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GENERAL ASSEMBLY

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**REPORT TO
THE SENATE OF MARYLAND**



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**SENATE
INVESTIGATING COMMITTEE
ESTABLISHED PURSUANT TO
SENATE
RESOLUTIONS 1 AND 151
OF THE
1975
MARYLAND GENERAL ASSEMBLY
DECEMBER 31 1975**

DECEMBER 1975

REPORT TO THE SENATE OF MARYLAND

by the

SENATE INVESTIGATING COMMITTEE
ESTABLISHED PURSUANT TO SENATE RESOLUTIONS 1 AND 151
OF THE 1975 MARYLAND GENERAL ASSEMBLY

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CHAIRMAN, CONSTITUTIONAL
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ANNAPOLIS, MARYLAND 21404

December 31, 1975

The Honorable Steny H. Hoyer
President, Maryland Senate
President, Legislative Council
State House
Annapolis, Maryland 21404

Dear President Hoyer,

The Senate Investigating Committee, having completed its assignment in accordance with Senate Resolutions 1 and 151 of the 1975 Session of the Maryland General Assembly, herewith submits its final report.

Respectfully,

Edward T. Conroy
Edward T. Conroy

Norman R. Stone, Jr.
Norman R. Stone, Jr.

Elroy G. Boyer
Elroy G. Boyer

John A. Cade
John A. Cade

Cornell N. Dynski
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Arthur H. Helton, Jr.
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Donald P. Hutchinson
Donald P. Hutchinson

Robert E. Struble
Robert E. Struble

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PREFACE

I

Pursuant to Senate Resolutions 1 and 151 of the 1975 Session of the General Assembly of Maryland, an Investigating Committee of the State Senate was established to investigate allegations of unwarranted surveillance of citizens by law enforcement personnel within the State. The purposes of the investigation were, first, to discover whether and to what extent agencies have engaged in inappropriate information-gathering activities, and, second, to recommend to the next session of the General Assembly the enactment of legislation to correct any abuses which were discovered and, thereby hopefully, to prevent their recurrence.

II

There is an inscription at the entrance to the National Archives in Washington that declares, "Eternal Vigilance is the Price of Liberty." This motto very neatly points up the tension inherent in the balancing of interests which has been in the forefront as the present investigation has run its course.

On the one hand, no free society can long hope to survive if it sees only with a blind eye, and hears only with a deaf ear, the insidious plots and schemes of those elements within it who seek to destroy that society and, with it, the freedoms for which it stands. Thus, there is a recognized and valid need for intelligence-gathering activities to protect society from

its enemies. But on the other hand, these activities must be kept strictly within the constraints established by our Constitution and laws, lest they be carried on with so much zeal that the very liberties sought to be protected are themselves trampled in the process. Thus, this Committee's task has been an arduous one, striving to maintain the delicate balance between the safeguarding of our society on the one hand and the protection of individual liberties on the other.

It must be kept in mind that those who are given the duty to collect intelligence information are imbued with the police power of the State. This is a power which gives an extraordinary license to a few to do what the many cannot. Those who exercise it are, for the most part, appointed officials, and unlike our elected leaders, are not directly accountable to the citizenry they serve. Furthermore, the craft of intelligence-gathering is one that plainly cannot be carried out in the public view and, accordingly, is subject to little, if any, public scrutiny. For these very reasons, it is absolutely essential that intelligence-gathering activities be strictly confined within legal and ethical parameters. The enforcement of one law or set of laws cannot be justification for the breaking of another; the cause of safeguarding society in general does not warrant the transgression of individual liberties. If there exists a tension which leads to that result, then the General Assembly must act to correct it. Even if there be no violation of law or liberties in precise terms, but merely the overwhelming potential for abuse, that situation should also be remedied by appropriate legislation.

The Committee trusts that the mechanism used in this investigation, a first for this State, has been a useful tool - the Investigating Committee

being free from the strictures associated with the judicial process (such as limitations on the time period in which legal actions can be commenced and jurisdictional restraints), yet giving due regard to the substantive and procedural rights of all concerned.

Finally, the Committee believes that only widespread public understanding of the issues embraced in this Report will lead to the kind of public vigilance which is, indeed, the ultimate guardian of Liberty.

III

This Report incorporates, in summarized fashion, the Committee's policies and procedures, the history of the investigation, significant areas of inquiry, and, most importantly, recommendations for legislation. In the Appendix will be found detailed information, such as extracts of pertinent statutory material, excerpts from transcripts, and noteworthy documents. Due to the volume of information amassed by the Committee, certain materials could not be incorporated in this Report or its Appendix. However, this information, in the form of hearing transcripts, affidavits, subpoenaed documents and correspondence, is available for public inspection, on request, save that information (1) turned over to prosecutorial authorities, (2) concerning the identity of certain individuals (see POLICIES AND PROCEDURES, infra), or (3) of a sensitive nature concerning the personal life of various individuals.

IV

This Report is based on information from the following sources:
sworn testimony received by the Committee in hearings conducted pursuant to

Senate Resolutions 1 and 151, testimony received by the Committee at the January 19, 1975 hearing on SR-1, affidavits and statements submitted to the Committee, and Committee interviews. We have attributed weight to evidence in accordance with the reliability of the circumstances under which it was received. For example, sworn testimony was afforded far greater weight than information received in the absence of oath or affirmation. In arriving at its findings and conclusions, the Committee considered unsworn evidence only in a corroborative capacity, requiring that major determinations find support in sworn evidence.

V

STATISTICS

HEARINGS

		Witnesses	Time	Transcript
Open	6	31	27.5	1184
Closed	<u>6</u>	<u>14</u>	<u>15</u>	<u>570</u>
Totals	12	45	42.5 hrs.	1754 pages

SUBPOENAS

The Committee issued 9 subpoenas for personal appearances and 11 subpoenas duces tecum for documents and other written materials.

AFFIDAVITS

The Committee received 29 affidavits and written statements.

INTERVIEWS

The Committee spent approximately 180 hours conducting 100 personal interviews of 60 individuals relative to the investigation. In addition, the Committee interviewed by telephone nearly 45 persons in addition to the 60 personally contacted.

EXPENSES

INVESTIGATION 2/1/75 - 10/31/75

Staff Salaries - - - - -	\$20,987.38
Hearing Transcripts - - - - -	4,642.60
Miscellaneous (postage, supplies, reproduction costs, etc.)- - -	<u>728.67</u>
TOTAL EXPENDITURES	\$26,358.65

PREPARATION AND PRINTING OF
FINAL REPORT 11/1/75 - 12/31/75

Staff salaries, reproduction costs, postage, and miscellaneous expenditures - - - - -	\$ 5,000.00 (est.)*
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TOTAL EXPENDITURES FOR INVESTIGATION	\$31,358.65 (approx.)*
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* Since several bills for services rendered to the Committee with respect to the preparation of the report have not yet been submitted, this figure must be estimated.

POLICIES AND PROCEDURES

Senate Resolutions 1 and 151 authorized the investigation of any law enforcement agency in the state alleged to have conducted unwarranted surveillance activities. Therefore, in the absence of specific allegations of misconduct by a particular department, no investigation with respect to that agency was undertaken. However, a general inquiry was made of twenty-four police departments in the state concerning the existence of intelligence units and the policies and procedures associated therewith.¹

During the nine months in which the Committee was vested with investigatory powers, credible allegations within the purview of Senate Resolutions 1 and 151 were received by the Committee with respect to one law enforcement agency, the Baltimore City Police Department.² Although testimony and other information was received concerning such matters as the denial of a hand gun permit and improper plea bargaining by various departments, they were clearly outside the scope of the inquiry and, therefore, not pursued. These matters, however, will be forwarded to appropriate authorities for review.

The Committee began its investigation with information obtained from the transcript of the hearing on SR-1, correspondence and telephone calls, newspaper articles and media broadcasts and members of the press. It was apparent to the Committee rather quickly that the investigation was going to be difficult for a number of reasons. It is important to review these

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1. See CONCLUDING OBSERVATIONS AND RECOMMENDATIONS, infra.
 2. The only exception to this being in the area of telephone wiretaps which is specifically addressed in another section of this Report.

factors not only to provide a better understanding of the current investigation, but so that lessons learned may be used to good advantage in future legislative probes, if necessary.

The statutory authority for Legislative Investigating Committees is Article 40, Sections 72-87 of the Annotated Code of Maryland (Volume 4A, 1971 Repl. Vol.).¹ Since the current inquiry marks the first time a legislative investigation has been conducted in accordance with these provisions, the Committee was forced to start "from scratch," drafting necessary documents such as the Rules of Procedure² and making a large number of important legal decisions and judgments for which there was little or no precedent in the case law of Maryland or any other state, and minimal precedent in federal law. Long hours were spent resolving questions of procedure that were raised sua sponte by the Committee, generally out of an excess of caution for the rights of, and in fairness to, those who were, or could be, affected by the actions of the Committee. The time and effort consumed in purely administrative matters were significant.

There were many factors which made difficult and oftentimes restricted the fact-finding process.

A significant inhibiting factor experienced by the Committee was the lack of cooperation and, in fact, active resistance of Commissioner Pomerleau and his counsel, George L. Russell, Jr.³ While the Committee made every

1. See Appendix B.

2. Id.

3. This matter is specifically addressed in CONCLUDING OBSERVATIONS AND RECOMMENDATIONS, infra.

effort to obtain the cooperation of the Department, it was clear shortly after the investigation commenced that it was unlikely that any meaningful cooperation would be forthcoming. The Committee considered resorting to the courts on several occasions but it was agreed that such action would not be taken unless the investigation was getting nowhere. The significant factors weighing in this decision were, on the one hand, the time, manpower and enormous expense protracted litigation would involve, and on the other, the need. The Committee, being relatively satisfied with the progress of the investigation, did not feel at any juncture in the investigation that costly and time consuming court proceedings were justified.

The Intelligence Unit of the Inspectional Services Division of the Baltimore City Police Department was, until sometime in 1974, compartmentalized into two sections, one dealing with subversive activities and the other organized crime. Both sections were under the supervision of the same individuals, and ISD personnel at various times would work out of either unit. According to the terms of SR-1 and 151, the Committee was without authority to investigate organized crime matters. Furthermore, it was the policy of the Committee not to place in any peril law enforcement officers involved in the investigation of criminal activities in an undercover or sensitive capacity. As a result, the Committee was oftentimes precluded from contacting various persons or pursuing areas of inquiry which may have been of interest. Being aware that criminal matters were outside the scope of the Committee's inquiry, the Department and prospective witnesses were free to use this as a protective veil, simply stating that a particular individual worked in an organized crime capacity or that certain questioned activities pertained to a criminal investigation.

