we would provide the names of individuals and organizations that we felt were major narcotic traffickers for consideration of separate tax investigation by IRS.

Since that time we have given 500 Class–I violator names to the Internal Revenue Service. We believe that the Internal Revenue Service has adopted a more active policy within the last 9 months to a year.

We feel, though, that the Tax Reform Act does need further study. We also believe that the seizure of these enormous illegal profits made by narcotics traffickers would be an effective deterrent presently missing in our law.

Senator THURMOND. I guess this is a two-way street. I am wondering if the Internal Revenue Service has furnished your information?

Mr. BENSINGER. I am getting some coaching, Mr. Chairman, which is sometimes an occurrence that happens in this job.

Let me introduce you to my professional expert here, Mr. Gordon Fink, who is the Assistant Administrator for Intelligence for the Drug Enforcement Administration.

Senator THURMOND. Have a seat at the table, Mr. Fink.

Mr. BENSINGER. Mr. Fink, why don't you respond to that question?

Senator THURMOND. Would you like him to answer that question?

Mr. BENSINGER. Why don't we have him do that?

Senator THURMOND. Hold up your hand and be sworn in.

Do you swear that the evidence that you give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. FINK. I do.

Mr. SCHULTZ. Will you state your full name for the record, please?

Mr. FINK. William Gordon Fink, Assistant Administrator for Intelligence, Drug Enforcement Administration.

As part of the exchange that the Administrator just made reference to, where we provided names to IRS, they—as a result of their investigation of their own potential taxpayers in violation—provided us with about 200 names that we then ran through our system. We turned them over to our field agents for ongoing investigations.

Therefore, the program is, in fact, two-way. They are providing us leads on potential targets that may not have been known to us. The activity right now is within our field structure, so I cannot report the specifics back. It is still in an embryonic stage. It is two-way, though.

Senator THURMOND. Now, Mr. Bensinger, it is my understanding that in the old days if they stopped a suspected drug trafficker and he happened to have $100,000 or $500,000 in cash in his possession, in the absence of a reasonable explanation, the Internal Revenue Service would make what is called a jeopardy assessment, which might include not only a tax assessment but a penalty for not declaring taxable income.

The same thing would be done, I believe, when an audit of a suspect's finances revealed that he had several million dollars in the bank, with no plausible source of income.

Is that correct?

Mr. BENSINGER. That is correct, Mr. Chairman.

Could I give you an example?

Senator THURMOND. Please do.

Mr. BENSINGER. On October 6, at the culmination of a major brown heroin investigation, search warrants were obtained on a Mr. and Mrs. Harold Hamilton. It was Harold and Edith Hamilton, who resided in Beverly Hills, Calif.

These two individuals were lieutenants in a major drug smuggling enterprise which reached across the Nation. They lived in a house worth $330,000 which they paid for in cash. It had a swimming pool

and was up in the estate section of Beverly Hills. They had a Rolls Royce valued at $60,000, a Jaguar, 10 mink coats, and $110,000 in cash stacked up in nice $10,000 piles.

All of these funds, I might add—the coats, the car, the house, and the property—were purchased with cash.

That was referred to the Internal Revenue Service for a tax jeopardy assessment. It shows the enormity of the profits to be made in the narcotics field.

They have since been convicted and sent to the Federal penitentiary for significant sentences.

That type of assessment does not reach the totality of the profits. It is just a tax on those assets. It is not the total assets in question.

Senator THURMOND. Thank you.

The subcommittee has heard that jeopardy assessments of drug traffickers are almost a matter of the past. It has heard of one case where a trafficking suspect was found with some $350,000 in cash for which he just could not account—and all the money was returned to him. Do you know whether these things are so?

Mr. BENSINGER. There was one case involving, I believe, a Thai national in the Washington, D.C., area in which there was a—if I am not mistaken, you may be familiar with this case, Gordon. It was some time ago, but it was within the last 12 months. It was a tax jeopardy assessment that was made on a narcotics trafficker with about $700,000 in their bank account. I think it was in Alexandria.

There are jeopardy assessments that are made. The extensiveness for them probably varies by region and by the attitude of the local IRS agents. I think we do need a strong stand on that issue. I think that the policy, in terms of its field implementation, would require me to do more research to be specific on whether this is something which is or is not receiving the type of attention that is necessary.

Certainly it is a major deterrent. A third of the traffickers today who are convicted are getting probation. Another one-third are getting very light sentences. If the money from which they are profiting is not in some way encumbered there are very inconsistent deterrents for narcotic traffic.

Mr. Fink would like to add a point.

Senator THURMOND. Would you like to add anything?

Mr. FINK. Last week I met with my counterpart with IRS on this very topic. We found that the IRS application varies widely with respect to their field system.

We have agreed that their headquarters would put out some additional policy guidance and we, in turn, with our field structure, would work more closely with them to try to provide the information that will result in a reinstitution of the program.

They have acknowledged that in certain areas it has lapsed. We are now trying, from the headquarters sense, get the policy down within both field structures on this very topic.

Mr. BENSINGER. I think also, Mr. Chairman, Commissioner Kurz and I have agreed to try to have joint training, if not our agents in the same conference for representatives from our jurisdiction—from DEA—to talk and meet with regional representatives from the IRS. We would like to impress upon them the important deterrents that consistent tax jeopardy assessments would have.

I do expect that communication and interchange to take place.

Senator THURMOND. Mr. Olszewski told the committee that the information gathering and retrieval system which the Internal Revenue Service had maintained until approximately 1975 had for all practical purposes been dismantled, and that, as a result of this, the investigation of criminal tax evaders has pretty well ground to a halt. If this is an accurate reading of the situation, it must certainly have affected your ability to deal with drug traffickers.

What is your comment on this?

Mr. BENSINGER. I do not think I could accurately comment on what has happened to their information retrieval system. To the extent that their data base does not include criminal information and we do have joint investigations, it would presumably have an impact. However, I would just not be in a position to comment on Mr. Olszewski's representation. I do not know the facts.

Senator THURMOND. Mr. Olszewski had some further testimony dealing with the cutback in the sharing of intelligence. He told the subcommittee that law enforcement agents of one agency are frequently fearful of disclosing information about suspected criminals to officers of agencies other than their own, because this would be a violation of the privacy law, bearing criminal penalties and they would have to defend themselves on their own.

He told the subcommittee that about a year or so ago an Internal Revenue Service agent had testified before the House Vanik committee that information he possessed about a possible murderer was not transmitted to the appropriate agency because of Internal Revenue Service restrictions on the sharing of information.

Doesn't a climate like this make it extremely difficult for you to function?

Mr. BENSINGER. Yes.

Senator THURMOND. Mr. Bensinger, I notice that you state that the flow of information to the Drug Enforcement Administration appears to be contracting—especially in terms of the information that you used to get on a voluntary basis from banks and telephone companies and utility companies and hotels and other private businesses.

It seems to me that this must be more than a minor irritation—it must hamper you seriously if you have to get a court order for a hotel or telephone record, and if the companies in question immediately notify the affected customer. Just how badly have these recent restrictions affected your agency?

Mr. BENSINGER. Well, I think it is the second part. The first part of your comment with respect to the private community is not significant. It would be of principal concern to the criminal investigator in the field if he is provided with an administrative subpena to get some toll calls from the phone company and the suspect in question is notified within 90 days that his telephone call information is being delivered to our agency. It puts that suspect on alert as to what, in fact, may not have been known to him—that he was under investigation. We may have undercover agents operating within his own organization.

There are procedures by which we can serve notice on the phone company. Mr. Brosan or Mr. Fink can correct me if that is not the case. There is a process by which this notification can be deferred, but it is the type of administrative action and activity that has to be made and which does tend to decrease the exchange of information.

Perhaps, Mr. Fink, you would want to comment further.

Mr. FINK. No; I think you have accurately described it. It is renewable on a 30-day period.

Mr. BENSINGER. A 30-day period?

Mr. FINK. Yes, sir.

Mr. SCHULTZ. Well, isn't it a fact that you could experience a case extending 30 days, 60 days, or maybe a year? This must play an important part in the way you conduct your investigation.

Mr. BENSINGER. Well, I think that is correct. Our major investigations are not completed in a matter of hours, days, weeks, or months. They are lengthy investigations.

The investigation that I mentioned with respect to Beverly Hills involved an organization that was investigated by agents from various regions throughout the United States and took, perhaps, 8 months to complete. The intelligence which was gathered about this organization preceded that by a considerable length of time.

If we keep submitting every 30 days—and my cohorts can correct me if I am incorrect—a request not to release that information it is possible that that information will not be released to that particular toll number owner.

However, it is also possible, with the concurrent repetitive requests back and forth in communication it could be mishandled or the information could get out. In major investigations we would like—particularly going after people who are the head of organizations, not dealing with heroin themselves but directing the financial operations and where the money goes—those individuals need to be the ones that we reach and put in prison.

To the extent that they are tipped off that they are suspects, we lose our effectiveness.

Senator THURMOND. Are these restrictions on company records all the result of the Privacy Act?

Mr. BENSINGER. Yes.

Senator THURMOND. You have told us something about the difficulties you are encountering under the Privacy Act. You have also told us that you are beginning to encounter some reluctance on the part of informers to cooperate with the Drug Enforcement Administration.

You have also indicated that State, local, and foreign law enforcement authorities are becoming concerned about protecting their records from possible disclosure.

You may correct me if I am wrong, Mr. Bensinger, but the impression I have from your presentation is that the situation is not very serious, and that the Drug Enforcement Administration is managing quite nicely. I must say, this flies in the face of everything the subcommittee has been told by a score or more of law enforcement witnesses. I have already quoted Director Knight of the Secret Service as saying they are probably getting about 25 percent of the intelligence they used to get.

Other witnesses have told the subcommittee that there has been a near-freeze on the exchange of intelligence between Federal, State and local agencies—at every level and in every direction. They have complained about the much greater difficulty they are now having in enlisting informants.

All of this testimony was provided to you in advance of this hearing. I must say frankly that, in the light of this testimony, I find it difficult to believe that the Drug Enforcement Administration has been affected as little as your testimony suggests.

Is there some explanation for this apparent discrepancy?

Mr. BENSINGER. Mr. Chairman, I am not sure I would share exactly your characterization that I believe the Drug Enforcement Administration is progressing quite nicely with respect to this legislation.

I do not think that it has had a documented adverse impact that I could represent to you in statistical, factual, and representative manners, perhaps, as, Mr. Knight.

I think that we are experiencing in the Drug Enforcement Administration direct and indirect costs. I do believe we are experiencing administrative burdens on a field investigative force which is already burdened with our own administrative requirements and legal and departmental regulations.

I do believe that we are hearing from foreign and State law enforcement officials concern about the disclosure of confidential information. I do believe we are experiencing, in the law enforcement constituency and in the Drug Enforcement Administration, increasing concern and fear of jeopardizing investigations.

However, I do not feel that I can represent to you that our information flow, as documented by the number of informants that we have active or by the type of intelligence that we share and exchange with Federal, State, and foreign agencies, has decreased. I just do not feel comfortable coming up and telling you something that I feel may be taking place if I am not in a position to prove it.

Senator THURMOND. I have some questions now that I would like to ask about the Freedom of Information Act. The first questions have to do with the quality of your analysts because it is obvious that careless or poorly trained analysts may bring an agency a lot of grief as a result of the Freedom of Information Act and the Privacy Act.

Mr. BENSINGER. Yes, sir.

Senator THURMOND. How many analysts do you employ?

Mr. BENSINGER. We have 15 individuals in the Freedom of Information section and the Privacy section.

Mr. Brosan can describe to you in precise detail the classification job titles of these individuals and the method of operation of that unit.

Mr. Brosan?

Mr. BROSAN. We have seven people that are specifically known as freedom of information specialists, Senator. I think they are probably the best in the Government.

We have 15 people in the unit, seven of whom are actual specialists who analyze and process the material.

Senator THURMOND. What type of training do they receive?

Mr. BROSAN. Six of these seven, Senator, have been with the unit since its origin in February of 1975. The type of training that they underwent at that time was familiarization with the acts from the acts themselves.

We have had very little turnover. They were there when the Freedom of Information Act became effective in February of 1975. They were thereby able to familiarize themselves with that act for 6 months. They were still there when the Privacy Act came into effect.

They are highly intelligent. Most of them are college graduates. Through practice and experience and through constant conferences with the various changes that come down we have been able to maintain them at a very high degree of competency. We have had no serious disclosure problems through some form of error or omission or oversight on their part.

Senator THURMOND. How many of the analysts received their positions through upward mobility channels?

Mr. BROSAN. None that I know of, sir. As I say, there were seven when we started and six of the seven remain. We have just been granted permission to select two additional analysts. However, they have not officially been assigned to our unit yet.

Senator THURMOND. The subcommittee has heard that your agency has been inundated with mimeographed or printed form letters, requesting information under the Freedom of Information Act and the Privacy Act, and that many of these letters come from prisoners or dissident groups. Is that accurate?

Mrs. BENSINGER. I would say that it is. We have received, in fact, 10 percent of the total number of requests from individuals who are convicted felons.

Senator THURMOND. It is clear to me that some organization or organizations must be putting the prisoners and dissidents up to sending in such form letters. Does the Drug Enforcement Administration's intelligence know of any organizations that are involved in such activities?

Mr. BROSAN. Not a specific organization. We will receive a standard form letter from several individuals—and we have on several occasions received these letters—within the same Federal penitentiary or within the same holding institution. If one individual writes us he apparently Xeroxes the letter and we then have others filling in the blanks.

We will receive a dozen or so requests from a single penitentiary in exactly the same letter form within a given period of a week or two.

As far as specific organizations having a standard letter, I would have to say no. We have received multiple requests from different organizations, but they are not always the same standard letter.

Senator THURMOND. The subcommittee has also heard that most agencies have had the experience that requestors do not confine themselves to a simple letter of request, but will write 15, 20 or 30 or more different letters, requesting variations on the same information. They do this for the purpose of harassment.

Has your agency had such experiences?

Mr. BENSINGER. I would say we have, both from individuals and corporations with whom we have responsibility from a compliance and regulatory nature.

Mr. SHORT. Would you classify this as harassment?

Mr. BENSINGER. George, what would you——

Mr. BROSAN. Yes, sir.

Senator THURMOND. The subcommittee has also heard that the Department of Justice received a request from a 15-year-old student who wanted the files in every unit and division within the Department checked to see if they had any information about him. According to our

information, the search involved over 100 Justice Department employees, and, of course, many hundreds of man hours.

Do you know about this case?

Mr. BROSAN. We were a part of the Justice Department organization that was required to respond in that instance. It was before my tenure in office, but that is a case that does exist in our files; yes, sir.

Mr. SHORT. Could you expand upon that case and tell us about it?

Mr. BROSAN. I do not know it from firsthand knowledge, but the files reveal that a youngster did write in and ask for information. The Department then corresponded with him. He asked that each section of the Justice Department be queried as to any data that they might have on this particular subject.

The Department complied. Every unit of the Department was asked to make a search for the information that the young man wanted. Of course, each department had some expense in both time and manpower, and so on, involved there. There are many components in the Justice Department.

Mr. SHORT. Wasn't there some indication that he was doing this as part of a school program?

Mr. BROSAN. Yes; I believe the file did indicate, Mr. Short, that he was doing this as part of a project in school.

Senator THURMOND. I believe you mentioned the case of a drug suspect, then under active investigation, who requested information about himself from your files. Had you replied that you had no information, you would have been in violation of the law. Had you told him that you had information but you could not release it to him you would have been alerting him to the fact that he was under investigation.

Your testimony was: "Fortunately, by the time our Freedom of Information Office could act, the subject had been arrested and the hashish confiscated."

What if there were no such fortunate delay? How could you handle a request from a suspect under active investigation about either violating the law or alerting him?

Mr. BENSINGER. I think this is a principal problem, Mr. Chairman. I want to frankly express a concern with that.

If the suspect is under investigation we respond and say that we cannot release the data to you in our systems of records that you request, because it is not available.

If the person is not under investigation, according to Mr. Brosan, the response is, "We have no information on this individual."

While the sentence that I read to you with respect to not providing the information in the systems of records and it not being available is what is used, this is a red flag to a drug trafficker.

Mr. SHORT. The subcommittee is familiar with this particular case. It did put you in quite a bind. Is there anything that you recommend so that you can legally get around such obstacles?

Mr. BENSINGER. George?

Mr. BROSAN. Yes; I would think we would have to make several changes. The first would be that we should not be required to respond within 10 days. If we eliminate the time requirement we might be in a position where we will not have to be in violation of the law.

In this instance the backlog happened to work to our advantage. We had a heavy backlog. Taking things on a first-come-first-serve basis the backlog was advantageous. We put this fellow at the end, and in the interim the agents were able to make the case.

Just as you have in the telephone subpena issue, these cases cannot be made in 30-, 60-, or 90-day time frames. Therefore, I would think that one of the changes that we would need would be some loosening of that 10-day time requirement.

Another one would be possibly exempting investigations for a period of time after their completion—whatever that period of time might be determined to be. It could be a year or something of that nature, so that we would not have to respond during the course of open investigation and for a period of time thereafter.

Senator THURMOND. The subcommittee has heard of another case where a prison inmate, acting under the Freedom of Information Act, requested a copy of a Drug Enforcement Administration publication describing the procedures used by criminal elements to manufacture liquid hashish.

According to our information, this information was sent to him. Do you know about this case?

Mr. BROSAN. Yes, sir. That was information concerning the simplified methods of manufacturing liquid hashish, which was contained in an intelligence brief which we used for the training of our own personnel. We had several requests for the material. We denied those requests, but we were later overruled by the Department of Justice appeals unit.

In fact, we have disseminated that information.

Mr. SHORT. The information was sent to the prisoner?

Mr. BROSAN. We had several requests for that information, Mr. Short. There were three, in fact. One of them was a prisoner, another one was an attorney, and I forget the third individual. We did, however, release the information in one instance. In another instance it is available for release. I believe that is the case with the attorney, but he has not paid the money. When he does we will release it.

I cannot recall the third one. We have, however, disseminated the information to the public. One of these three people has it.

Mr. SHORT. In the case of the prisoner, Department of Justice overruled your denial and the documents were sent. I believe, however, that when the documents reached the prison the warden refused to release them, because this was not the type material that should be given to prisoners. I think the warden took appropriate action; this does not, however, alter the fact that DEA was required to release this information in the first place.

Mr. BROSAN. I am refreshed. That is correct, sir.

Senator THURMOND. Have you had any requests under the Freedom of Information Act for information about some of the highly sensitive techniques and devices that are now used in the war against criminals?

Mr. BROSAN. We have had requests under the Freedom of Information Act as opposed to the Privacy Act for such things as our radio frequency, the tail numbers of our aircraft, where they are stationed, which are seized, descriptions of the aircraft, and so on. We have had requests of that nature; yes, sir.

Senator THURMOND. How have you responded to these requests, or how would you respond if you got some?

Mr. Brosan. At the time, Senator, we denied these requests. However, I do not know whether we would be able to deny them if the requests were resubmitted at this time, due to some changes in policy.

Senator Thurmond. Would you be terribly handicapped in your law enforcement work if you had to furnish that information?

Mr. Brosan. I would not want to have our tail numbers and these type of agency operations revealed.

Senator Thurmond. I cannot hear you.

Mr. Brosan. Mr. Chairman, let me speak very directly. The answer to your question is yes. I do not think it is appropriate for us to reveal to the public at large—and certainly to an inmate in a Federal penitentiary—the tail numbers of our aircraft or the transmission and frequency numbers of our agents.

I am concerned about the safety of our personnel. We have to have voice privacy and appropriate communication effectiveness. I think it would be a mistake to have our frequency put on the bulletin boards of criminal organizations and other locations.

Senator Thurmond. Have you had a request for such information?

Mr. Brosan. Yes; we have had requests for the information.

Senator Thurmond. Did you deny it or how did you handle it?

Mr. Brosan. We denied that under the previous policies of the Department of Justice. We did deny that information as being harmful to our law enforcement operations, yes.

Senator Thurmond. Have you been forced to furnish that by some overruling body?

Mr. Brosan. Not the information concerning the tail numbers and the frequencies and so forth. We have not, as of this time, been forced to reveal that.

Mr. Bensinger. I am speaking without having a dialog, but I do not think the Deputy Attorney General or the Attorney General would want, knowing their thinking and having met them, that type of data necessarily released, by the way.

Mr. Short. Mr. Brosan stated that under the new policy you may have to release it.

Mr. Bensinger. I would question whether the policy would require us to do that.

Mr. Brosan. At the present time, my understanding of the policy would be that we would have to demonstrate what harm could befall the agency and its mission. If we could demonstrate that, then we would be able to withhold that data.

Mr. Bensinger. I would represent to you that I think we could make that argument, and I think the Attorney General would back it.

Senator Thurmond. Have you had any requests for rosters of investigative personnel? This is something that troubles us because the Civil Service Commission has ruled that the names, grades, and salaries of Federal employees is public record information. If you have had such requests, how have you handled them?

Mr. Brosan. We have had such requests, Senator. We have handled them by getting a computer printout of all our employees and then eliminating from that list those employees that are classified under the Civil Service classification of 1811, which is our criminal investigators. The balance of the list has been forwarded to the requestor at the cost of the production, whatever that may be. It is $20 or $25 or something of that nature.

There are some problems with that. We feel that other personnel within DEA are equally as sensitive as our agent personnel—for example, our chemists, our intelligence analysts, and so forth. We would hope that their names could be withheld. These requests come from, at times, various commercial agencies such as insurance companies and so forth.

Under the new civil service regulations we must reveal the names and the posts of duty.

Mr. SHORT. You have 1,810 general investigators, don't you?

Mr. BROSAN. Yes, Mr. Short.

Mr. SHORT. And they are required to perform a certain amount of criminal work?

Mr. BROSAN. Absolutely. They are out there checking on the various drug firms and pharmacies and so on.

Mr. MARTIN. Have their names been revealed?

Mr. BROSAN. Yes.

Senator THURMOND. Do you think it is wise to do that?

Mr. BROSAN. No, sir. I would prefer not to reveal the names. We would prefer to withhold the entire list.