ISD, unlike other units in the Police Department, was, to a great extent, operated on a "need to know" basis, meaning that when an individual was given a task, he was not made aware of why the order was given or for what purpose the information he obtained would be used. Furthermore, only those individuals directly involved in an assigned task were generally aware of its existence. These types of operating policies rendered difficult attempts to paint an overall picture of the operation of the unit or to obtain corroboration of information received.¹

Since the inception of ISD there have possibly been less than forty officers who were privy to some sensitive aspects of the operation of ISD and only a small percentage of those who were thoroughly familiar with most aspects of its operation. Of the forty officers, a great majority are still in the department with many of the remaining officers receiving departmental pensions or holding other law enforcement or related jobs. Considering this along with the attitude of the Commissioner and his attorney toward the investigation, one can appreciate the reluctance which was consistently shown by members and former members of the Baltimore City Police Department to become involved in the controversy or to be open and candid.

To a great extent investigations of this nature are aided by the production of various documents or reports. Commissioner Pomerleau testified that all ISD files and materials in the Department dealing with non-criminal subjects had been destroyed before this investigation commenced. The fact

1. It is interesting that many members of the Baltimore City Police Department were, until many years after ISD was established, unaware of the existence of the unit, since ISD is not within the normal chain of command and answers only to the Commissioner. Until recently, most Department personnel, if aware of the unit's existence, had little, if any, actual knowledge of its functions and activities.

that such files within ISD were destroyed was verified independently by the Committee. Without these documents, the Committee was denied a valuable source of evidence.

As with many inquiries of governmental agencies, there was the opportunity for Department officials to gauge the progress of the investigation. Members of the Department and oftentimes former officers were represented by George L. Russell, Jr., Esq., who was retained by Commissioner Pomerleau and represented him and his supervisory personnel. Through the officers or their counsel, information learned at a hearing, interview or otherwise could be reported to Department officials. Benefits to an agency under inquiry of having such information are obvious.

The apparent newsworthiness of the investigation made more difficult the environment in which the Committee was expected to do its work. Potential witnesses feared their jobs would be in jeopardy if they were publicly identified as having been involved in a controversial "spying unit" or if they were identified as cooperating with the Committee. With a few exceptions, potential witnesses were extremely concerned with what hardships they and their families might suffer from such exposure. They strongly felt that through "leaks" or otherwise, intense coverage by the media significantly decreased an individual's chances of remaining anonymous.

Lastly, the Committee was completely without any power to confer immunity upon prospective witnesses. While the Committee was charged with the task of determining if unwarranted surveillance (which necessarily encompasses illegal surveillance activities such as wiretapping without proper court authorization and unauthorized entries) had taken place, it was without any legal mechanism to investigate these matters fully. In the

absence of being afforded protection against subsequent criminal prosecution, the fear that an individual may have had of incriminating himself may have significantly affected his decision whether to contact the Committee or to disclose what he knew.

Given the above considerations, it was apparent to the Committee that critical to the ultimate success of the investigation was the selection of methods by which individuals were contacted and their cooperation elicited. It was decided that the Committee's work would be conducted in a quiet and low-key fashion. In all but a few cases, individuals were contacted personally by staff members and interviewed in the familiar surroundings of their homes. Efforts focused on establishing a favorable rapport with individuals and developing their trust and confidence in the Committee and its staff.

The Committee carefully considered the problem concerning the reluctance of people contacted to become involved and to speak openly. While the Committee clearly understood why individuals expressed apprehension, it was felt that the interests of the public, as well as those agencies under investigation, would be best served by public disclosure of the information gathered by the Committee. Therefore, it was concluded that in those instances deemed appropriate, the Committee would represent to potential sources that their identity would not be disclosed at any point in time, except pursuant to proper and lawful process. However, the substance of whatever information was obtained would be made public. Thus, evidence was received by the Committee from various sources pursuant to these terms in interviews, closed hearings and in affidavit form.

HISTORY OF THE INVESTIGATION AND PERTINENT MATTERS

—During December of 1974, several articles appeared in the Baltimore News American and the Sunpapers alleging surveillance by members or agents of the Inspectional Services Division of the Baltimore City Police Department (hereinafter referred to as the Department) of citizens not suspected of criminal activity. Partly in response to the allegations contained in these newspaper accounts, the Baltimore City Grand Jury, September term, on December 23, 1974, under the direction of the then State's Attorney for Baltimore City, Milton B. Allen, commenced an inquiry into the criminal charges that had been lodged.

—On or about December 24, 1974, Senator Verda Welcome (D. Dist. 40, Baltimore City) called on Governor Marvin Mandel to launch an investigation of the Baltimore City Police Department's Inspectional Services Division. In the latter days of December, Governor Mandel ordered City Police Commissioner Pomerleau to submit to him within a week a complete and detailed report on ISD and to provide the names of all persons who had been placed under surveillance "for activities that fall outside the normal range of intelligence work." Upon receiving the report requested from Commissioner Pomerleau, Governor Mandel, according to the Sunpapers, stated that it showed no indication of wrongdoing on the part of the Commissioner and that he would not discuss the report with Commissioner Pomerleau until after the Baltimore City Grand Jury concluded its investigation. The Governor also indicated that he wanted to insure that in the future ISD operated under "some sharply defined rules and regulations."

--Senator Verda Welcome introduced Senate Resolution 1¹ calling for the Governor to appoint a Commission to investigate the allegations of unwarranted surveillance by the Baltimore City Police Department on January 9, 1975. The Resolution was referred to the Senate Constitutional and Public Law Committee chaired by Edward T. Conroy (D., Dist. 24, Prince George's Co.) for public hearing.

--On January 10, 1975, the Grand Jury of Baltimore City, September term, submitted its final report to Judge Basil A. Thomas. In the report, the Grand Jury noted that it had not been able to complete the ISD investigation before the expiration of its term but recommended that the investigation be completed by the incoming Grand Jury on a "top priority basis."

--On January 16, 1975, a hearing was held by the Senate Constitutional and Public Law Committee on Senate Resolution 1. Each of the thirteen witnesses who testified supported the Resolution under consideration, including Police Commissioner Pomerleau who testified for approximately one hour concerning, among other things, various aspects of the operation of ISD and the report he had submitted to the Governor. In reaffirming his earlier testimony in support of SR-1, Mr. Pomerleau, at the conclusion of his appearance before the Committee, stated:

"Would you assist me, Mr. Chairman, in re-establishing credibility in government? I am so disenchanted with the lack of credibility of the government and I would like for the cast of characters to be developed. I would like to open this thing up and let the people know just who is doing what to whom; not only the cast of characters, but I would like to identify publicly the Directors of the cast. I commend very strongly that this thing be opened up fully."

1. See Appendix A.

—On January 22, 1975, upon the invitation of Senate President Steny Hoyer, he and the eight members of the Senate Constitutional and Public Law Committee met with the former Chief Judge of the Supreme Bench of Baltimore City, Dulaney Foster, the newly elected State's Attorney for Baltimore City, William Swisher and his Deputy Joseph Murphy, and the Forelady and Assistant Foreman of the Baltimore City Grand Jury (January term) to review the scope and intent of SR-1. The Senate members present explained that any inquiry conducted pursuant to the proposed Senate resolution would not interfere with or usurp the functions of the Grand Jury in investigating possible violations of the criminal law by members of ISD and that if, during the course of the investigation, evidence concerning possible violations of the law came to the attention of the designated investigatory body, such information would be forwarded to the Baltimore City Grand Jury or the appropriate prosecutorial authority. Furthermore, the Senators sought input from those present concerning the rights and privileges of persons who were potential witnesses before both the Grand Jury and the proposed investigatory body.

—Within several days of the public hearing on SR-1, the Constitutional and Public Law Committee issued a favorable report on the resolution and proposed two amendments, the first providing for the investigation to be conducted by a legislative committee rather than a commission appointed by the Governor, and the second providing for the investigative powers to extend not only to the Baltimore City Police Department but to all police departments in the State. Although the only charges of unwarranted surveillance activities that were presented to the Committee concerned the Baltimore City Police Department, the latter amendment was proposed since it was the opinion of the Committee that if, during the course of the investigation, additional

allegations of wrongdoing came to the Committee's attention, it would be free to inquire into them without having to obtain further legal authorization from the Senate.

—On January 29, 1975, the Senate of Maryland adopted SR-1, including the amendments reported out of Committee. The Senate Constitutional and Public Law Committee was designated the Investigating Committee.

—In the normal course of events, the State Attorney General's Office represents both the Maryland General Assembly and the Baltimore City Police Department.¹ However, because of the very obvious conflict which would be involved in representing both the Senate and the Baltimore City Police Department, the agency under investigation, Deputy Attorney General Henry R. Lord advised Commissioner Pomerleau that the Attorney General's Office would be unable to represent the Baltimore City Police Department. Therefore, on February 6, 1975, Mr. Pomerleau announced that he had retained George L. Russell, Jr., Esq. to represent the Baltimore City Police Department. The following day, Diane G. Schulte, Esq. was named Special Counsel to the SR-1 Committee.

—During the second week of February, the Committee scheduled its first

1. Chapter 203, Acts of 1966 (Police Omnibus Bill), Section 527 (a) provides: "The Police Department of Baltimore City is hereby constituted and established as an agency and instrumentality of the State of Maryland. The purpose generally of the department shall be to safeguard the lives and safety of all persons within the City of Baltimore, to protect property therein, and to assist in securing to all persons the equal protection of the laws."

hearing for February 18. The Committee voted to close the hearing to the public for two reasons; the first being that the investigation had indicated that individuals with relevant information were extremely reluctant to appear in a public session; and secondly, Commissioner Pomerleau testified on January 16 concerning the confidentiality of various matters of interest (T, 20) and it was the intention of the Committee to have Commissioner Pomerleau testify at the February 18th hearing. Later, Mr. Pomerleau was extended such an invitation which he, through his attorney, declined. Mr. Russell, however, offered to appear before the Committee on behalf of the Baltimore City Police Department and since it was made clear to the Committee that the Commissioner would not appear, the Committee agreed to hear from Mr. Russell concerning the matters under investigation.

—On February 14, five members of the Baltimore City Council were appointed to a Committee to investigate the "budgetary and administrative aspects of the functions of ISD" pursuant to a resolution introduced by City Council President Walter Orlinsky.

—At the first hearing of the SR-1 Committee on February 18, nine persons testified concerning, primarily, the identity of potential witnesses and the surveillance of union activities and the American Friends Service Committee, Inc. by members of ISD. Mr. Russell, who appeared before the Committee on behalf of the Baltimore City Police Department, spoke only of matters of procedure, refusing the opportunity extended to him by the Committee to address matters of substance concerning the investigation or to provide any information relating to the intelligence-gathering activities of the Department.

—On March 4, 1975, Benjamin L. Brown, Solicitor for Baltimore City,

issued a legal opinion which, in effect, ruled that the investigation being conducted by the City Council pursuant to the resolution introduced by President Walter Orlinsky in early February was without legal basis.