Senator THURMOND. Who forced you to reveal the names?

Mr. BROSAN. We counseled with the Department of Justice by memorandum. We were advised at the last Freedom of Information Coordinators meeting last Thursday that it was discussed. We apparently have no legal grounds to withhold that information under the new civil service regulations.

Senator THURMOND. Under the civil service regulations?

Mr. BROSAN. Yes, sir.

Mr. MARTIN. Do you favor an amendment to the Freedom of Information Act that specifically exempts the disclosure of rosters of personnel of investigative agencies?

Mr. BENSINGER. I believe so. I think, Mr. Martin, that it would not restrict itself to compliance of criminal investigators, but other professional technical personnel who are engaged in service and support to agencies such as ours that are enforcing the laws and criminal statutes of the United States.

Senator THURMOND. Have you had any requests for information from foreigners who are residents in other countries?

Mr. BROSAN. Yes. We have had requests under that category.

Senator THURMOND. What did you do about that?

Mr. BROSAN. A foreigner who is a resident in another country is not entitled to information under the Privacy Act, but he is entitled to information under the Freedom of Information Act. As any other Federal agency, we would respond to the extent that we can, deleting that information which we would be entitled to delete under the various exemptions of FOIA.

Senator THURMOND. Under the Freedom of Information Act did you say that you had to provide the requested information or not?

Mr. BROSAN. Yes, sir. We would have to provide the information.

Senator THURMOND. I have a list of additional questions here about the Freedom of Information Act and its impact on the Drug Enforcement Administration. Some of the answers, I know, you will not have at your fingertips. Therefore, I am going to suggest that you take the questions and provide careful answers to them as soon as possible, and the questions and answers will be placed in the record at this point.

Is that agreeable to you?

Mr. BENSINGER. That certainly is, Mr. Chairman.

[Material to be supplied follows:]

QUESTIONS RECEIVED AT THE CONCLUSION OF THE HEARINGS HELD SEPTEMBER 21, 1977

Question: What is the average time to process a routine Freedom of Information Act of Privacy Act request in which a file is found on the requestor and all information needed is available to identify him/her?

Answer: From the time the request is received until such time as the response is mailed to the citizen, approximately four weeks elapse. All of the time, however, is not spent in processing the case. A portion of it passes as each request waits its turn according to a strict first-in first-out procedure.

In the past, the time that a request was in our office has been as long as 14 weeks. However, this is no longer the case with "the average request." A preponderance of the DEA investigations are conspiratorial in nature and involve numerous individuals over long periods of time. A request, therefore, might involve the review of material in over 100 files. On the other hand, a person could appear in only a single file on just a page or two. This obviously results in a wide range of processing time depending on the type of case being handled.

Question: How long is it taking to process a request in which no file is found?

Answer: Requests which are "no records" are generally processed within three working days after they are assigned from the backlog.

Question: Will you ever be able to process requests within the 10 days as required by the Act? That is, for those requests in which a file is found.

Answer: No. Rather, we will be able to answer some requests within the 10-day time frame. Cases involving multiple files will take considerably longer; and although we can assign a team of Freedom of Information Specialists to these larger matters, we cannot extend this to the point where those processing the files will lose the continuity of the issues which are involved. For example, were we to assign 10 specialists to process one volume each of a 10 volume case, it would be apparent that Specialist No. 9—not having read the other volumes—might concede a disclosure on the face of the material before him, which, in fact, should have been withheld. Therefore, there is a limit beyond which you can fragment a case. Not being able to split the file among numerous specialists, the only other alternative is to extend the time limit.

Question: What do you consider a reasonable time frame?

Answer: I believe that we should strive for an average response time of 30 working days. We should be required to report to the Congress in our Annual Freedom of Information Report the average response time of all the requests received during the proceeding year. If this average is above 30 working days, the agency should then be required to increase its resources dedicated to Freedom of Information. If the average response time is 30 days or less, the agency should be deemed to be in compliance with the law.

Question: What is your estimated costs for fiscal year 1977 and projections for fiscal years 1978, 1979, and 1980? What costs are you taking into account?

Answer: Attached is a copy of an itemized cost estimate prepared after cost analysis by the Assistant Administrator for Administration and Management. The costs enumerated should be considered to be annually repetitive with the exception of Item (*b*).

Cost estimate of DEA Freedom of Information Act and Privacy Act programs (fiscal year 1977)

Item:	Item cost
(*a*) Freedom of Information Unit. Includes salaries and benefits, office space, equipment, and reproduction costs	$440,000
(*b*) One thousand man-days of TDY assignment for Special Agents in Freedom of Information Unit. Includes salaries, benefits, per diem, and airfare	156,000
(*c*) Field and headquarters support in processing requests from Freedom of Information Unit. Includes salaries and benefits of those aiding the Freedom of Information Unit	17,000
(*d*) DOJ Freedom of Information and Privacy Act appeals service	20,000
(*e*) Chief counsel. Includes salaries and benefits of one attorney full time and one attorney part time	30,000
(*f*) Accounting of disclosures. Includes salaries and benefits of those submitting and processing DEA 381's (disclosure account records) and cost in computer services division	139,000
(*g*) Investigative records section. Includes salaries and benefits for two clerks full time and one clerk part time	30,000
Total	832,000

All costs have been adjusted to include general and administrative overhead costs.

At present, there is no way we can possibly project costs for the next three years so these figures are not included.

Question: Besides the personnel you have within the Freedom of Information and Privacy Act Branch, how many other employees in other offices work on Freedom of Information and Privacy Act matters and are their costs included in the Freedom of Information and Privacy Act Branch cost estimates?

Answer: See Answer above.

Question: What is your projected level of activity over the next 3 years and do you foresee that your present complement will be enough to meet the number of requests?

Answer: Having only two full years of experience with these Acts, it is difficult to project the level of activity for the next three years. The trend, however, has been for a slight increase in the second year over the first and what appears will be a somewhat larger increase in this the third year. In the first year, DEA was just under 700 cases; and in the second year, slightly over 700 cases. We expect in Calendar Year 77 to have received over 800 requests. Based on this data, it would be necessary to increase the present staff of specialists from 9 to approximately 12 next calendar year. The overall number of personnel working in the Freedom of Information Division is presently 15, with 2 additional selected and not yet present for duty. I would expect the complement would have to be increased next calendar year from the 17 just mentioned to approximately 24 or 25. Beyond 1978, it is difficult to project at this time.

Question: Could you give a percentage breakdown of the type of requestors that use the Freedom of Information and Privacy Act that would fall in the following categories: (A) Criminals; (B) Aliens; (C) Curious citizens; (D) Media; (E) Researchers; (F) Federal Government applicants?

At the same time, could you please breakdown the type of files requested into: (A) Security; (B) Criminal; (C) Civil matters; (D) Applicant BI, etc.?

Answer: (A) Criminals—More than one-third of all the requests answered during Calendar 76 were to persons known to us to be convicted felons.

(B) Aliens—We have and continue to respond to Aliens under the Freedom of Information Act and also under the Privacy Act; but only under the latter to the extent that those Aliens are permanent residents of the U.S., e.g., Aliens incarcerated in Federal penitentiaries.

(C) Curious citizens—We are certain we have received requests from curious citizens. The exact data could not be ascertained without a case-by-case review of our 2,000 files.

(D) Media—The media has made a number of requests of DEA. Exact details are again not available, as we do not record or categorize requesters in any way whatsoever. It should be noted that the immediate media, i.e., newspapers, television, radio, etc., are somewhat encumbered by our time limits, as they need the data sooner than we can provide it. The Acts do not help such requesters, because we handle things on a strict first-in first-out basis.

(E) Researchers—DEA has received a number of requests from researchers which again have not been itemized or recorded. Other forms of media might be included in this category such as those seeking data for books, documentaries, etc., which are not needed within the immediate time frames required by the press and electronic media. We do not know the exact number.

(F) Government applicants—The second largest unit of requesters after known criminals are Government employees and those are applicants for positions within DEA and its predecessor agencies. We have a considerable number of such requests.

DEA handles each request on an individual basis and in no instances do we keep a record of the characteristics of the person or organization making the request. Therefore, our responses have been based on estimates—which we feel are close to what actual research would disclose.

Concerning the types of files requested, we are most often asked for criminal files followed by security files, that is those matters which involve our own internal security involving DEA employees, applicants, etc. Another large area of requests are those received strictly under the Freedom of Information Act covering Regulatory matters in the area known to us as Compliance.

Question: What benefits do you think have been derived from the Freedom of Information Act and the Privacy Act?

Answer: Generally speaking, the openness of Government has been demonstrated and specifically the accuracy of DEA's records. While requesters, from time to time, dispute some of the material within our files, in less than half a dozen instances has it been proven that there was a mistake in fact.

Question: What negative impact, if any, have the Freedom of Information Act and the Privacy Act had on the primary mission of the Drug Enforcement Administration?

Answer: Considering the amonut of information that DEA has divulged, it would be impossible to rationalize that there has been no impact whatsover. This is particularly true when you consider the fact that over one-third of our responses are distributed to convicted felons and that we have had almost 100 organized crime and narcotic figures make inquiry of us in the past two years. Specificially, DEA has no way to measure accurately the damage that has resulted from these disclosures. Many of these individuals are at present suspect and will certainly, based on the information they have already received, be able to take evasive action and not commit the same errors that led to their earlier capture.

While many of our investigative techniques are known, we are, through these Acts, further advertising our capabilities and exposing our weaknesses. This obviously hampers the accomplishment of our mission.

DEA, almost simultaneously with the introduction of the Acts, acquired new leadership; reorganized our personnel; set new politices and guidelines, and generally changed our program and redirected our goals. The disadvantages brought upon us by the Acts in question have been overlapped by the improvements occurring during the same period of time. This makes it impossible to state how much further along in our mission we would have been had the Acts not been passed.

Question: How many requests have you had in which you had no file or record?

Answer: DEA does not maintain a list of its "no record" determinations. We feel that 15 percent is a fairly accurate estimate.

Question: How many requests have you had in which you have had to close them administratively because the requester does not provide the required information (i.e., notarized signature, date of birth, Social Security Number, etc.)? How long do you wait before closing them?

Answer: DEA administratively closes approximately 50 requests in a given year. Some of these requests are later reopened when additional data is received. Our policy was, in the past, to wait 60 days before administratively closing a case and this was quite satisfactory. Presently, however, we are waiting 90 days, as computerization facilitates a quarterly reporting format.

Question: How much has the Drug Enforcement Administration collected in fees since the Freedom of Information and Privacy Act cases began to be processed?

Answer: DEA collected $890.50 during 1975; $693.60 during 1976; and $531.90 for 2 quarters in 1977 for a total of $2,116.000 fees collected since the inception of the Freedom of Information and Privacy Acts.

Question: How many cases do you have in litigation? What are the primary reasons for these cases?

Answer: We have had a total of 40 cases in litigation since the enactment of the FOI/PA. The primary issues resolved in almost every litigation case involved: administrative markings, invasion of third party privacy, identification of informants, and identification of law enforcement personnel. In each case, these major issues have been resolved in favor of DEA. There have been only three lawsuits involving classified documents and each is still pending.

Question: How many litigated cases have achieved final action, and how many has the Government won?

Answer: Twenty-one cases have reached final action status. Two cases are presently pending in the Eighth Circuit, and one case is also pending in the Ninth Circuit. The Second, Sixth, and Tenth Circuits have upheld DEA's previously won verdicts. Nineteen cases are either under advisement, awaiting *in camera* examination, awaiting the additional Discovery or pending trial. DEA has substantially prevailed in every case with the exception of a recent decision now under a Motion for Reconsideration involving an apparent procedural mistake pertaining to the *in camera* filing of the documents in issue.

Question: What plans do you have for the future to reduce the costs and problems with processing Freedom of Information and Privacy Act requests (i.e., file automation, file destruction, use of non-agent personnel)?

Answer: File automation concerning DEA's general file system is already well underway. DEA has maximized the use of non-agent personnel, leaving a mere two Special Agents in the program.

Concerning file destruction, there is much room for improvement. DEA has inherited the files from the Bureau of Narcotics, the Bureau of Narcotics and Dangerous Drugs, the Bureau of Drug Abuse Control, the Office of National Narcotics Intelligence and the U.S. Customs Service. In many instances, files duplicative of those in the central headquarters depository exist in various field offices. DEA is considering, as a start, abolishing all field files prior to 1968, the date of the establishment of the BNDD. Following this, other improvements will be considered.

* * * * * *

In a followup question not included on the typewritten list provided at the time of the Hearings, the Subcommittee has asked for suggestions as to changes in the Acts. The following are some of those that we would suggest:

(A) The unrealistic response requirement of 10 days imposed by the FOIA should be extended as set out in our answer to questions three and four above, as an average of 30 working days. It is a contradiction to place a law enforcement agency in a position where it is constantly in violation of the law.

(B) A third agency rule should require that documents found within an organization's files which belong to a third agency *must* be referred to that agency for its own direct response to the requester. Under present circumstances, the responsibility to answer the request falls upon the agency receiving it. They are allowed to confer or consult with the Agency whose documents they hold, resulting in inconvenience and sometimes confusion. A third agency rule would formally fix responsibility.

(C) At the present time, information received from local police agents and foreign governments is protected from disclosure under (7)(D) of the FOIA. These agencies are lumped with other sources of information and information creating uneasiness in their minds. We would suggest that all non-Federal law enforcement agencies and foreign agencies be explicitly mentioned as confidential U.S. sources whose identity can be revealed or withheld at the discretion of the agency receiving the request.

(D) The wording which introduces the various exemptions under (7)(D) of the FOIA is not broad enough to include such sensitive items as investigative manuals, confidential training information and methods, etc. This section specifically allows only for the protection of *investigatory records* compiled for law enforcement purposes. Some subject material has been successfully withheld administratively under an "equity" theory. This theory has failed to withstand judicial review. The matter can be solved by substituting for the words "investigative records," the words "material compiled for law enforcement purposes." The various provisions would thereby be broadened to include the items mentioned above.

(E) DSA would suggest that a time limit be extended which would protect Reports of Investigations and related files for a period of three years from the time the case is closed. Such a provision would preclude the nebulous responses that must be made to requesters, particularly during ongoing investigations.

(F) The assessment and collection of fees has proven to be an expensive incumbrance. In addition, it frequently raises questions in the area of administrative discretion that for the sake of a few dollars, complicates and delays the entire process. It is suggested that the Federal Government emulate some of the States' FOI laws which require a fee of $10 for the processing of a request. No further fees would be required regardless of the amount of research or the number of pages released. A requester would, however, have to pay for specialized items such as computer tapes.

Having a uniform fee would eliminate the recordkeeping now required of FOI units; discourage multiple requesters; discourage those interested in simply harassing the agency; and yet not be a serious encumbrance to anyone sincerely interested in obtaining copies of their files and determining if a file exists.

Question: Have you received any requests for information under the Freedom of Information and Privacy Acts from major organized crime figures, and have you complied with these requests?

Answer: Yes.

Question: How many such requests have you received and processed from major organized crime personalities?

Answer: Although the names of all requesters have not been checked, 160 names were selected (from approximately 2,000 requests that DEA has received) as possibly being involved in organized crime. These names were checked against the Organized Crime and Racketeering list in the Department of Justice. This check revealed that of the 160 names queried, 63 were principle organized crime figures and 14 were organized crime associates.

DEA has not asked its regional offices for a current list of persons they consider to be OC figures in their particular areas.

Question: How many such requests have you received and processed from minor organized crime figures?

Answer: See answer to question above.

Question: You said that you have received multiple requests for information from certain parties and corporations. I believe you mentioned the figure of 32 requests in one case. When you receive such successive multiple requests, can you use the same material in answering all of them—or do you have to treat such request as a new request, and do an updated job of research on your files? Please expound your answer to include difficulties encountered and any recommendations you may have to rectify this situation.

Answer: There are basically two types of multiple requests. One type concerns the same requester who will make numerous requests, each with a slight variation or on a different subject matter. Each has to be treated as a new request and the subject matter cannot be used in answering the requests. The second type concerns the requester who may ask for all records concerning a major organization, and includes 20 or 25 other names that information on the major organization may be listed under. This necessitates checking 20 to 25 references through DEA Headquarters and Regional files.

Two months later the same organization will again make a request for the same information but they add one or two names to be checked. This has to be handled as a new request and Headquarters and Regional indices again have to be queried. This process can be repeated indefinitely as an update of records kept by DEA on the requesting organization. If certain material is released pursuant to one of these requests, this same material can be used subsequent to a new request, but the indices would still have to be checked to see if information has been previously withheld, this material would have to be reconsidered while processing each request to ascertain if it should still be withheld under current Department of Justice guidelines.

Question: The Subcommittee has been informed that DEA recently conducted a survey of its field offices for the purpose of finding out what difficulties they are encountering as a result of the operation of the Freedom of Information Act and the Privacy Act. If such a survey has in fact been conducted, would you provide a copy of the replies received, or a summary of the replies received, for the information of the Subcommittee?

Answer: Copies are enclosed. (See p. 76.)

Question: In the course of your testimony, you made several recommendations for amending the Freedom of Information and Privacy Act in a manner that would more effectively protect the integrity of law enforcement operations at the same time as they assure the basic constitutional rights incorporated in these two Acts. On the basis of your experience in DEA, are there any other recommendations you would be prepared to offer for improving the Freedom of Information and Privacy Acts?

Answer: Yes. See answers to first set of questions.

Question: In your testimony you stated that DEA has received a number of requests for copies of an agent's information bulletin describing methods used by criminals in manufacturing liquid hashish. You said that your initial disposition was not to send this information, but that you were overruled by the Department of Justice. If DEA has a summary of the requests received for copies of the liquid hashish bulletin and of the handling of these requests, we would like to have a copy of this summary for the record. Similarly, we would like to have copies of any exchanges of memoranda and correspondence with the Department of Justice relating to this matter.

Answer: Enclosed. (See p. 79.)

Question: You have testified about the misgivings expressed by the British and French law enforcement authorities about sharing information with DEA, because they fear that this information may be divulged under the Freedom of Information Act or the Privacy Act. Have there not also been expressions of concern from the West German Government, the Canadian Government, and other friendly Governments?

Answer: Yes.

Question: Could you provide the Subcommittee with copies of any memoranda or correspondence relating to the concerns expressed by the British, French, West Germany, Canadian, and other governments on the subject of sharing information with DEA—whether the correspondence and memoranda were directly between DEA and officials of these other governments, or whether the exchange of views was relayed through the DEA resident agents?

Answer: Enclosed. (See p. 83.)

Question: Would you provide the Subcommittee with nine or ten examples of cases in which arrests were made of individuals involved in narcotic trafficking, when large amounts of currency were either confiscated or located, but IRS neglected to make a jeopardy assessment. In replying to this question I do not intend for you to attempt to judge the reason IRS did not deem it proper to make such an assessment.

Answer: Region 1, $100,000; Region 2, $75,700; Region 3, $83,780; Region 6, $48,600; Region 7, $88,000; Region 8, $135,000; Region 10, $42,047; Region 11, $95,700; Region 13, $33,441; Region 14, $105,650; Region 15, $191,189.92.

In certain DEA regions, money was not confiscated or IRS was not asked to make jeopardy assessments because of previous instructions from IRS offices that they would not respond.

New Orleans has informal agreement that IRS will not be called because they will not respond on less than $1,000.

Question: Could you furnish the Subcommittee with a copy of a document prepared by your staff regarding "the drain on our resources to administer the Privacy Act." The document in question was referred to in a memorandum from Mr. Donald E. Miller, Chief Counsel to the Administrator, subject Department of Justice Executive Conference May 6–8, 1976, and dated April 20, 1976.

Answer: Enclosed. (See p. 85.)

[Memorandum]

AUGUST 30, 1977.

To: Mr. Robert M. Stutman, Director, Office of Congressional Affairs.
From: Louis Bachrach, Chief, International Intelligence Division.
Subject: DEA field response: Impact of the Freedom of Information and Privacy Acts on DEA investigations and intelligence collection.

In preparation for the anticipated hearings of the Senate Judiciary Committee's Subcommittee on Criminal Law regarding the above subject, the Office of Intelligence, in coordination with the Office of Enforcement, solicited field response on this matter using the attached cable (Attachment A).

In addition to the following summary of the impact of these Acts on DEA field investigations and intelligence collection, I have attached a chart (Attachment B) which summarizes the individual responses of DEA regions. No response was received from the New Orleans, Dallas, Seattle, or Bangkok regional offices. Mexico City indicated that enactment of these laws had had no impact on their activities. Although individual responses from some Region 18 district offices were received and generally fell in line with those of foreign offices in other parts of the world, no overall regional response was solicited from the regional management, now located in headquarters.

Generally, DEA field offices feel that enactment of the Freedom of Information and Privacy Acts has diminished DEA's ability to fulfill its mission, both in terms of conducting criminal investigations and collecting intelligence. Further, they are of the opinion that this negative effect is just beginning to manifest itself, largely as a result of a general public ignorance of all the laws' provisions.

The impact assessments made by DEA field offices generally contain the following three conclusions:

(1) Although thus far there has been a minimal increase in the reluctance of informants to cooperate with DEA, field offices predict that such cooperation will diminish substantially as potential informants and the general public become aware that the identity of informants can usually be determined through Freedom of Information inquiries. This will apply particularly in cases where potential informants are non-involved witnesses and members of the business and professional communities whose cooperation would be entirely voluntary. This foreseen decrease in cooperation will probably have a greater effect on intelligence collection than on "quick buy" investigations for the simple reason that the violators arrested in a "quick buy" made possible by informant information would be in less of a position to retaliate against that informant than would targets of a long-term intelligence probe who might learn an informant's identity through peripheral enforcement activity that left them free to take reprisals.

DEA field offices have conveyed the concern of local and state authorities concerning the sharing with DEA of local informants. These enforcement authorities are greatly concerned that DEA may not be able to safeguard the identity of their informants and are consequently increasingly reluctant to share these individuals with DEA or to identify the sources of any information they may provide.