The opinion stated in part:

"...inasmuch as the Police Department of Baltimore City is an 'agency and instrumentality of the State of Maryland,' and not a municipal agency, the Committee on Legislative Investigations does not possess the power or authority, generally, to investigate the continuing operations, efficiency and functions of the Inspectional Services Division of the Police Department of Baltimore City."

As a result of this opinion, the investigation of the ISD by the City Council was terminated.

—On March 5, an open hearing to which the general public was invited to appear was held by the SR-1 Committee and testimony from six persons was received. Among those witnesses were: Congressman Parren Mitchell (D., Md.) who testified concerning the surveillance of his campaign activities and public meetings by a covert operative of the ISD; David Glenn, a former director of the Community Relations Commission of Baltimore City who testified concerning statements made to him by Commissioner Pomerleau indicating broad surveillance by the Baltimore City Police Department of the activities of Mr. Glenn and other members of the community; and, Mr. George Guest, a former police officer with ten years service in the Baltimore City Police Department, who testified that while in the Department, he had learned from several officers that through the cooperative efforts of members of the city Vice Squad and personnel of the C&P Telephone Company, illegal wiretaps were conducted and that information obtained from the interceptions were used as a basis for affidavits for search and seizure warrants.

Mr. Guest testified that he had heard that these wiretap procedures were utilized on at least one occasion in a matter unrelated to any alleged criminal activity.¹

—On March 12, subpoenas were issued to the Baltimore City Police Department, the United Credit Bureau of America, Inc. and Charles Benton, the Director of Finance for Baltimore City, for various records pertaining to Mr. Terry Josephson, a former ISD member who left the Department in 1971 to accept a position as vice-president with United Credit Bureau of America, Inc., one of the largest independent consumer credit bureaus in the country. Mr. Josephson had resigned from his lucrative position with the Credit Bureau in late January of 1975 and returned to the Baltimore City Police Department.

—On March 21 and 23, public hearings were held by the Committee and five persons testified including Terry Josephson, Herbert Rouse of the C&P Telephone Company, and Roger Twigg, a reporter with the Sunpapers.

Mr. Josephson admitted that while in the employ of the United Credit Bureau he disseminated information limited to the name, present and former address, and present and former employment of individuals with credit files to certain persons, including members of ISD. He denied, however, supplying personal information from consumer credit files to anyone in violation of the Federal Fair Credit Reporting Act.²

Herbert Rouse, chief of the C&P Telephone Security Office, denied that any member of the Security Office or the C&P Telephone Company had ever

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1. On March 10, a complete transcript of Mr. Guest's testimony was sent to the State's Attorney's Office for Baltimore City.
 2. See Appendix B.

cooperated with the Baltimore City Police Department or any other law enforcement agency in the interception of telephone communications without a court order. Mr. Rouse testified that prior to October 10, 1974, the C&P Security Office provided members of law enforcement agencies with non-published telephone numbers in the absence of subpoenas or other legal documents.

Roger Twigg, who covered the "police beat" in Baltimore City for the Sunpapers from 1968 through 1974, testified that he had written many stories critical of the Baltimore City Police Department and Commissioner Pomerleau. Mr. Twigg testified that he had been personally surveilled and harassed for some period of time while working the police assignment. He specifically testified about three separate incidents where the tirelugs on his car were loosened while the vehicle was on the Baltimore City Police Department parking lot to which he had a press pass. As a result of these activities by the Police Department, Mr. Twigg shifted his reporting assignment and transferred to the Annapolis Bureau of the Sunpapers.

--During the month of March, the SR-1 Committee held three unannounced hearings in closed session. Testimony was received from Irving Glashoff, Walter T. Egger, Roger Twigg and one other individual who shall remain unidentified. Testimony received in these hearings concerned, among other things, various policies, practices and procedures of ISD including the surveillance of persons not suspected of criminal activities and the collection and storage of data pertaining to these individuals. Additionally, testimony concerning wiretapping without court authorization by C&P personnel at the request of members of the Department was heard.

--On March 31, the SR-1 Committee voted to present an interim report

to the Senate and to seek authority to continue its investigation past the April 6th termination date of the 1975 General Assembly. The extension was sought for two main reasons: the first being, to allow the Committee to conduct further investigations in order to develop a more accurate and complete factual setting in which legislation could more beneficially be devised; and the second being, that the Baltimore City Police Department should be afforded the opportunity to comment on specific matters of concern to the Committee and explain its positions respecting them.

—On April 5, the Senate adopted Resolution 151 authorizing the continuation of the investigation by the SR-1 Committee until October 31, 1975 with interim reports to be filed by July 1 and September 1, and a final report on or before December 31, 1975.

—Leslie L. Gladstone, Esq. joined the staff of the SR-151 investigation as a part-time attorney-investigator on May 5.

—On May 9, the Baltimore City Grand Jury, January term, presented its final report to Judge Basil Thomas. The only statement concerning its investigation of ISD in the six page report was as follows:

"The Grand Jury recommends that the ISD investigation which began under the previous Grand Jury and has continued this term be terminated. There has been no testimony presented which supports allegations of criminal activity in the procedures of the Inspectional Services Division of the Baltimore City Police Department."

—On May 22, Commissioner Pomerleau filed suit in the United States District Court for the District of Maryland against each of the members of the SR-151 Committee seeking the issuance of both a temporary and permanent injunction against the continuance of the investigation. On May 30,

Assistant Attorney General George Nilson filed a Motion to Dismiss Mr. Pomerleau's lawsuit on behalf of the SR-151 Committee. On July 3, after a hearing on the Motions, Judge R. Dorsey Watkins denied the Plaintiff's Motion for a Temporary Injunction and the Defendant's Motion to Dismiss. No further action has been taken by Mr. Pomerleau with respect to the lawsuit since the July 3rd hearing. The investigative efforts of the Committee continued unaffected by the filing of the Commissioner's federal action.

—During the months of August and September, the SR-151 Committee held two unannounced, closed hearings at which two witnesses testified. Their testimony consisted primarily of detailed information concerning the operation of ISD, and the involvement by the Department and the C&P Telephone Company in the interception of telephone communications without legal authorization.

—On September 23, invitations to appear before the Committee were issued to two persons who had previously testified before the Committee. These individuals were advised that information had been received which was inconsistent with statements made by them to the Committee and they were extended the opportunity to address these matters and qualify or change their previous testimony. Both persons, through their attorneys, declined to appear. Subpoenas were not issued by the Committee to these individuals because it was felt that obtaining their testimony under circumstances of compulsion might jeopardize the further investigation of the particular matters by prosecutorial authorities.

—Also on September 23, an invitation to appear before the Committee on October 16 and 18 was issued to Commissioner Pomerleau. Mr. Pomerleau was advised that he would be provided with a list outlining the Committee's

specific areas of concern¹ by October 1 and that the Baltimore City Police Department would be afforded the opportunity to be heard at the hearings with respect to the operation of the ISD since its inception as well as the significant matters outlined by the Committee. Furthermore, because the Commissioner indicated his preference for a closed hearing in his testimony before the Committee on January 14, he was afforded the opportunity to appear before the Committee in closed session.

—On September 24, Mr. Pomerleau accepted the invitation to appear before the Committee on one of the two days scheduled and expressed his desire that the meeting be public.

—On October 10, Mr. Samuel Portera, a former member of ISD, testified in a public hearing pursuant to a subpoena issued by the SR-151 Committee. Mr. Portera, who was represented by the Department's attorney, basically denied knowledge of, or any participation in, ISD activities other than performing background investigations of Department personnel being considered for promotions or certain inter-departmental transfers.

—On October 18, Commissioner Pomerleau and seven officials of the Baltimore City Police Department, including Major Bernard Norton, the Director of ISD, and Lt. Donald Woods, a member of that unit, testified at a public hearing before the Committee. Mr. Pomerleau and his staff answered questions from the Committee but rejected the opportunity extended to them to present any statements or evidence on their behalf. Basically, in their testimony the witnesses denied that members of ISD or their agents had participated in any illegal or improper surveillance activities.

1. See Appendix C

ORGANIZATION AND FUNCTIONS, ISD

I

The Inspectional Services Division (ISD) of the Baltimore City Police Department was formally established July 1, 1966 as an operational arm of the Police Commissioner. There is reason to believe that intelligence-gathering was carried out to some extent prior to that date and that several officers engaged in such work became ISD members.

ISD differs from other divisions in the Department in that its chief officer reports directly to the Commissioner, rather than to him through another management echelon. The current head of ISD is Major Bernard F. Norton, who formerly was head of the Internal Investigation Division (IID),¹ and was hired by Commissioner Pomerleau after FBI service. His predecessor, Lt. Col. Maurice duBois, Ret., who headed ISD until 1970, also had been with the FBI.²

Although this Report focuses upon ISD activities in the period July 1966 to January, 1975, General Order No. 1-75, dated January 10, 1975, is useful in defining the mission of the ISD during the relevant time period as it is perceived by the Department, in that the General Order purports

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1. The IID also has an intelligence section (the "Integrity Unit"), which is compartmentalized from the rest of the Division like ISD. Several of its members were trained at Fort Holabird in defense techniques against electronic surveillance and surreptitious entry.
 2. Major William Rawlings, who served as the Lieutenant of the Intelligence Section of ISD until 1974, should be specifically mentioned because of the instrumental role he played in the overall development of ISD as an "intelligence" unit. In 1974, Rawlings was promoted from lieutenant to major and placed in charge of the IID.

"to codify within one directive the longstanding policy and procedural guidelines under which the Baltimore City Police Department's Inspectional Services Division, Intelligence Section, functions." ISD is comprised of two sections, Inspections¹ and Intelligence. According to General Order No. 1-75, "The primary mission of the Inspectional Services Division's Intelligence Section is to keep the Police Commissioner informed of organized criminal activities, internal integrity problems and potential public disorder."² It has also been stated that "The primary mission of the Intelligence Section, Baltimore City Police Department, in the active surveillance of individuals or groups outside the normal criminal behavior, has always been to attempt to spot potential areas of violence and to inform, with intelligence data, the Operations Bureau so that logical commitment of forces in Patrol and Traffic could be made."³ For the purpose of fulfilling these missions, the Intelligence Section was compartmentalized into two subsections, Subversives and Organized Crime.

In its early years, the Intelligence Section (hereinafter referred to as "Intelligence") was very small, but it grew and later averaged between fifteen and twenty-two sworn members. Personnel in this section received no formal Departmental training in intelligence-gathering techniques beyond that minimal amount included in the regular Police Academy curriculum. Essentially, newcomers were trained by experienced officers on-the-job or learned through trial and error. There were a few books and manuals scattered around the ISD

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1. The Inspections Section is primarily responsible for the inspection and control of various stores and equipment.
 2. G.O. 1-75, p. 3; The Section also has a number of ancillary duties enumerated in the Order. See Appendix D.
 3. Id.

offices, but these were utilized only upon the individual's initiative.