2. Another matter which has contributed to the negative effect on DEA of these Acts concerns the free exchange of information between DEA and local, state, and foreign enforcement agencies. In dealing with foreign governments, DEA foreign regions have detected a general concern about DEA's ability to safeguard the identity of foreign sources of information divulged to DEA in the course of joint investigations or in responses to domestic regions' requests for information. In one case, the federal narcotics police of a European country required written assurances from DEA Headquarters that we would safeguard the confidentiality of certain information provided by them. In another case, Canadian legislation paralleling the U.S. Privacy Act caused the actual with-holding of information essential to a U.S. indictment. The free exchange of information between DEA and local and state enforcement agencies has been somewhat impeded by these Acts for several reasons. Misunderstandings of the restrictions on information exchange, fear of the stiff personal penalties for violation of the Acts' provisions, the heavy administrative burden of documenting permitted disclosures, and a deep concern about DEA's ability to safeguard the identity of state and local sources of information have all contributed to a general uneasiness in our relations with domestic narcotics agencies.

3. Although no major DEA sources of information have yet been closed, there has been a noticeable constriction of information flowing to the agency from members of the private sector, e.g., phone companies, banks, hospitals, utility companies, hotels, pharmaceutical companies, and small private businesses. The amount of information previously provided on a voluntary basis has decreased markedly whereas information previously provided in response to simple requests can now often be obtained only upon service of an administrative or grand jury subpoena. Making this situation even more difficult, there has been an increased tendency on the part of businesses served with such a subpoena to immediately notify the affected customer that he or she is the subject of DEA investigation, thus compromising said investigation.

In closing, I would like to quote a particularly appropriate and generally representative sentiment expressed in Jerry Jenson's response to Attachment A for DEA's Los Angeles Regional Office:

"The real costs and effects of the FOI and Privacy Acts cannot be measured in terms of man-years or dollars, but by the increasing difficulty of collecting information and keeping our sources confidential."

This comment reflects both my own personal belief and that of the large majority of DEA field offices responding to our inquiry.

Attachments.

ISSUES	REGION 1-Boston	2-New York	3-Philadelphia	5-Miami	6-Detroit	7-Chicago	8-New Orleans	10-Kansas City	11-Dallas	12-Denver	13-Seattle	14-Los Angeles	15-Mexico City	16-Rarotok	17-Paris
Reluctance of informants to cooperate.	non-criminal witnesses/SOI's concerned regarding their names appearing in reports accessible to criminals.	some effect, involuntary nature of cooperation & general ignorance of Acts responsible for lack of effect thus far on CI cooperation.	Due to ignorance of CI's, minumal effect thus far; however, once CI's become aware availability their names thru defense attorney action, cooperation will decrease substantially.	CI's are now more reluctant to cooperate.	general increase in reluctance of CI's to cooperate; particularly businessmen and individuals with strong family ties. Also reluctance of locals to provide identity/info from own CI's	not yet, but continued publicity re: FOI Act will cause; general awareness that identity of CI's can be obtained. Serious detrimental effect on CI cooperation will be result.	N O	no impact.	N O	some reluctance to cooperate on the part of CI's has been noted.	N O	there has been adverse reaction to sharing of local CI's with DEA as result of their possible compromise thru requests under FOI Act.	N	N O	SOI's not generally familiar with FOI Act provisions, but once they are, anticipate lessened cooperation.
Doubts on the part of local law enforcement agencies as to our ability to safeguard data they may provide.	problems with local and state author.'s re: protection of their SOI's after DEA use/interview; to prevent automatic disclosure by phone co. have to regularly forward delay request letters.	restricted flow of info has been result. Formal response to direct request is still rule, but flow of voluntary or routine info has decreased.	policy making mgrs of local law enforcement agc's have expressed doubts, but no way to measure info not being provided as result of these doubts.	questions of ability to safeguard info have arisen, resulting in constricted flow, e.g., previously provided info now requires administrative and sometimes grand jury subpoena.	considerable doubts by local law enforcement agc's responsible for inhibition of free flow of information.	general misunderstandings have caused occasional refusal to provide info; although cleared up as they occur, go unexpressed and fear of Federal reprisals has caused problem.	R E P L Y R	some reluctance to cooperate resulting from administrative burden and from fear of Federal penalties.	R E P L Y R	most initial doubts on parts of local agc's have been cleared up; however, isolated examples remain of regular censorship of info passed to DEA.	R E P L Y R	several civilian sources and non-investigative Fed agc's have ceased exchange of info for fear of compromise or of prosecution for violating requirements of FOI/P Acts.	O I M P A	R E P L Y R	local governments are concerned regarding safeguarding of info provided during joint investigations or to domestic R/O on requests. Ours, local govt request written assurance.
Closing down of particular sources of information as a direct result of enactment of these laws.	no comment	no SOI's closed but increase in wariness by businesses, particularly pharmaceutical cos. In one case, Canadian laws similar to PA caused withholding of vital [illegible]	no, but phone co has severely restricted use of toll info by policy of immediately notifying customers of DEA interest and existence of subpoena.	no comment	channels still open, but less flow of general, intelligence info. Conflict between CSA and PA has caused confusion and possible loss of information.	private insts increasingly reluctant to provide info w/o service of subpoena; also, banks must immediately notify suspects as result of recent IRS case ruling.	E C F I V E	no comment.	E C E I V E	no, but obtaining information has become more difficult, particularly with Western Union and the phone company.	E C E I V E	recent phone co policy of notifying subscriber of DEA interest is being considered for adaptation by other business as result of PA. Effect on DEA investigations would be that techniques and activities would become [illegible] knowledge.	C T	E C E I V E	no closing down of particular sources yet.
Miscellany	- heavy administrative burden - other Federal agencies not as stringent as DEA.	heavy administrative burden.	our reputation for cooperation w/locals suffering due to PA.	heavy administrative burden.	heavy administrative burden.		D	minor administrative burden.	D	sentiment that more sensitive intelligence not being received.	D	real cost of FOI/PA enactment not in terms of those specified complying with documentation requirement, but in terms of added difficulty in collecting info and keeping SOI's confidential.	D		

ATTACHMENT B)

Request No. 77-079F—A Case History

"The purpose of the Federal Controlled Substances Act (CSA) is to minimize the quantity of drugs of abuse which are available to persons who are prone to abuse drugs." (Drugs of Abuse, U.S. Department of Justice, DEA, available in the pamphlet rack, Lobby, DEA Headquarters).

On February 1, 1977, Ronald D. Veteto made a request under the Freedom of Information Act for: "(1) Any studies conducted by the Drug Enforcement Administration on *liquid hashish oil*, relating to the manufacture and use; (2) Any studies conducted by the Drug Enforcement Administration on the illicit manufacture of methaqualone and barbiturates." A copy of this request is attached as Tab A.

Mr. Veteto's request was forwarded to DEA from the Federal Penitentiary in Atlanta, Ga., where he was serving 8 years for possession with intent to distribute narcotics.

This was Mr. Veteto's 4th request to DEA under the Freedom of Information Act. His first request was made in October 1976 and requested all available issues of the Drug Enforcement magazine. He stated that if there should be a fee, we should expect prompt payment. In November, DEA advised Mr. Veteto that upon receipt of $5, ten back issues of the magazine would be forwarded to him. No further correspondence has been received from Mr. Veteto, and the ten copies of the magazine remain in the files of the Office of Freedom of Information pending receipt of the $5.

On December 1, 1976, Mr. Veteto wrote to the Office of Freedom of Information requesting all records on himself (Privacy Act). The request was processed, and on March 28, 1977, Veteto was advised that upon receipt of $11.20, copies of the documents that had been reproduced would be forwarded to him. The material remains on the shelf of the file room in the Office of Freedom of Information as no further correspondence nor the $11.20 has been received.

On January 20, 1977, Mr. Veteto requested student guides covering clandestine lab investigations, seizures, and forfeitures and tort claims. His letter stated that he will make payment promptly. The material, with excisions pursuant to (b)(2) was forwarded to him on April 15, 1977, and a duplication fee of $2 was waived.

Request of Leonard J. Koenick

By letter dated January 7, 1976, Mr. Leonard J. Koenick, a Washington Attorney, requested all of the training material used in our agents and chemists schools. A large quantity of manuals, student handouts, etc., were compiled. A determination letter dated February 17, 1976, advised Mr. Koenick that portions of the material were available and that the fee would be $54.53. Among the material withheld from Mr. Koenick was a student handout entitled, "Liquid Hashish" (Series IG-TB74-103, Intelligence Brief). Staff Assistant Thomas H. Wingate, Jr., cited FOI exemptions (b)(2), (b)(4), (b)(6), (b)(7)(A), and (E). Briefly, it was his viewpoint that the intelligence briefing could be withheld because it related to materials solely within the internal rules and practices of DEA; that it was confidential information; that it was information whose disclosure would have an inhibitive effect upon the development of DEA work; that it was material the disclosure of which could constitute an unwarranted invasion of personal privacy; that it would interfere with law enforcement investigation; and that it would disclose investigative techniques and procedures and thereby impair their just effectiveness.

This determination was appealed by Mr. Koenick on March 15, 1976, and subsequently assigned to an attorney from the Department of Justice for review.

Request of Dennis Sladek

While awaiting the disposition of the Koenick appeal, on August 26, 1976, Dennis Sladek, also an inmate in the Federal Penitentiary at Atlanta, Ga., requested all of the DEA agents training materials. This requester was serving a 6½ year term for the illegal manufacture of narcotics and conspiracy to distribute same. His request was also assigned to Staff Assistant Wingate. When Sladek did not receive a response within the 10-day period set out in the Freedom of Information Act, he appealed to the Department of Justice. (At that point in time, the Office of Freedom of Information was backlogged several weeks. As of this writing, the backlog is several months.)

On October 28, 1976, the appeals unit attorney discussed both matters with Staff Assistant Wingate and found in favor of the requesters, stating that the intelligence briefing in question was not investigative material and, therefore, not entitled to be included under the exemptions set out above. DEA was allowed to continue withholding only small amounts of the material included in the various training documents. Specifically, the bulk of the intelligence briefing entitled, "Liquid Hashish" was to be given to the requesters.

Of particular interest within this document are sections entitled, "Manufacture" and "Laboratories", quotes from which are set out below:

MANUFACTURE

[Note: Paragraphs describing the manufacturing apparatus and process of manufacturing liquid hashish have been deleted from this memorandum.]

In December 1976, the DEA advised Mr. Koenick that pursuant to the instructions of the Deputy Attorney General, additional materials would be released to him. Once again, it was requested that he forward $54.43 to cover the cost of document reproduction, file search, and pamphlets, etc. To date, there has been no response from Mr. Koenick.

Likewise, in December 1976, inmate Sladek was advised that a quantity of material (including the "Liquid Hashish" intelligence brief) was available to him upon payment of $62.30. In an exchange of correspondence, Sladek asked for an itemized list; subsequently he selected those items he wanted, and forwarded payment to DEA. He did not ask for, nor receive, the intelligence brief describing the manufacture of hashish oil.

Request of Don Victor Harbolt

Don Victor Harbolt is an inmate at the Federal Penitentiary in Atlanta, Ga., serving terms for conspiracy to commit armed robbery and escape. Mr. Harbolt has made 10 requests to the DEA which will be outlined below. However, it should be noted that on two of the requests made by Mr. Veteto, as well as on Mr. Veteto's appeal from decisions covering his Privacy Act request, the initials of Don Victor Harbolt (dvh) appear at the bottom of the letters.

Request No. 1: Dated April 3, 1975.

Material Requested: A list of all bulk manufacturers of methamphetamine.

Determination: Dated April 9, 1975. A list from the Federal Register was sent to Mr. Harbolt—$1 fee waived.

Request No. 2: Dated April 18, 1975.

Material Requested: The applications for drug licenses for Abbott Laboratories, Sigma Chemicals, and J. H. Delmar.

Determination: Dated April 30, 1975. Applications forwarded. Fee of 60 cents waived.

Request No. 3: Dated April 25, 1975.

Material Requested: All purchase orders made to General Electric Corporation in the amount of $400 or more for FY 70 and FY 71.

Determination: Dated May 9, 1975. The requester was advised that upon receipt of $5.60 the documents in question would be forwarded to him.

No further correspondence was received, and the material remains on the shelf of the Office of Freedom of Information.

Request No. 4: Undated, but received on September 16, 1975.

Material Requested: All issues of Drug Enforcement magazine and a listing of all studies done by or financed by DEA in Calendar Years 1974 and 1975.

Determination: Dated September 22, 1975. The available back issues of the magazine were forwarded, and a fee of $2 was waived. No copy of a list of studies was located, and Mr. Harbolt was so advised. Subsequently, he filed an appeal and a lawsuit.

Request No. 5: Dated December 5, 1975.

Material Requested: All aireraft confiscated by DEA to include the Registry Number and type, DEA investigative file number and whether or not the plane was being used by DEA. Secondly, all aircraft owned or leased by DEA to include the Registry Number and type, where stationed, the cost and budget authority.

Determination: Dated January 28, 1976. Some documents were released in toto and others were partially released, while still other material was totally withheld. Mr. Harbolt was advised that the budget authority for such matters had previously been published. He was told that upon receipt of $12.40, the available

material would be forwarded to him. No further communications were received from Mr. Harbolt, and the material remains on the shelf of the Office of Freedom of Information.

Request No. 6: Dated July 6, 1976.

Material Requested: A copy of the Report to Congress covering Tort Claims for the year 1975 as required under 28 USC, Section 2673.

Determination: Mr. Harbolt was advised that this section of law was repealed in 1965, and no such report exists.

Request No. 7: Dated August 21, 1976.

Material Requested: A list of all drugs and chemicals which are controlled, with the exception of Schedules I and II.

Determination: The Controlled Substances Manufacturer Lists from 21 CFR Part 1300 (to end) were forwarded to Mr. Harbolt, and a fee of $1.90 was waived.

Request No. 8: Dated September 15, 1976.

Material Requested: All applications, justifications, requests, or originating documents on all studies done by or financed by DEA during Calendar Years 1974 and 1975.

Determination: Over a period of 2 months, DEA exchanged letters with Mr. Harbolt indicating to him that his request was too broad, and that it did not reasonably describe records as required under the Freedom of Information Act. In so doing, certain documents were provided to him, and the fee waived. The final piece of correspondence was from DEA to Mr. Harbolt on November 24, 1976, maintaining the position that the records requested were not reasonably described. No further correspondence has been received.

Request No. 9: Dated November 30, 1976.

Material Requested: Any Purchase Orders made in FY 76 and FY 75 to Ocean Applied Research Corporation and the justifications for the items serviced. Determination: The requester was asked to post a check in the amount of $25 before DEA would proceed with the search of its files. No further correspondence has been received.

Request No. 10: Dated January 19, 1977.

Material Requested: A copy of (1) "Liquid Hashish", an Intelligence Brief; and (2) Concise Outline on Tablets and Tablet Manufacture.

Determination: Dated April 11, 1977. Portions of the documents were released, and other sections were withheld pursuant to (b)(2). The fee of $1.40 was waived.

It should be noted that this last request covers the same document as set out in the Koenick/Sladek and Veteto requests (which contains the initials of Mr. Harbolt).

Interaction of Freedom of Information Specialists

As stated above, the initial requests covering the Intelligence Brief, "Liquid Hashish", were processed by Staff Assistant Thomas H. Wingate, Jr. The Harbolt request (No. 10 above) was assigned to Staff Assistant Thomas M. Burton. He was aware that the Koenick and Sladek requests covered the specific document, "Liquid Hashish", and that Wingate's original decision to withhold it had been, for the most part, overruled by the Departmental attorney. What Burton did not know was that after the decision had been made to release the material, it had not in fact left the office because neither party (Koenick and Sladek) had forwarded the necessary funds. (Both Staff Assistants had processed dozens of requests during this period, many of which were equally complex. Office of Freedom of Information files are indexed by name to accommodate our most prevalent requests (80% Privacy Act). Neither the capability nor the staff exists to index by Freedom of Information subject.)

Working then, under the impression that the material had already been released, Burton processed the Harbolt request in accordance with the previous Departmental decision, and on April 11, 1977, released the Intelligence Brief, "Liquid Hashish", almost in its entirety.

Finally, the 4th Veteto request covers the same material, including the simplified description of the manufacture of liquid hashish. Upon review of the case, the Chief, Freedom of Information Division, took exception to the release of what amounts to instructions on how to manufacture an illegal drug. These instructions were to be sent to a person being held in a Federal Penitentiary for drug trafficking. Whether or not prison officials would allow an inmate to possess such material is questionable in itself. Certainly, distribution of instructions

to manufacture hashish is counter to the very principals for which the Drug Enforcement Administration was established.

Further, convicted narcotics traffickers should not be able to use the Government mails, the Government narcotics law enforcement agency, and the Government penitentiary to receive firsthand instruction on violating the law.

The Freedom of Information Specialist handling the Veteto request, Todd Stevenson, was questioned by the Chief. He explained that the release of such material troubled him but (a) the material had already been released, and (b) an attorney from the Department of Justice had previously ruled against DEA on this material. The precedent case for Stevenson was the Harbolt request which had been processed by Staff Assistant Burton. Staff Assistants Charles Bonneville (Supervisor) and Burton explained the Harbolt release exactly as Stevenson had, except that their precedent was set in the Koenick/Sladek matter. The triangle was completed with the explanation and evidence supplied by Wingate.

Status

Veteto Request No. 1—Ronald D. Veteto filed an appeal with the Office of the Deputy Attorney General in December 1976 when DEA did not respond to him within the 10-day statutory FOI time limit. In may 1977, Mr. Veteto filed suit against DEA in the Northern District of Georgia, including a motion to proceed In Forma Pauperis.

Veteto Request No. 4—Mr. Veteto was released from the Federal Penitentiary in Atlanta on April 14, 1977. The material at issue, covering the illegal manufacture of liquid hashish is being held in the Office of Freedom of Information pending instructions from the Chief Counsel.

Questions

(1) Should the Office of Freedom of Information process new requests for the same individual or organization when previous requests have not been paid for?

(2) Should a subject index be established and computerized with the Office of Freedom of Information to permit the checking of each request against releases or withheld data on the same item in previous requests? Such a system would avoid the office contradicting itself. However, it would add a new administrative recordkeeping burden to the staff, further expense, and an increased backlog.

(3) Since decisions made in one case tend to dictate what action will be taken on future similar requests, shouldn't the worst possible circumstances be presumed before releasing any data? For example, what was to be a release to an attorney, in the particular chain of events, wound up being a release of information to convicted narcotics dealers inside a Federal penitentiary.

(4) Must DEA release information which is counter to its mission, that is, information which will encourage or facilitate the use of drugs?

(5) In view of Mr. Harbolt's ten requests, the product of which in three cases remains on the shelf in the Office of Freedom of Information; and in view of his request for material which as of ten years ago was no longer required (No. 6); and requests, such as "all purchase orders made to General Electric over $400 for FY 70 and 71,"—at what point can it be determined that the agency is being harassed and made a fool of by the inmate. To be more specific, where is the line to be drawn between the agency's obligation to respond to the Freedom of Information request and its obligation to conserve the taxpayers' money. Unnecessary or spurious requests delay service to all succeeding citizens.

Conclusion

During the processing period of Mr. Veteto's request, he was released from the Federal Penitentiary at Atlanta, Ga. This Office feels that in forwarding such material to him we would be:

(1) Promulgating the simplified methods by which hashish can be produced, and therefore increasing the potential for criminal abuse, and

(2) By "simplifying the technology," we would minimize the risk that the drug trafficker must take, and thereby impede the accomplishment of our mission.

In just a brief period of time, there have been four requests covering this material. DEA must weigh the impact of the Department of Justice decision to release such information, as it would appear to:

(a) The public,
(b) Foreign nations which DEA is exhorting to do their utmost to inhibit the drug traffic,
(c) Cooperating domestic law enforcement agencies who certainly will not understand such dissemination.

CANADIAN EMBASSY,
AMBASSADOR OF CANADA.

AIDE-MEMOIRE

The Government of Canada, as part of normal diplomatic intercourse, has from time to time exchanged information with the Government of the United States in confidence and in the expectation that this confidentiality would be respected and protected. Therefore the Government of Canada could not agree to the release under the Freedom of Information Act, or under any other legislation or administrative order, of any classified documents or information, including reports of conversations between United States and Canadian officials, at least until such time as these documents or information have been made available to the Canadian public by the Government of Canada under appropriate Canadian legislation and regulations.

WASHINGTON, *June 27, 1975.*

APRIL 14, 1977.

(Attention of Charles L. Bonneville).
To: All Regional Directors (foreign) and (domestic).
Subject: Protection of data furnished to DEA by foreign governments.

On January 6, 1977, all RD's were sent a recently prepared policy statement setting forth the provisions for protection of data furnished by DEA by foreign governments. Instructions were included directing that all agent personnel in your respective regions be advised on the contents of this statement.

Recently, some DO's have requested copies of these guidelines from the FOI division, stating that they have not received them.

Please check into this matter in your region. It is important to insure that a copy of these guidelines have been issued to all agent personnel.

DANIEL P. CASEY,
Assistant Administrator for Enforcement.

JANUARY 12, 1977.

Memorandum to: All FOIA specialists.
From: George B. Brosan, Chief, CCFI.
Subject: Confidentiality of information supplied by foreign governments.

The attached document entitled Procedures on Confidentiality sets out DEA's policy covering the disclosure of information received from Foreign Governments. It was accepted and distributed on January 5, 1977 to all Regions, and is provided to you for your information and guidance.

Attachment.

DECEMBER 21, 1976.

To: Mr. Daniel P. Casey, Assistant Administrator for Enforcement.
From: George B. Brosan, Chief, Freedom of Information Division.
Re confidentiality of information supplied by Foreign Governments.

By memorandum dated October 5, 1976, SAIC Thomas V. Cash, Bonn, Germany, requested guidance in responding to the ROG concerning confidentiality of information that Government supplied to DEA. Since it is likely that other Foreign Governments have similar questions arising from publicity surrounding the Freedom of Information and Privacy Acts, I suggest that we adopt the attached proposed policy statement and circulate it to all overseas offices.

For your information and guidance, we have been advised that the Federal Bureau of Investigation has also received such a request from the Republic of Germany and has supplied their Legal Attaches with a similar policy statement.

Attachment.