Until the promulgation of G.O. 1-75, there were no written orders or guidelines concerning the operation of ISD. It operated essentially on oral direction. The only relevant written guidance was a two-page memorandum dated February 2, 1973, disseminated by the Commissioner to all Department personnel concerning the use of electronic eavesdropping devices.¹ Thus, there was no written guidance in such important areas as:

- (1) the circumstances under which investigations were to be commenced, continued, and terminated;
- (2) the general purpose and scope of the investigative process;
- (3) the collection, evaluation, storage, and dissemination of data pertaining to individuals;
- (4) the conduct of intelligence personnel and their operatives; and
- (5) relationships with other law enforcement agencies.

ISD possessed intelligence-gathering hardware, including some of a sophisticated nature. Equipment now owned by ISD would often be borrowed from other, mostly federal, law enforcement agencies. Included in the ISD inventory were sophisticated cameras and electronic surveillance devices. In fact, ISD, by order of the Commissioner, was responsible for the safekeeping of all Departmental electronic eavesdropping devices.² Training of ISD personnel in the use of this equipment, was, again, rather informal. While a few officers were familiar with most ISD hardware, most individuals developed discrete specialties, e.g., cameras or recording devices. At

1. See Appendix D.

2. Id.

least five ISD officers were trained at the Army Intelligence School, Fort Holabird, during the late 60's in defense against electronic eavesdropping and surreptitious entry. In the course of such training, the trainees were inevitably familiarized with the "offensive" use of such practices. It may be concluded from the foregoing that ISD had the means and the knowledge to carry out sophisticated surveillance activities.

In addition to its sworn personnel, ISD made use of a number of informants and operatives. These persons included volunteers and paid individuals. They worked primarily in covert operations and may have been nearly one hundred in number. Some of these persons, so-called "walk-ins," volunteered their services unsolicited, while the cooperation of other persons was actively sought by ISD.¹ Operatives were employed in both the anti-organized crime and anti-subversive operations of ISD. Unfortunately, as is often the case with informants, certain of them were as untrustworthy or amoral, or as much a threat to society, as those persons against whom they were employed. Operatives did essentially the same things as officers, infiltrating organizations, attending meetings, and generally keeping their eyes and ears open. It is noted that there were no criteria by which ISD officers were guided in evaluating the reliability of operatives and informants and the data they supplied.

ISD personnel in the non-criminal area worked both overtly and covertly in joining organizations and attending meetings and rallies. Perhaps these activities are best summarized by two former long-term ISD members who

1. For example, on one occasion a well-known media person was approached by an ISD member (now a high-ranking official) and asked to become an operative. The invitation was refused.

said, "If there was a meeting in Baltimore City, we [ISD] were there." While ISD surveilled groups such as the Workers Party of America,¹ The Young Communists, Sparticus, Mother Jones, the Vietnam Day Committee, the Soul School, Make a Nation and the Black Panther Party, personnel also attended meetings at schools and colleges, including the University of Maryland Law School, Johns Hopkins University, The Community College of Baltimore, and Morgan. The meetings of formal community associations such as the Edmondson Village Improvement Association, and informal ones, such as a group from Cherry Hill concerned about rodents and a group from West Baltimore concerned about a road relocation, were monitored by ISD. Further, broader-based organizations like the Black United Front were subject to ISD scrutiny. All strikes were covered,² and information, including photographs, was obtained concerning participants in picket lines.³

In addition, political campaigns of candidates such as Congressman Parren Mitchell, State Senator Clarence Mitchell, III, George Russell, Jr., Milton Allen, and Judge Joseph Howard were watched and in some cases infiltrated. Finally, ISD regularly monitored meetings of government agencies in Baltimore such as the City Council, the School Board, the Liquor Board, utility rate increase hearings and expressway hearings.⁴ On occasion, ISD personnel

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1. ISD personnel would infiltrate groups such as the Workers Party of America, recruit students to join the organization, and then list them as members of a subversive organization in their reports.
 2. Including the Police Strike, the Teachers Strike, the several Hospital Workers Strikes, and the Sanitation Workers Strike.
 3. For example, ISD surveilled pickets protesting increases in utility rates.
 4. It should be noted that at most larger public meetings or rallies, regular Department personnel would be present in order to prevent disruption of the proceedings and, generally, maintain order.

utilized concealed recording devices to capture the proceedings.

ISD personnel attending meetings were required to submit written reports indicating as much of the following as possible: the subject of the meeting, the identity of the leaders¹ and speakers and an account of what they said and the names of every person in attendance including members of the press and media.² Reports reached the Commissioner through a channel consisting of the individual's supervisor, the Lieutenant, and the Major. Certain reports were distributed inter-governmentally, to, for example, the FBI, Army Intelligence, the Mayor's Office, and the Attorney General's Office, while others stayed within the Department.³ Distribution was determined by ISD supervisors.

Once a report was submitted to ISD, the information in it became a part of the Division's information collage. Index file cards were prepared for every individual or organization mentioned in a report. File cards on individuals noted the subject's address, employment, phone number, physical description, organizational affiliations, and, at times, included a photograph. Cards on organizations listed a description of the organization, its leaders and members, dates and places meetings were held and head counts.

Information from cards was transcribed to files cross-indexed to the

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1. A particular concern of ISD.
 2. A former member of ISD stated that he always instructed members of his family never to stop at any rally, picket line or public gathering even out of curiosity because someone might see them and submit their name as being in attendance which could result in them being considered a "potential threat."
 3. Evidence seemed to indicate that, generally speaking, reports concerning non-violent activities, political functions or community associations were not, at least formally, distributed outside of the Department.

cards. These files were comprised of "activity folders" and "dossiers." An individual's "activity folder" contained copies of ISD reports on surveilled meetings or activities attended by the individual as well as photographs, press clippings, and reports concerning media coverage. While a file card and personal "activity folder" was created for each person mentioned in a report, "dossiers" were prepared only on certain persons. A "dossier" was comprised mainly of a "background report" prepared by ISD personnel, upon the oral direction of a police superior.¹ Occasionally, such reports were ordered to be prepared on a "rush" basis. The background report resulted in as much detailed information as possible being compiled about a person such as address, phone number, employment, earnings, close associates, debts and creditors, family members and relatives, business activities, and property owned. There were no limits placed upon the nature of the information amassed in a background report. In fact, extremely personal and sensitive information was included in background reports when it could be obtained, and the subjects were at times followed and observed in their personal habits. One experienced ISD member recalled "...there was no limitation...as a matter of fact, the more information you could gather, this, in the sight of your superiors, made you a better officer."²

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1. "Background reports" were occasionally prepared upon the written request of another intelligence agency, usually a federal agency.
 2. Dossiers were stored in file cabinets in a different area than the activity files. The extremely sensitive personal information procured during background investigations or from other sources was not stored in the dossiers (brown accordian-type folders) but in the ISD Director's locked storage container in his private office.

With respect to dossiers, Mr. Pomerleau testified as follows:

"...that no dossier. Activity folders, yes. There is a distinction. A dossier is a full background investigation, who he is married to, what his children are, educational background, all of that activity, complete, full field background investigation. None of that, none of that persisted. We only move into that kind of area when we are closing for the criminal closing." (emphasis added) (T-58, January 14, 1975)

While dossiers were prepared on organized crime figures and persons in the criminal milieu, evidence clearly indicates that such files were also maintained on individuals whose only characteristic in common was their active involvement in community and political affairs.

In that the primary function of ISD was intelligence-gathering, it was essential that an ISD member establish contacts and develop sources. The ISD newcomer would be introduced by ISD personnel to certain sources. He was then expected to develop a rapport with them, and to develop contacts of his own as well. The number and nature of sources enabled ISD to gather vast amounts of information with relative ease. Sources were developed, for example, within the C&P Telephone Company, Bureau of Vital Statistics, FBI, National Security Agency, credit bureaus,¹ Baltimore City Liquor Board, State Real Estate Commission, Department of Education,² Baltimore City Bureau of Water Supply and the State Department of Assessments and Taxation. Most sources supplied information upon informal oral requests; subpoenas were rarely, if ever, used. Such sources were not identified in reports, and,

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1. Credit Bureau of Baltimore, Inc.,; United Credit Bureau of America, Inc.
 2. At least one individual in the Department of Education would supply information from teacher personnel folders.

of course, the subject was unaware of the source's information-giving activities. Indeed, there is evidence from ISD personnel that often the source's employer did not know of his handiwork on behalf of ISD.

An additional duty of ISD was to thoroughly review local and regional newspapers and clip any articles in which the Department or Commissioner Pomerleau were mentioned. These articles, like reports, went to the Commissioner through a channel of ISD supervisory personnel and were filed, at a minimum, according to subject matter and author, if available. Certain radio and television broadcasts were also monitored and written reports prepared noting any comments or criticisms concerning the Department and staff.¹

As previously stated, the Intelligence Unit of ISD carried out their activities in two areas, subversives and organized crime. Evidence indicates that the major emphasis by supervisory and upper echelon personnel with respect to the operation of the Intelligence Unit was in the area of subversive as opposed to organized crime investigations. This concern was directly reflected in the allocation of manpower within the unit, a majority of the individuals being involved in the surveillance and investigation of persons and organizations unrelated to organized crime.

With respect to the day to day operation of the unit, supervision of ISD personnel was generally lax. Once given their assignments, unit members

1. Several former members of ISD related how they spent many hours, and on occasion worked overtime, performing these functions which they generally agreed were a waste of an experienced investigator's time. Eventually, a video-tape machine which operated on a timing mechanism was purchased to automatically record television broadcasts.

and operatives were relatively free to carry them out as they saw fit. For example, if an assignment was to cover a political rally, it would be left to the ISD member's discretion as to how information concerning the participants and those in attendance would be obtained. While the name and address of a person could be procured by tracing his license tag number, it might also be acquired by following him, the latter method necessarily involving a greater invasion of the individual's privacy than the former. At least one member turned the situation to his own advantage, relating that in the absence of any real supervision, he was able to "get in a lot of studying while on the job."

II

Through the aforementioned procedures, ISD amassed a data bank containing the names of, and information pertaining to, hundreds, perhaps thousands, of citizens of this state, many of whom did nothing more than testify with respect to a particular piece of legislation before the Baltimore City Council, or peaceably walk a picket line.

Evidence indicates that in response to requests transmitted from the office of the Deputy Police Commissioner, Frank Battaglia, ISD would furnish reports on many applicants for employment with city, state and federal agencies. If a particular individual was not mentioned in intelligence records, a report would be submitted to Deputy Commissioner Battaglia's office indicating that a search of ISD files had been conducted "with negative results." However, if the subject's name appeared in the

information bank, a positive report listing all data concerning the individual in question would be forwarded.¹ Whether a prospective employee was apprised that such an investigation was done, and if so, whether he was made aware of and could comment on the information imparted to his potential employer by the Department, is not known.

As mentioned previously, ISD intelligence reports were disseminated to local, state and federal agencies. Additionally, information collected by ISD was used to inform Commissioner Pomerleau about individuals with whom he came in contact or had dealings. For example, if the Commissioner was scheduled to meet with a person with whom he was not familiar, he would review the information which ISD had collected concerning the individual.

Several persons testified that Commissioner Pomerleau, when meeting with citizens and government representatives about legitimate matters concerning the Department, related to them words in a threatening fashion to the effect that "...I know where you meet, when you are going to meet before you meet, what you do...". Others, including elected officials, told the Committee how Commissioner Pomerleau frequently tried to impress upon them that he knew everything about everybody, including them. On at least one occasion, Mr. Pomerleau boasted about having thick files on the Director of a governmental commission. Several persons from various agencies within the criminal justice system, including a high ranking police official from a jurisdiction outside of Baltimore City, said that it was extremely difficult to deal with Commissioner Pomerleau due to, among other things, his overbearing methods. Such tactics were employed by Mr. Pomerleau

1. It is unclear whether personal information from dossiers was disseminated for such purposes.

particularly when someone questioned or disagreed with him. One well-respected member of the press stated that these same type of comments had been related to him about Commissioner Pomerleau over a period of years by many prominent persons, including judges and local officials.

During the hearing before the Committee on October 18, Mr. Pomerleau testified as follows concerning the use of information he had received concerning the activities of a particular citizen:

"COMMISSIONER POMERLEAU: You are partially correct. I called that individual's mother and said, you know, I think it would be wise if you came into the office and bring your son with you and we had a discussion and that individual, when I read to him what I had in two different source documents, got on his knees and said, please don't do that to me and the mother assured me that she would make some proper input and I don't believe it would serve his best interests or the Committee's best interests to be any more detailed; but I certainly can be. It had nothing to do, not one thing to do with the internal function of the Baltimore City Police Department. It didn't have one thing to do with the Police Commissioner of Baltimore. It was external to the Police Department. If there hadn't been correction I was going to get a warrant. There was correction and I had sufficient evidence to get a warrant.

Q. Is that type of intimidation normal procedure of the Department?

COMMISSIONER POMERLEAU: It is not intimidation, it is cooperation. I called in a leader of the community. This is not reflective of what that leadership is trying to do in an urban area. It contravenes what she and others were trying to do. She didn't know it and I thought she ought to know it. I would do the same for you if you have a son and he gets out of hand. That is not intimidation. I would tell you, Senator, that unless you straighten out your son - this is a hypothetical problem - these are the problems, here it is and if you don't straighten out your son I am going to get a warrant for his arrest. This is not intimidation. This is trying to get things ameliorated without going to court."

CONCLUSIONS

The acquisition of intelligence data is a proper function of police agencies in performing their law enforcement duties. Regardless of the areas in which intelligence-gathering is carried out, it is clear that the only legitimate purposes for all such efforts are the investigation and prevention of unlawful activities and the maintenance of public order. Intelligence endeavors having no reasonable relationship to the achievement of these goals are unwarranted and improper.

The performance of these functions within the Baltimore City Police Department has, since 1968, been the responsibility of the Inspectional Services Division. Commissioner Pomerleau, to whom ISD answered directly, received all ISD reports and was thoroughly familiar with its operation. According to the Department, ISD intelligence-gathering activities fell into two broad categories referred to as organized crime and subversive activities. While ISD quite properly monitored groups such as the Black Panthers and The Young Communists, evidence also showed activities, persons and organizations having no connection with crime or unlawful activities were improperly surveilled and investigated. There was no valid purpose for ISD personnel to have regularly monitored meetings of community organizations and governmental agencies, political campaigns and associated functions, and picket lines, and to have reported detailed information concerning what transpired and those in attendance. The Department's explanation that only some public meetings were attended for the purpose of maintaining order or to keep a rapport with those individuals in attendance who were under criminal surveillance is not accurate in light of the substantial evidence

provided by numerous former members of ISD that all such meetings in Baltimore City were regularly attended and information, when available, was recorded concerning everyone in attendance with special emphasis on leaders of organizations and rising stars in the community. Furthermore, evidence indicated that at most governmental meetings non-intelligence personnel of the Department were in attendance specifically for the purpose of maintaining order. At several of the community association meetings monitored by ISD, members of the Community Relations Division of the Department were also present, oftentimes at the invitation of the association.

When Commissioner Pomerleau and ISD officials were questioned about an ISD report which the Department acknowledged as "typical," it was explained that the particular political function with which the report concerned itself was attended (1) so that the ISD agent could "keep up his credibility" with certain persons present and (2) in order to develop follow-up action that would be taken by the Department if there was violence at the meeting or if there was property damage as the crowd dispersed. While the explanation certainly sounds plausible, it was interesting to view the type of information that was included in the report in light of this explanation.¹

The primary concerns of the report appeared to be the type of political function, the identity of the participants, the political views of the candidates, whether Commissioner Pomerleau was mentioned and whether any future meetings regarding the candidacy of Mr. Mitchell and Mr. Russell were scheduled. The report did not mention whether it was a peaceful gathering or if there were interruptions during or after the meeting, or what contacts

1. See Appendix D for report.

were made by the ISD member present with those persons with whom credibility was to be maintained, such information being that logically expected to be included in light of the reasons expressed by the Department for ISD attendance. As a result of this report, of course, a permanent index card and, most likely, an activity folder containing a copy of the report was created for each individual and organization mentioned, if such were not already in existence. If the individual or organization was already a "subject" within the ISD intelligence collage, a copy of the report was added to their existing files.

ISD's broad information-gathering with respect to various facets of governmental, political and community life as was typified in the above mentioned report was clearly excessive. As a result of these practices, even the most law-abiding citizen was likely to have been named in the ISD intelligence collage if he exercised his constitutional right to speak at a public hearing of the Baltimore City Council or School Board.

ISD prepared background reports containing very personal and sensitive information concerning various citizens. While the Commissioner stated that such reports were prepared when ISD was "closing for the criminal closing," credible evidence before the Committee indicated that such information was obtained not only on members of the criminal element but also prominent community leaders and political figures, including elected officials, who had no connection with crime. This type of activity was a clear abuse of the police powers vested in the Department and is abominable.

All of ISD information-gathering activities, both warranted and unwarranted, went on in the total absence of any guidelines, written or otherwise, concerning the circumstances under which investigations and surveillance should be commenced and conducted, the proper scope of the investigative process, and the collection, evaluation, storage and dissemination of intelligence data. Detailed written criteria addressing each of these matters should have been in existence for the guidance of intelligence personnel. Information collected was automatically stored regardless of its relevance, reliability or the need for such data and there was no periodic review to update or purge the materials maintained. Furthermore, there was insufficient supervision of personnel conducting intelligence assignments, which situation, in the absence of operational guidelines, resulted in lower level personnel having very broad discretion in vital and sensitive areas. Under such circumstances, the likelihood of misuse of investigative powers was substantial.

A factor that was most important to consider with respect to the unit was the mental attitude of ISD personnel about intelligence work and the atmosphere in which they went about performing their intelligence activities. The feeling seemed to prevail in ISD that persons who deviated from the norm, who were outspoken or criticized the status quo, members of organized labor, picketers, and protestors, these people were "potential threats" and society must be protected against them. The Committee well realized that there are those who would destroy or cripple our society if allowed and that society must protect itself against these evils. However, it must be kept in mind that over-reaction to such dangers oftentimes results in social and personal injustices to others. Indeed, the climate in ISD

in which intelligence-gathering activities were carried out, and unchallenged and subjective judgments concerning individuals and organizations were made, was an undesirable one.

The seriousness of these broad and unchecked intelligence-gathering activities cannot be fully appreciated unless viewed in terms of the actual known uses of this information and the potentials for abuse inherent in its procurement.

For example, ISD reports were sent to the Mayor's Office, the State Attorney General's Office, other state law enforcement agencies, as well as federal agencies, including Army Intelligence and the FBI. Thus, an individual mentioned in an ISD report would become known to local, state and federal agencies. There is, however, no way of knowing what uses these agencies have made or will make in the future with respect to this information concerning citizens. Furthermore, evidence shows that ISD issued reports including information from their intelligence collage on individuals who applied for employment with local, state and federal agencies upon the request of the prospective employer. If an individual was unaware that the employer was going to investigate his background, or even if the individual authorized such an inquiry, it was unlikely that he was informed of the type or substance of the information reported to the employer by ISD. Therefore, the individual was not in a position to respond to the data or what it purported to represent, and his opportunity for employment may have been seriously impaired as a result of incorrect or irrelevant information being considered.

The mere fact that someone was "mentioned" in intelligence files, or that a person was characterized in a report as "an outspoken member of

the community," may well have carried negative implications to a prospective employer or to whoever had access to the information that ISD distributed to local, state and federal agencies. Furthermore, while an ISD report concerning a prospective employee may have indicated that "Mr. X was seen in attendance at a meeting of a left-wing organization," the report could have failed to point out that the meeting was held at the University of Maryland and that Mr. X, a student, had been walking down the hall and stopped to listen out of curiosity. Information was, after all, obtained from informants and covert operatives, as well as sworn personnel, and was oftentimes of a hearsay nature. Intelligence-gatherers had license, oftentimes poetic, to make subjective judgments in reports concerning such things as an individual's character, beliefs, political leanings, motivations, personal habits, associates, and ambitions. In the absence of any formal guidelines concerning the proper scope of investigations and the evaluation of data received as well as the reliability of sources (the identity of whom were not generally included in a report), information about an individual may have been substantially erroneous or inaccurate.

As previously pointed out, ISD possessed intelligence information concerning individuals from all segments of community life. Evidence showed that not only the information itself but the fact that the Commissioner had the means to obtain such data has, at times, been used inappropriately. For example, the Commissioner would inform citizens and government officials in a sometimes boastful but always intimidating fashion that he knew everything about everybody. In order to work properly and be effective, the criminal justice system should operate to as great an extent as possible as one integrated unit with cooperation and understanding among the various agencies

of which is comprised. This would include law enforcement agencies, prosecution authorities, the judiciary, probation and correction departments, and others, as well as the citizenry the system serves. Yet communications between the Commissioner and officials of such other agencies has, in many instances, been very poor, due in large measure to the Commissioner's methods of dealing with people, especially those with whose views he differed. Such a state of affairs hardly has been conducive to smooth and effective functioning of the criminal justice system and has failed to serve the best interests of society in our efforts to reduce crime.