PROCEDURES ON CONFIDENTIALITY

The individual access provisions of the Freedom of Information Act (Title 5 USC 552) and the Privacy Act (Title 5 USC 552a) have given some Foreign Governments cause for concern as to the confidentiality of information they supply the Drug Enforcement Administration. You may assure those Governments that both Acts provide for the protection of the data they supply. Briefly, we may summarize the applicable provisions as follows:

I. CLASSIFIED MATERIAL

Such information as is classified by another Government will, under 28 CFR 17.19, be accorded the same handling as material classified by the United States, and therefore will be exempt from individual access under both the Freedom of Information Act (5 USC 552(b)(1)) and the Privacy Act (5 USC 552a(k)(1)), in accordance with 28 CFR 16.57 which covers the interface of the Privacy Act with the Freedom of Information Act.

II. NON-CLASSIFIED MATERIAL

A. Criminal Investigative and Intelligence material provided in confidence by foreign Governments, which is contained in DEA's files and is the subject of a request under the Freedom of Information Act is exempt from disclosure under Title 5 USC 552(b)(7)(D). Similarly, criminal investigative and intelligence data requested under the Privacy Act is exempt from disclosure under Title 5 USC 552a(j)(2).

B. Information provided by a foreign Government in the course of a civil investigation for law enforcement purposes may be withheld from a Privacy Act requester under Title 5 USC 552a(k)(2) to the extent that it would identify that Government as the source of the information and provided that the information was supplied to DEA pursuant to an express promise of confidentiality.

C. *Suitability investigations.*—the identity of the source of material in a security or background investigation may be withheld under Title 5 USC 552a(k)(5) provided that such information was supplied to DEA under an express grant of confidentiality if it was supplied after September 27, 1975, or an implied grant of confidentiality prior to that date.

SUMMARY

It is the policy of DEA to hold all information received from foreign Governments in the strictest confidence. In order to insure this confidentiality, it is the responsibility of these employees receiving information from foreign Governments to take the following steps:

1. *Classified material.*—insure that classified documents received from foreign Governments are properly marked in order that they may be accorded the protection outlined in the exemptions above.

2. *Criminal investigative and intelligence data.*—If information is passed to DEA for a criminal investigative and/or intelligence purpose, and the data is documented in a criminal investigative or intelligence record system maintained by DEA, a pledge of confidentiality need not be granted to the foreign Government. DEA is authorized to withhold the data and the identity of the source pursuant to Freedom of Information and Privacy Act exemptions regardless of the existence of an expressed grant of confidentiality. DEA employees may document in the file a pledge of confidentiality if the foreign Government so requests, or if there is some doubt as to the purpose for which the information is supplied.

3. *Non-Criminal Investigative Material and Investigative Information for Suitability, Eligibility, or Qualifications for Federal Civilian Employment, Military Service, Federal Contracts, or Security Clearances.*—The DEA employee who received information solely for the above purposes from a foreign Government will make an express promise not to disclose the information without the foreign Government's consent. This pledge of confidentiality will be documented on a DEA–6 and made part of the file.

SEPTEMBER 13, 1977.

Re Freedom of Information and Privacy Act, exchange of information from foreign police agencies.

Mr. THOMAS CASH,
Special Agent-in-Charge, Bonn, Germany.

The Federal Republic of Germany (FRG) should be assured that the Freedom of Information/Privacy Act provides for the absolute protection of classified documents supplied to DEA by foreign governments. DEA, as always, will continue to honor the classified policy of foreign governments.

In addition, the Republic of Germany, Ministry of Interior, should be advised that information disseminated by any FRG agency to DEA which is not classified will also be protected under Title 5 of the United States Code, Section 552, Subsection (b) (7) (D) and Section 552a, Subsections (k) (2) and (k) (5).

With regard to information provided to DEA in civil, suitability, and other non-criminal matters, since implementation of the privacy act on September 27, 1975, a specific request of confidence is required in order to protect the identity of the information furnished by foreign police agencies. DEA will grant an express promise of confidentiality in response to any such requests by the Federal Republic of Germany.

It is the policy of DEA to hold all written and oral information received from foreign governments in the strictest confidence. A copy of DEA's Procedures on Confidentiality is attached for additional information.

PETER B. BENSINGER,
Administrator.

Attachment.

APRIL 20, 1976.

MR. PETER B. BENSINGER,
Administrator.
DONALD E. MILLER,
Chief Counsel.

Department of Justice Executive Conference May 6–8, 1976.

Attached hereto, for your use at the above conference, is a briefing paper on the Freedom of Information Act and resources DEA has committed to administer the Act.

This paper is broken down into five (5) parts:

Part I. Statistical Summary.
Part II. Resource Commitments—Comments.
Part III. FOIA Abuses and Technical Problems.
Part IV. Corrective Legislation.
Part V. FOIA/PA Interface Regulations—Comments.

Certain statistical data is tabbed off within the Parts of this report which you may find enlightening, particularly with respect to the resources we have committed to this program to the detriment of our mission.

An index is provided for ready reference to the above material.

The attached represents only data and resources committed to administer the Freedom of Information Act. A separate paper has been prepared regarding the drain on our resources to administer the Privacy Act.

Attachment.

FREEDOM OF INFORMATION DIVISION, OFFICE OF CHIEF COUNSEL

Summary-calendar year 1975

Staff:	
Chief	1
Attorney	1
Staff assistants	3
Specialists	5
Secretaries	2
Clerk-typists	3
Total	15

Direct costs:	
Salaries	$309,069.23
Equipment	33,276.71
Xerox	8,000.00
Operating	8,586.00
Total	358,931.94
Revenue:	
1st quarter	$206.90
2d quarter	233.90
3d quarter	194.10
4th quarter	255.60
Total	890.50
Requests:	
Granted	46
Granted-in-part	212
Denied	62
Withdrawn	14
Referred	10
No record	260
Pending	71
Total	675
Judicial appeals:	
Pending	10
Adjudicated (Upheld)	3
(Reversed)	0
Total	13

RESOURCE COMMITMENT

When the Freedom of Information Act was passed, no funds were appropriated to the Executive Branch to administer the Act. Therefore, all positions in the Freedom of Information Division were taken from ceilings allotted to other units or activities within DEA.

Some comparative figures on the committment of resources to administer the Act, as opposed to the resources committed to accomplishing our primary mission are startling.

The fifteen employees assigned full time to the Freedom of Information Division, represent fifty percent (50 percent) of our investigative commitment in the Republic of Mexico, twenty-nine percent (29 percent) in Europe, twenty-eight percent (28 percent) in South America, thirty-eight percent (38 percent) in Southeast Asia, sixty percent (60 percent) in the Near East, one hundred percent (100 percent) in the South Pacific, and two hundred-fourteen percent (214 percent) in Canada. (See Tab A).

In addition, the Freedom of Information Division is larger than any of our six (6) Internal Security Field Offices (See Tab B), equals or is larger than the agent commitment of eighty (80) of our domestic District Offices (See Tab C), is larger than the individual sections within the Enforcement and International Training Divisions (See Tab D), and is larger than the resources commited to the various sections of the Office of Intelligence (See Tab E).

The direct costs incurred by the Freedom of Information Division during calendar year 1975 amounted to $358,931.94. This figure exceeds the PE/PI Allowances of twelve (12) of our nineteen (19) Regions, domestic and foreign (See Tab F).

FOREIGN INVESTIGATIVE COMMITMENTS

Foreign Region	Number of agents	Percentage
Republic of Mexico	30	50
Europe	52	29
South America	54	28
Southeast Asia	39	38
Near East	25	60
South Pacific	15	100
Canada	7	214

NOTE: Figures reflect foreign staffing plan dated Nov. 21, 1975.

Internal security field offices [1]

Northeast field office	13
Northcentral field office	7
Southeast field office	9
Southcentral field office	12
Western field office	14
Mid-Atlantic field office	6

[1] Figures obtained from Summary of Ceilings and OnBoard Report dated Jan. 31, 1976.

Region and district office	*Number of agents*
Region 1:	
Portland	2
Burlington	2
Concord	1
Providence	2
Region 2:	
Buffalo	15
Rouses Point	3
Long Island	15
Albany	2
Rochester	2
Region 3:	
Pittsburgh	13
Wilmington	2
Region 4:	
Norfolk	4
Charleston	3
Greensboro	5
Wilmington	4
Region 5:	
Orlando	3
Jacksonville	6
Tampa	6
West Palm Beach	3
Savannah	2
Columbia	2
Charleston	3
San Juan	11
Region 6:	
Grand Rapids	2
Cincinnati	3
Cleveland	12
Columbus	2
Louisville	3
Region 7:	
Mount Vernon	3
Milwaukee	9
Hammond	4
Indianapolis	9

Region 8:	
Baton Rouge	3
Jackson	4
Nashville	3
Memphis	4
Birmingham	4
Mobile	4
Little Rock	4
Shreveport	1
Region 10:	
St. Louis	13
Minneapolis	9
Duluth	2
Des Moines	2
Omaha	2
Wichita	2
Minot	2
Sioux Falls	2
Region 11:	
Austin	5
Beaumont	1
Corpus Christi	11
Brownsville	10
Lubbock	3
Del Rio	8
Eagle Pass	8
Midland	3
Oklahoma City	2
Tulsa	2
Region 12:	
Albuquerque	13
Deming	5
Phoenix	13
Nogales	15
Tucson	15
San Luis	15
Douglas	7
Salt Lake City	3
Cheyenne	2
Region 13:	
Spokane	4
Blaine	3
Portland	10
Boise	2
Great Falls	2
Anchorage	2
Fairbanks	2
Region 14:	
Fresno	2
Tecate	3
Sacramento	6
Las Vegas	7
Reno	2
Honolulu	13

NOTE: Figures as of Jan. 31, 1976, obtained from summary of ceilings and onboard.

National Training Institute: [1]	
Enforcement Training Division:	
Basic programs section	5
Police programs section	10
Specialized programs section	7
Field training section	8
In-service programs	2

International Training Division:	
Mobile team A	5
Mobile team B	5
Mobile team C	5
Mobile team D	5
Advanced International School	7
Headquarters Intelligence: [1]	
Domestic Intelligence Division:	
Eastern section	9
Central section	2
Western section	8
Dangerous drugs section	7
International Intelligence Division:	
European section	5
Near East section	3
Far East section	5
Latin American section	10

[1] Figures obtained from Summary of Ceilings and On-Board Report dated Jan. 31, 1976.

PE/PI ALLOWANCES [1]

Region:	*Fiscal year 1976 allowance*
Boston	$237,400
Philadelphia	137,500
Baltimore	213,200
New Orleans	260,500
Kansas City	247,380
Seattle	270,100
Mexico	299,400
Bangkok	312,400
Paris	128,200
Caracas	234,000
Ankara	164,400
Manila	19,000

[1] Figures represent PE/PI allowances for fiscal year 1976.

Abuses of and Technical Problems With the Freedom of Information Act 5 U.S.C. 552

ABUSES

1. Repetitive and Duplicative Requests:

A. We have received thirty-two (32) requests from one organization requesting information about itself. This organization has also filed a similar amount of requests with almost every agency of the Executive Branch.