As was discussed in a previous section, one individual against whom, according to Commissioner Pomerleau, he had evidence of criminal wrongdoing, ended up on his knees in the Commissioner's private office. Indeed, it was not proper for the Police Commissioner who, by his own admission, was in possession of evidence of wrongdoings by a citizen upon which formal charges could have been brought, to summons that citizen, whether a leader of the community or otherwise, before him and with the citizen on his knees, determine his fate. Such evidence should have been turned over to prosecution authorities who are vested under the law with the discretion as to whether or not criminal proceedings should be instituted in any particular case. While the Commissioner termed his actions "cooperation," it appeared to the Committee that they were more in the nature of intimidation.

In conclusion, it should be reiterated that the Committee believes that there is a very valid purpose for intelligence-gathering and supports the activities of the Department and other law enforcement agencies in this area. Indeed, there was and is a need for ISD with respect to many of

their endeavors. However, it is very unfortunate for the citizens of this state, and particularly those of Baltimore City, that the abuses in intelligence-gathering outlined above took place and that the energies of all ISD members who were, by and large, very capable police officers, were not directed toward combating crime.

DISSEMINATION OF CREDIT BUREAU INFORMATION

On October 26, 1970, Congress enacted Public Law 91-508, Title VI¹, commonly referred to as the Fair Credit Reporting Act, to insure fairness in the reporting procedures used by Consumer Credit agencies. Among other things, this Act prohibits disclosures by employees of consumer credit bureaus to governmental agencies of information from consumer files with the exception of the consumer's name and current and former addresses and places of employment, without a court order or in the absence of very limited circumstances.² The Act provides for the imposition of criminal sanctions for the violation of its terms.

The Fair Credit Reporting Act took effect in May of 1971. For many years prior to this date, employees of the Baltimore City Police Department had utilized the Credit Bureau of Baltimore, Inc. to obtain records of divorces, bankruptcy, debts, addresses, employment and other types of personal information from consumer files. This data was used to determine the suitability of applicants for employment with the Department and to assist in criminal and non-criminal investigations conducted by various divisions in the Department. The information was generally provided by the Credit Bureau of Baltimore upon the informal request of law enforcement personnel. Documents provided to the Committee by the Department indicate that in May of 1971, when the Fair Credit Reporting Act went into effect, the Department ceased to utilize services of the Credit Bureau of Baltimore in obtaining such information.

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1. Title 15, USC §§1681-1681t.
 2. See Appendix B.

On December 3, 1971, Terry Josephson, a member of the Intelligence Unit of the Department's Inspectional Services Division making an annual salary of \$9,084.00, resigned to accept a position as Vice-President of the United Credit Bureau of America, Inc. for "financial reasons." According to Mr. Josephson, the United Credit Bureau of America, Inc. (hereinafter referred to as "UCB") is one of the largest independent consumer credit agencies in the country and has files on most citizens of Baltimore and the state. These files contain personal information concerning consumers, including data obtained from background investigations pertaining to an individual's character, reputation and living habits. In his position, Mr. Josephson had unlimited access to these credit files. On January 3, 1974, Mr. Josephson filed for personal bankruptcy in the United States District Court for the District of Maryland. In early January of 1975, an article appeared in the News American alleging that Mr. Josephson was operating in an undercover capacity for the Department at UCB, supplying personal information from consumer files to ISD personnel. On January 31, 1975, Mr. Josephson resigned from the United Credit Bureau where he was receiving a salary in excess of \$20,000.00 per year. One month later Mr. Josephson was re-appointed an officer in the Department for a salary of \$9,100.00 per year.

In subpoenaed testimony before the Committee, Mr. Josephson denied supplying members of ISD with personal consumer information other than that allowed by the Fair Credit Reporting Act, or being "a plant" at the UCB for ISD. He denied that he left UCB because of the newspaper disclosures concerning his alleged activities for ISD and the pending ISD investigations, claiming that it was a matter of coincidence that he resigned his job shortly

after the News American story broke and Senate Resolution 1 was adopted. In responding to questions concerning why he left UCB in January of 1975, he testified that he was not progressing in the business quickly enough, that he did not get along with his boss, Mr. Charles Flanders, President of UCB, and that generally he had been unhappy at UCB during 1974.

The Committee then read to Mr. Josephson the following portion of a letter he had sent to his employer on November 18, 1974.¹

"Well, Charles, [Charles Flanders] that's it in a nutshell. If you can help me, I would greatly appreciate it. If not, I understand. I'll stay at home as long as possible and continue to try and put as much money into the bills as I can. I do want to assure you and Natalie of one important thing. Please do not worry about me on the job here. I am maintaining a bright and cheerful attitude and I am not going to let personal things bother me any more. I love UCBA very much. You know I want to spend the rest of my life here - - I love my work and always look forward to being here. I find my job challenging and rewarding and I am very proud of being associated with you and Natalie [Mrs. Flanders]. As far as I am concerned, UCBA will ALWAYS come first in my life and I refuse to let anything jeopardize that position. I appreciate the trust you have placed in me and I will NOT let either of you down ... never!"

Mr. Josephson was then asked to explain the letter in light of his testimony concerning his reasons for leaving UCB. The following ensued:

1. The letter was supplied to the Committee in response to a subpoena duces tecum directed to UCB.

Josephson: ". . .I wanted to reassure him, to satisfy my ego, if I must be a little personal, his ego, that I was happy there, but it is not the truth. I was not happy there. (emphasis added)

Question: So what you said was not the truth? You said you loved the business, you find it challenging and that you want to spend the rest of your life there, that isn't the truth?

Josephson: "No. I thought this is what he wanted to hear." (emphasis added)

Mr. Josephson was also questioned about his activities with ISD before he resigned from the Department in 1971. Mr. Josephson testified that although he worked primarily in organized crime, he had supplied information to ISD concerning the Jewish Defense League (JDL). When asked whether he "infiltrated" the JDL, he responded "No." He pointed out that he had been asked to join the JDL by one of its leaders who knew he was a police officer in ISD. Subsequently, he was asked to explain a handwritten statement contained in his sworn application for re-employment with the Department which read "As a police officer in ISD, I was asked to infiltrate a subversive group, the Jewish Defense League, which I did. . . . I was responsible for seeing to it that the Balto. chapter of the JDL didn't get formed."

Shortly thereafter the following exchange took place:

Q. "Since you were not asked to infiltrate a subversive group, then this is false; is that correct?"

A. I would say it is half false.

Q. All right. Half false. So that again we have an instance similar to the last paragraph in the letter that was discussed where you have represented facts or the half truth or half falsity to your own advantage; is that correct?

- A. I wouldn't say - - well, all right. Yes. I would interpret it as that way, yes.
- Q. This happens to be an application for re-employment in the Police Department?
- A. Right.
- Q. Where you have misrepresented the facts; is that correct?
- A. Well, at the time I was writing it, again, I just was trying to distinguish in my personal life I did not belong to a group. I did put it in the category as line of duty. That is true.
- Q. You sure did, and you have put the Committee in a very difficult position Officer. We have had two instances here in this testimony where you have admittedly written what was not the truth to work to your own advantage or to put yourself in the best favorable light to the addressee of what you were writing, and I am wondering how the Committee is going to determine the rest of what you have told us, what status that is, whether it is all true, half true, half false, and I hope you can understand that you have made yourself not a very credible witness. Whatever else you have to say that would help that credibility, I think you ought to say it."

Mr. Josephson's subsequent efforts notwithstanding, his credibility remained doubtful.

The Committee received sworn evidence that Mr. Josephson, while in the employ of the UCB, supplied information from consumer credit files to members of ISD without an appropriate court order.¹ Such data included the nature and amount of debts, the identity of creditors, property owned, marital status, the number of children and other personal information which was obtained in furtherance of both criminal and non-criminal investigations of various citizens. Furthermore, evidence indicates that supervisors in

1. See Appendix E for excerpt of testimony.

ISD were aware that Mr. Josephson provided such information and suggested to division members that his services be utilized.

CONCLUSIONS

The Committee's remarks must be prefaced by pointing out that because this matter involved possible violations of federal law, the Committee did not draw definitive conclusions in this area.

While it was unclear as to whether Mr. Josephson left the Department in 1971 for other than financial reasons, the Committee received credible evidence that while in the employ of the United Credit Bureau (UCB) Mr. Josephson disseminated very personal information from consumer files to members of ISD. Furthermore, evidence indicated that ISD supervisors were aware that Mr. Josephson provided such information to ISD and condoned this practice.

In his testimony before the Committee, Mr. Josephson denied that he had provided ISD members certain personal information from consumer files while at UCB. Mr. Josephson also denied that he resigned from UCB where he was making \$20,000 per year on January 31, 1975, two days after the passage of Senate Resolution 1, and re-entered the Department for a salary of \$9,100 because his activities in supplying information to ISD had been exposed in a newspaper article. Mr. Josephson's testimony was seriously impeached when, during questioning by the Committee, Mr. Josephson was shown to have been untruthful on two prior occasions, once in a matter relating to his previous employment with UCB and the other concerning his sworn application for re-employment with the Department. The Committee did not feel Mr. Josephson was a credible witness.

WIRETAPPING AND RELATED MATTERS

I

Both state and federal statutes prohibit the interception by law enforcement personnel of telephone communications in the absence of a valid court order authorizing the interception. On March 5, George Guest, a member of the Baltimore City Police Department from June 1964 until mid 1974, testified at an open hearing before the Committee that while he was in the Department, information came to his attention that members of the city Vice Squad, in cooperation with personnel from the C&P Telephone Company, monitored telephone conversations without proper legal authorization. The information that was obtained from intercepting the conversations was used as bases for affidavits for court authorized warrants to search various premises in Baltimore City. On at least one occasion, this unauthorized wiretapping procedure was alleged to have been used for a personal matter, unconnected with the investigation of criminal activity.

While the major thrust of the entire SR-1 and 151 investigation was the improper surveillance of individuals not suspected of criminal activity, the Committee felt it was incumbent upon them to look into these charges since Senate Resolutions 1 and 151 mandated an investigation into "all unwarranted surveillances." (emphasis added) Due to the gravity of the matters alleged and because testimony indicated that the unauthorized surveillance procedures had been utilized with respect to a non-criminal matter, the Committee commenced an inquiry to ascertain if the charges were valid, and if so, to determine what divisions or units within the Department utilized such procedures and whether they were employed to surveil citizens

not suspected of crime.

II

The Committee obtained evidence consisting of the sworn oral testimony of a former police officer, two sworn affidavits of former police officers, and two interviews with former law enforcement officers, all of whom were directly involved in these wiretapping procedures. Additionally, the Committee received corroboration of these matters from three other individuals.

The evidence from these sources indicated that the following pattern of activity existed from the mid 60's until 1973. Various members of the city Vice Squad would submit the number of a telephone they believed was being used to conduct illegal transactions to a particular Lieutenant in their squad and request him "to get a make" on the telephone number. The Lieutenant would then contact certain members of the C&P Security Office¹ and inform them of the telephone number and seek their assistance in obtaining information concerning this particular telephone. Within a period of time ranging from a few hours to several days, the Vice officer who made the original request would receive information from his Lieutenant which had been provided by C&P employees such as the subscriber's name and address, the location of the telephone, whether there was "action" on the phone line and, if so, the kind of gambling activity,² the names of individuals mentioned in conversations, gambling codes and other information concerning

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1. Other employees of the C&P Telephone Company also may have been contacted.
 2. Sports bets, lottery, etc.

the illegal activity that was obtained by monitoring the telephone line.¹

Upon receiving this information, the Vice officer would then prepare an affidavit for a search and seizure warrant for the premises where the telephone was located. The affidavit, of course, did not reflect that the information was obtained from telephone eavesdropping but attributed the data to "a reliable informant" or some other source.² As a safety precaution, the affiants would generally drive past the property in question "to make sure it was still standing"³ and to obtain a physical description to include in the affidavits.

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1. There is some evidence that at least one other Maryland law enforcement agency and, perhaps, two federal law enforcement agencies, may have obtained such information from the C&P.
 2. One of the affidavits received by the Committee reads in part as follows: "Affidavits of members of Vice oftentimes contained information that came from unauthorized telephone taps or were prepared as a result of unauthorized taps. The unauthorized taps were done, primarily, through cooperative efforts of Lt. "X" of the Vice Squad and Mr. "Y" of the Security Division of the C&P. Typically, a member of Vice would obtain from an informant the number of a telephone which he suspected carried conversations pertaining to illegal activities. The officer would ask Lt. "X" to 'get a make on the telephone number.' "X" would then contact individuals from the C&P, one of which was "Y", and arrange for someone in the C&P to listen on a line and obtain information concerning the conversations which occurred. After receiving the information desired, Lt. "X" would contact the officer who originally supplied the phone number and tell him that illegal operations were or were not being conducted with respect to the given phone number. If the answer was in the affirmative, "X" would tell the officer pertinent information such as the kind of operation involved, codes utilized, hours of activity and the names of individuals which might have been identified on the phone and the location of the phone involved. The officer then on his own initiative or upon instructions from "X" would write an affidavit for a search and seizure warrant for the given location of the telephone which contained fictitious information concerning an illegal transaction or, reliable information received from an informant concerning illegal activity at the location in question."
 3. On one occasion, a search warrant based on an affidavit containing incorrect information was issued for a vacant lot.

After the affidavit was reviewed and approved by Vice supervisors, the officer would swear to the validity of the information contained in the affidavit before a judge who would then approve the issuance of the search and seizure warrant. Many Vice officers preferred taking their applications for search warrants to District Court judges rather than members of the Supreme Bench¹ because several of the lower court judges did not scrutinize the affidavits very closely for legal sufficiency or the credibility of the affiant.² Once the search and seizure warrant was signed by a judge, it was ready for execution.

Oftentimes before a warrant was actually served, the Vice Squad would check with C&P personnel to make sure that the telephone line on the premises was "hot." Members of the raiding party would wait in the Vice Squad office, or by a telephone located in the vicinity of the premises to be searched, for a call from C&P personnel notifying them that at that very time, illegal activity was being discussed on the line. The raiding party would then immediately proceed to the premises and execute the warrant. Seldom, under these circumstances, were their efforts in vain.

In addition to the above, the Committee obtained evidence that certain Vice officers personally intercepted telephone conversations without legal authorization. However, this apparently was done rather infrequently because the Vice officers could obtain the same information from the C&P without incurring any personal risks.

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1. In Baltimore City, the Circuit Court is referred to as "The Supreme Bench."
 2. Evidence indicates that, on occasion, certain judges may have signed warrants without even reading the supporting affidavits.

Evidence further indicated that supervisors in the Vice Squad, through the rank of captain were aware or had substantial reason to suspect that the unauthorized eavesdropping procedures were being conducted. However, there is no indication whatsoever that any steps were taken to terminate these practices or to discourage them. Testimony indicates that a majority of the search warrants prepared by the Vice Squad during the time period in question involved such telephone interceptions. Furthermore, many supervisors in the Vice Squad tacitly approved and, at times, actually instructed officers to include false information in affidavits for search warrants. Vice personnel related incidents where affidavits containing factual scenarios that were "absurd" were approved by supervisors (and subsequently judges) without comment.¹

In the past, members of the C&P Security Office provided members of local and state law enforcement agencies with non-published telephone listings and the names and addresses of the subscribers upon oral request. Testimony of Mr. Herbert Rouse, head of the C&P Security Office, indicated, however, that as of October 10, 1974 his company required that law enforcement personnel furnish a subpoena authorizing the divulgence of this information.

1. An excerpt from an affidavit received by the Committee is illustrative.

"Some of the Vice affidavits were like reading 'Grimm's Fairy Tales.' In one incident the affidavit stated that the affiant was sitting on a park bench when, lo and behold, a man sat down next to him on the bench. The man attempted to stand up, a dog jumped on him and a bag the man was carrying fell to the ground out of his hands, revealing lottery slips. Several members of the Vice Squad had a good laugh upon reading that particular falsified affidavit."

Mr. Rouse, an employee of the C&P for over thirty-seven years, denied emphatically that any C&P employee had participated in improper wiretapping activities and reviewed with the Committee the extent to which the C&P becomes involved in the carrying out of valid court ordered wiretaps. Basically, the C&P participates in legal wiretaps only to the extent that

- (1) C&P lawyers review the court orders authorizing the interceptions,
- (2) C&P Security personnel lease telephone lines and provide technical information including "multiple appearances" and "pole numbers" to the law enforcement agency which will conduct the wiretap and
- (3) C&P personnel check the telephone lines at the expiration of the time period for which the tap is authorized to insure that the lines are clear and that all tapping equipment has been removed.

In essence, Mr. Rouse testified that the C&P does not participate in the installation of the tap itself or the subsequent monitoring. Although approximately fifty legal wiretaps were conducted in Maryland last year, the C&P did not keep copies of the court orders authorizing the wiretaps. Mr. Rouse testified that although he does not keep copies of the court orders, as a matter of personal practice he does maintain some records concerning the legal taps.

While federal and state law permits telephone company employees to intercept communications so long as the employees are acting in the normal course of their employment in some activity necessary to the rendition of service or to protect the rights or property of the company,¹ it is clear

1. For example, toll fraud investigations.

that the information which evidence indicates was transferred to Department personnel by C&P employees would not have been obtained during interceptions permitted in accordance with these statutory exceptions.¹

At the Committee hearing held on October 18, 1975, Commissioner Pomerleau and other Department officials specifically denied that the Department or any of its members had participated in or had been party to any illegal wiretapping procedures. Furthermore, testimony was given that the only information which Vice Squad personnel received from the C&P Telephone Company was the names and addresses of telephone subscribers, the location of telephones and toll charges.²

CONCLUSIONS

The Committee remarks must be prefaced by pointing out that because this matter involves possible violations of federal law, the Committee did not draw definitive conclusions in certain areas.

According to the evidence received, the Committee believed that there is a reasonable possibility that certain C&P Telephone Company personnel, at the request of members of the Department's Vice Squad, intercepted telephone conversations without legal authorization. Evidence indicated that the information obtained was incorporated in affidavits for search and seizure

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1. The Committee reviewed with C&P officials the circumstances in which C&P employees intercept telephone calls and subsequently provide information concerning the substance of the intercepted communications to law enforcement officers.
 2. See Appendix E for relevant excerpts from the transcript of the October 18th hearing.

warrants prepared by certain members of the Vice Squad.

It was common practice for members of the Vice Squad to knowingly include untrue information in their affidavits for search and seizure warrants, oftentimes upon the instruction of their supervisors and, generally, with their knowledge.

Until October of 1974, the C&P Telephone Company provided members of state and local law enforcement agencies with information concerning telephone subscribers in the state, including names, addresses and non-published telephone numbers, in the absence of proper authorization for the divulgence of this data. Furthermore, the C&P does not require that records be maintained concerning legal court ordered wiretaps carried out by law enforcement agencies in which C&P facilities are utilized. Reports currently being maintained are done so as a matter of personal practice and are not adequate in that, among other things, copies of the court orders authorizing wiretaps are not kept.

Finally, evidence indicated that several judges of the District Court of Baltimore City did not exercise that degree of care and caution in reviewing affidavits for search and seizure warrants which was necessary to adequately protect the constitutional rights of persons affected.

RECOMMENDATIONS

I

Before outlining the observations and recommendations of the Committee, it is appropriate at this point to address the matter concerning the attitude and conduct of Commissioner Pomerleau and his counsel, George L. Russell, Jr., with respect to the Senate investigation.

At the hearing on SR-1 on January 14, 1975, Commissioner Pomerleau not only supported legislation authorizing an investigation of his Department, but, in fact, requested that an inquiry be launched for the express purpose of "re-establishing credibility" not only of himself and his Department but "Government" generally. One of the primary reasons the Committee issued a favorable report on the proposed resolution was to provide the Commissioner, whose ISD Unit had been accused in the press and media of unwarranted surveillances and specific acts of wrongdoing, with a forum in which he could be heard on the allegations and issues in question. The importance this factor assumed in the Committee's deliberations was reflected in a statement made by one of its members to the Department's counsel at the first hearing held by the SR-1 Committee on February 18. Commissioner Pomerleau had been extended an invitation to appear at this hearing, but had refused to attend.

SENATOR STROBLE: "Okay. Well, I bring this up because I want to share my feelings with you.

MR. RUSSELL: Certainly.

SENATOR STROBLE: So you know what's going on here and what many members of the Committee felt when we voted to support the resolution. We listened to three hours, five hours of testimony on this resolution one day several weeks back, [January 14, 1975] and every person who testified before that particular hearing said that they wanted this resolution to come out favorable. I didn't hear anything in that testimony, including Commissioner Pomerleau's testimony, which said that, in my estimation, that we needed this resolution, we needed to inquire further.

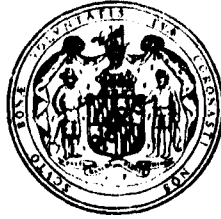
The thing that made up my mind was the Commissioner sat right at a table just like you are right now and said he wanted us to do it. He wanted us to dig into it, and now we come and he's not coming. He doesn't want to say any more. (emphasis added)

MR. RUSSELL: No, sir.

SENATOR STROBLE: We thought we were doing him a service, is what I'm saying, and when I get a letter today where you're condemning us for following what he wanted us to do, that bothers me."