Each new request contains a list of names that the organization may be known by, sometimes as many as twenty-five (25), and each new request reiterates a prior list already submitted plus a couple new names.

This causes us to continually update and research our files as each request is technically a new request which encompasses all documents in our files up-to-date the request was received.

This organization has advised us that they shall continue to update their requests.

This one organization has filed Freedom of Information Act lawsuits against almost every agency of the Executive Branch and has drained a substantial portion of the resources of the Executive Branch by requiring them to defend themselves against these lawsuits.

B. We received eighteen (18) requests from a firm who was seeking to be registered. Because of the firm's initial failure to comply with certain statutory requirements which are prerequisite to being registered, the firm could not be registered. The President of the firm began filing requests. During a conversation with him, wherein we were seeking further clarification of one of his requests,

he frankly admitted that he would continue to submit requests until his firm was registered. The firm's registration was eventually approved at which time the requestor wrote and withdrew his last three requests. We have not heard from this firm since.

2. Shot-gun Requests:

We received a request from a fifteen (15) year old student who was seeking access to all records on him within the Department. He specifically requested that the files of each component Unit and Division within the Department be checked, and itemized these units to insure that all units were mentioned. Over one hundred (100) employees of the Department had to conduct searches of their files to respond to the request of an inquisitive minor.

3. Form Letter Requests:

We have been inundated with form letters from prisons and dissident groups. Inmates have utilized preprinted forms and have mailed requests to all law enforcement agencies in an effort to discover what the agency may know about their criminal activities. Criminals are utilizing the Act as a pre-trial discovery mechanism, and inmates are using the Act as a technique to obtain documents in furtherance of their appeals from a conviction for a criminal offense. The largest percentage of all requests are from prisoners.

In fact, discovery under the Freedom of Information Act may be broader than the rules of discovery available in criminal proceedings.

TECHNICAL PROBLEMS

1. Active Investigations:

Although Senator Hart stated that the Freedom of Information Act amendments were not designed to prematurely disclose investigations, the Act requires that the agency respond to the requestor within ten (10) working days from receipt of the request and cite the specific statutory exemption relied upon in withholding the requested data. Therefore, in order to comply with the law, and to inform a requestor that he is being denied access to his records because the release of same would interfere with enforcement proceedings (b)(7)(A), is to inform the requestor that he is under active investigation.

The mere acknowledgement that records do in fact exist would lead even a non-sophisticated criminal to conclude that we have an interest in him.

2. Investigative Techniques and Procedures:

A. We are concerned about our ability to protect from disclosure several sensitive, sophisticated investigative techniques utilized to detect criminal activities, certain devices used to protect undercover operatives and informants, and devices utilized in tracking suspects.

The (b)(7)(E) exemption allows us to withhold from disclosure any mention of these techniques or devices, provided that the reference to the device or technique is contained in an investigative file.

However, many of these techniques and devices were developed through the use of research contracts. The research files and the data contained therein relating to the development and use of the technique or device, is not an investigative file.

Therefore, although we will argue that the intent of Congress was to protect from disclosure these devices and techniques, the Courts have shown a reluctance to accept "equity" arguments and claim our remedy is with Congress.

B. We have experienced similar problems regarding material we utilize in our training programs.

Any criminal who could gain access to the course material we provide during our training programs would have a decided advantage in avoiding apprehension and punishment.

We have received several requests for this type of material and we are unsure of our ability to defend against its disclosure due to the lack of specific language in the Act which would protect it.

3. Third Agency Rule:

The lack of a "third agency rule" is a problem with the Act.

If Agency A received information about an individual who is engaged in assorted criminal activities, a copy of the report outlining his activities will be furnished to other agencies (B and C) who have investigative jurisdiction over the crimes being committed by him.

The individual will then file a Freedom of Information Act request with Agencies A, B, and C. Agencies B and C must then consult with Agency A regarding the release of the document, because the Act appears not to allow, with the exception of classified documents, Agencies B and C to refer the requestor to the Agency who originated the report.

If a decision is made to deny any part of the report to the requestor, he may then file a lawsuit against all three (3) agencies, in different Courts if he so desires, to compel the disclosure of the same document.

4. Requests from Foreigners:

Unlike the Privacy Act, which restricts access to records to United States citizens or resident aliens, the Freedom of Information Act allows access by "any person". Therefore, foreign citizens, residing in foreign countries, can and have filed Freedom of Information Act requests for data that is contained in Executive Branch agencies' files.

5. Confidentiality of Local, State, and Foreign Police Data:

In processing requests we are concerned about our ability to withhold from disclosure information and documents that is provided to us in confidence by local, state. and foreign governments.

We have refused to disclose this type of data, or those agencies interests in a requestor, pursuant to the (b) (7) (D) exemption.

If we are forced to disclose local, state, or foreign interests, or data or documents given to us by them in confidence, then those sources of information will soon dry up and cooperative law enforcement efforts will be diminished.

Police officials, both domestic and foreign, have expressed concern over the integrity of their interests and information they provide to us in confidence, and have told us that the Freedom of Information Act may seriously jeopardize the future exchange of information between our agencies.

Although we won the first court action testing this theory in the case of *The Church of Scientology* vs. *DEA, Central District of California, CV–74–3550–F*, this ruling is only at a District Court level and other District Courts may render a different opinion. We, therefore, are hoping that The Church of Scientology appeals this case in order that we may get a Circuit Court of Appeals decision on this crucial issue.

6. Personnel Rosters:

We have refused to disclose rosters of investigative personnel on the basis that such disclosure would jeopardize their lives or physical safety, would impair their future ability to perform in an undercover capacity and would invade their privacy.

The exemption that allows us to withhold information the disclosure of which would jeopardize the lives or physical safety of law enforcement personnel (b) (7) (F) is an exemption that relates to material contained in an investigative file, not an administrative, or personnel file.

The exemption relating to material contained in personnel files the disclosure of which would constitute a clearly unwarranted of personal privacy (b) (6) requires a substantial showing of privacy interests, possibly more than just a roster of names.

The refusal to disclose rosters of investigative personnel pursuant to (b) (6) exemption may not withstand judicial tests due to the use of the words "clearly unwarranted".

Additionally, we are in conflict with Civil Service Commission regulations which state that the names, salaries, grade, and duty stations of Federal employees is public record and available to the public upon request.

The Privacy Act has provided some defense against disclosure, however, the test is whether or not the release of the rosters would be required under the Freedom of Information Act. The Privacy Act states that we cannot withhold anything under the Privacy Act that would be required to be released under the Freedom of Information Act.

7. Ten Day Rule:

The ten (10) day rule, which requires an agency to respond to the request within ten (10) working days from receipt of the request is not practical. We have not been able to respond to requests within ten (10) days because of the large volume of requests received, and the lack of appropriations to provide resources to administer the Act. All resources currently being used to administer the Act have been appropriated from other budgetary allocations previously used to support our law enforcement mission.

CORRECTIVE LEGISLATION

In early February, 1976 Congressman Andrew Maguire (D–NJ) contacted DEA at the request of a constituent to determine whether or not the Freedom of Information Act, as alleged by the constituent, was compromising Federal law enforcement efforts and its investigative files.

Pursuant to Congressman Maguire's request, DEA furnished his office with data outlining the abuses of the Act and areas wherein investigative files and other records were in jeopardy due to technical deficiencies in the wording of the Act.

As a result of conferences between the staff of Congressman Maguire's office and DEA's Freedom of Information Division, on April 1, 1976 Congressman Maguire introduced H.R. 12975, a bill to amend the Freedom of Information Act to improve the handling of information collected for law enforcement purposes.

Although the bill could be stronger in several respects, it is a substantial improvement over the present amendments.

The major provisions of Congressman Maguire's bill would:

1. Extend time limits for a response from ten (10) to sixty (60) days with additional time for files which exceed two hundred (200) pages.
2. Extend the time period for a response to an appeal from twenty (20) to thirty (30) days.
3. Provide for a "third agency rule" and the referral of documents not originated by the holder of the documents.
4. Provide for a blanket exemption of any investigatory material compiled within two (2) years of the date of the request.
5. Bring under the umbrella of the (b)(7) exemptions records other than investigative records, the disclosure of which would interfere with enforcement proceedings, disclose investigative techniques, etc., such as manuals, training materials, and sensitive research contracts used to develop body alarms, tracking devices, etc.
6. Clarify the (b)(2) exemption by rewording the exemption and striking out the word "personnel."
7. Eliminate from consideration any documents already in the public domain, such as court records, newspaper clippings, etc.

Congressman Maguire is a member of Congresswoman Abzug's Subcommittee on individual rights and privacy.

Congressman Maguire's remarks to Congress about his bill and a copy of the bill are attached as Tabs G and H.

INTERFACE REGULATIONS FREEDOM OF INFORMATION/PRIVACY ACTS

The current regulations regarding the interface between the Freedom of Information Act and the Privacy Act (28 CFR Part 16) provides that the Privacy Act is the exclusive vehicle by which individuals may gain access to records *about themselves* (Mary Lawton Theory).

The bulk, or better than ninety percent (90%) of our requests fall within this category.

Unlike the Freedom of Information Act, the Privacy Act allows agencies to exempt from disclosure entire systems of records under certain conditions. DEA, therefore, exempted the Investigative Reporting and Filing System, its Internal Security Files, and some other systems of records from the disclosure requirements of the Privacy Act.

Even though we have now lawfully exempted those systems from the disclosure requirements of the Privacy Act, the above mentioned interface regulations require that we furnish the requestor with the same data that he would have been entitled to pursuant to the Freedom of Information Act, but for the enactment of the Privacy Act and the exemption of the pertinent systems of records thereto.

Our burden has, therefore, not been eased. However, under the above theory and procedures, any release of documents is discretionary, as opposed to mandatory under the Freedom of Information Act. Additionally, those systems of records which were exempted from the disclosure provisions of the Privacy Act were also exempted from the Civil Remedies section, thereby eliminating substantive judicial rights of the requestor.

There now appears to be some disagreement within the Department over the Department's ability to defend the Lawton Theory in court regarding the exclusiveness of the Privacy Act. Regulations are now in draft form which will modify the Lawton Theory and thereby, in essence, confess error in the processing of

90% of our requests since the effective date of the Privacy Act, September 27, 1975.

DEA has litigation pending in the Eastern District of Virginia wherein we are asserting the exclusiveness of the Privacy Act. DEA would like to see the publication of the new regulations held in abeyance until we can test the Lawton Theory in court. If we can win, the advantages, as stated above, will be substantial. If we lose on the Lawton Theory, we should still win the suit over any material we withheld from the requestor, as the requestor was provided, as a matter of discretion, everything that he would have been entitled to pursuant to the Freedom of Information Act.

Senator THURMOND. I wish to thank you gentlemen for appearing here this morning, and for giving us the benefit of your testimony.

Mr. BENSINGER. Thank you very much, Senator. We appreciate the opportunity of being here and sharing with you this perspective.

Senator THURMOND. The subcommittee will now stand adjourned.

[Whereupon, at 11:06 a.m., the subcommittee adjourned, subject to the call of the Chair.]

[NOTE.—The Senate Criminal Laws and Procedures Subcommittee attaches no significance to the mere fact of the appearance of the name of an individual or organization in this index.]

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