Since the very inception of the investigation Mr. Pomerleau and his attorney have refused to cooperate in any meaningful fashion and, in fact, have actively opposed the efforts of the Committee. While the Committee deems it inappropriate for purposes of this Report to thoroughly set out and review such matters, one illustration should suffice insofar as this particular subject is concerned. On March 28, 1975, the following letter was sent by Chairman Conroy to Mr. Russell notifying him that the Committee would seek an opinion of the Ethics Committee of the Maryland Bar as a result of certain actions of Mr. Russell and Commissioner Pomerleau respecting Mr. Russell's legal representation of the Department.¹ In the letter, Senator Conroy points out several situations where the Commissioner and his counsel were attempting to impede the investigation.

1. See Appendix C for the Committee's letter to Mr. Norwood B. Orrick, Esquire, Chairman of the Maryland State Bar Ethics Committee, as well as the opinion issued by the Committee.



SENATE OF MARYLAND

ANNAPOLIS, MARYLAND 21404

EDWARD T. CONROY
STATE SENATOR
EIGHTH LEGISLATIVE DISTRICT
PRINCE GEORGE'S COUNTY
CHAIRMAN, CONSTITUTIONAL
AND PUBLIC LAW COMMITTEE

March 28, 1975

JAMES OFFICE BUILDING
ROOM 400
ANNAPOLIS, MARYLAND 21404

George L. Russell, Jr., Esquire
704 Jefferson Building
2 East Fayette Street
Baltimore, Maryland 21202

Dear Mr. Russell:

On Friday, March 14, 1975, you stated to Committee counsel on the telephone that you represented all sworn members of the Baltimore City Police Department. You further stated that you would notify counsel in the next several days as to whether you would accept service of process for all members of the Police Department in addition to the Commissioner himself. Furthermore, you requested that the Committee not contact or communicate with any of your clients directly but should, instead, contact you.

In correspondence dated March 17th, the Committee sought information from you concerning the names of your clients, briefly pointing out certain of the reasons for requesting this information and the problems confronting the Committee without this data. In a letter dated March 19th the Committee requested that you provide the information concerning the identity of the clients for whom you would accept service of process as you previously stated you would.

The Committee is in receipt of your response to the aforementioned letters. Unfortunately, your letter does not provide the Committee with the information requested.

The question as to the nature and extent of your representation with respect to the Baltimore City Police Department is a vital one. It seems that the individuals you represent are an ever-expanding group which the Committee, at any point in time, is at a loss to be able to specifically identify. Only today was the Committee made aware, first through the news media and then in a communication from the Commissioner himself, that you also represent unsworn employees and retired employees of the Police Department. Your refusal to provide us with the information we have requested creates serious problems.

March 28, 1975

You have asked that the Committee members and counsel not communicate directly with your clients but contact you as their legal representative which, under appropriate circumstances, would be a proper request. According to the Code of Professional Responsibility of the Maryland Bar, the attorney members of the Committee and counsel would be subjecting ourselves to possible disciplinary action by the Bar if we were to violate such a request, assuming it to be well founded. By refusing to name the individuals you purport to represent, the attorney members of this Committee and counsel are placed in a precarious position everytime a person is contacted with respect to some aspect of the investigation. The Committee may, for example, become aware that a certain person has knowledge of pertinent information and have no idea whatsoever if the person is or was a member of the Police Department, or whether, if he was a member, he retired or resigned. The Committee could not reasonably ascertain this until the Committee had, in fact, contacted the person. It might well be argued that a violation of the Code of Professional Responsibility had occurred in merely contacting this individual if he in fact turned out to be one of your clients.

Of course the response might be made that the Committee could check with counsel for the Police Department every time it wished to contact an individual with respect to the investigation. Such a retort is, however, totally unrealistic since it would be ridiculous for the Committee to disclose to an agency under investigation the identity of every person who is a potential source of information.

An important ramification of both your failure to identify your clients and your request that the Committee contact you directly rather than communicate with the persons you represent is the unfair position in which certain former and present employees of the Department are now placed. Allegations and testimony before the Committee indicate that the Police Department employees not only have information pertinent to our inquiry but may themselves have been the subject of improper surveillance. These employees may very well wish to communicate such information to the Committee. It may well be that their interest as employees of the Department would be best served and protected if such communications were made without the knowledge of their superiors and members of the Department's administration. Also, an employee may wish to be represented by counsel of his own choosing or waive his right to be represented by counsel. In such instances, an employee would indeed be hard pressed to tell the Department that he does not wish to avail himself of the services of counsel personally selected by the Police Commissioner. A perfect example is Terry Josephson, a police officer who appeared before the Senate Committee and knowingly and intelligently waived his right to counsel on two separate occasions during the hearing. Yet, you, on behalf of the Police Department, made objections to questions and in fact answered several of the questions propounded to the witness before he could answer. At one point, after the witness told the Committee he could explain matters in closed session, you stated that no Baltimore City Police Officer will testify in a closed session.

March 28, 1975

The witness was placed in an extremely unfair and awkward position.

Yet another factor further adding to the dilemma of these employees of the Police Department came to the Committee's attention today in a letter directed by the Commissioner to the Committee. The Commissioner has instructed all members of the Police Department to refer any form of communication from this Committee to you and submit appropriate written reports to Department heads.

The Commissioner asked for this investigation in an open hearing on the Senate Resolution by which this Committee was created. To quote the Commissioner, starting at page 97, line 18 of the transcript of that hearing held before the Senate Constitutional and Public Law Committee on January 14, 1975:

"Would you assist me Mr. Chairman in re-establishing credibility in Government? I am so disenchanted with the lack of credibility of the Government and I would like for the cast of characters to be developed. I would like to open this thing up and let the people know just who is doing what to whom; not only the cast of characters, but I would like to identify publicly the Directors of the cast. I commend very strongly that this thing be opened up fully."

The Commissioner's actions to date and his requirement that the Committee contact counsel for the Police Department before communicating with sworn and unsworn members of the Department as well as former employees and, further, his order to all personnel to report any communications with the Committee to superiors, is in direct contradiction of the Commissioner's plea for an open and thorough hearing on the whole matter. It can only be viewed as a roadblock intentionally constructed to impede this investigation.

The Committee fully recognizes and upholds the right of every individual to avail himself of counsel at any stage of this investigation. However, this is a personal right and a choice which should be exercised freely by each individual. It is fundamentally unfair to place an individual in a situation where he, practically speaking, must accept an attorney's services of his employers, rather than his own, choosing.

If indeed the allegations against the Police Department are unfounded as the Police Commissioner has consistently stated, then there is no reason whatsoever for him to stifle and impede communication between the members of the Department and this Committee. Rather, we ask that the Commissioner allow and encourage the search for truth by this Committee which he himself advocated.

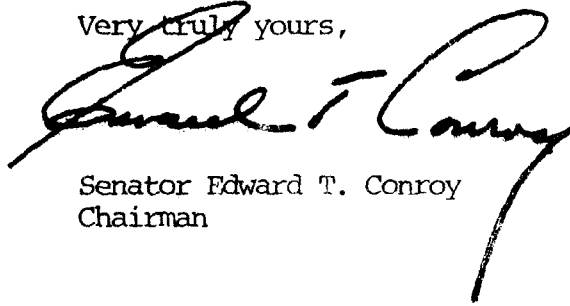
The Committee has contacted the Ethics Committee of the Maryland Bar and has requested an opinion concerning communications by the attorney members of the Committee and it's counsel with your "clients". A copy of that letter will be

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sent to you under separate cover.

Very truly yours,

A handwritten signature in black ink, appearing to read "Edward T. Conroy". The signature is written in a cursive style with a long, sweeping tail that extends downwards and to the right.

Senator Edward T. Conroy
Chairman

ETC:je

cc: President Hoyer
Commissioner Pomerleau
Norwood Orrick, Chairman
Ethics Committee of the Maryland State Bar

Unquestionably, the efforts of Commissioner Pomerleau and Mr. Russell to intimidate and frustrate the Committee in their lawful endeavors have ill-served the members of the Department they represent and the legitimate interests of the people of the State of Maryland. Despite their efforts, the following recommendations to the Senate of Maryland are made.

II

From that point in the investigation where surveillance abuses were first discovered, the Committee kept uppermost in its deliberations the development of proposals for legislative action by the General Assembly designed to prevent their recurrence. This, after all, was the raison d'etre of the Committee's entire effort. The task of proposing meaningful, yet flexible, legislative solutions to the problems was extraordinarily difficult.

For example, did the solution lie in passing new laws criminally punishing inappropriate intrusions on citizens' privacy? This, at first blush, appeared the logical solution. However, it was a practical impossibility to fashion a statute which would sharply define areas of legitimate police concern for surveillance purposes, yet still maintain needed flexibility in the investigative process. The Committee was loath to propose any legislation that would hamper valid law enforcement efforts. Further, the investigation showed that several problems were not state-wide but, rather, peculiar to Baltimore City. Finally, the Committee felt that it would serve no useful purpose merely to enact new criminal statutes

since those new statutes may, like the old, be more honored in their breach than in their observance.

Thus, one of the vital problems of concern to the Committee emerged. This problem was not so much one of laws, but, rather, of people. It was clear to the Committee that command echelons within the city Police Department knew of certain abuses uncovered by our investigation and did not correct them until outside inquiries had commenced. We believed, furthermore, that the problem, to a significant degree, stemmed from a perception entertained in the highest levels of the Department that its actions were not to be questioned in any other place. Recent disclosures concerning our Federal Government served well to illustrate the abuses engendered by such a line of thought. Consequently, the Committee believed that steps must be taken to insure that henceforth a more appropriate degree of responsiveness be forthcoming from the city Police Department.

It is with these considerations in mind, that the Committee's recommendations for legislation to the Senate of Maryland are proposed.

RECOMMENDATION ONE

Credit reporting agencies which prepare and furnish consumer reports to third parties assemble vast amounts of information on consumers. Such data includes information concerning a consumer's credit capacity, character, general reputation, personal characteristics and mode of living. Larger reporting agencies have consumer information on nearly every citizen in a particular jurisdiction. While there are federal laws regulating the conduct of such agencies in the dissemination of consumer information,¹ there are no comparable state laws on the subject.

Because so many citizens of this state are the subject of information-gathering for consumer credit purposes and, therefore, have a vital interest in seeing that such information is handled with the utmost of confidentiality and disseminated responsibly, the Committee feels there is a need for state legislation to insure that consumer reporting agencies conduct their business in such a way as to safeguard the consumer's right to privacy. In matters of such seriousness involving the basic rights of so many people, the citizens of this state should not have to look to or depend upon federal authorities to safeguard or vindicate their interests.

The Committee recommends to the Senate that legislation be adopted similar to subsections b, f, n, o, p and r of section 1681 of Title 15 of the United States Code. The legislation should delineate the circumstances under which credit reporting agencies may furnish or disseminate information. Such agencies

1. Title 15, USC §§1681-1681t. These provisions are referred to as the Fair Credit Reporting Act.

should be specifically precluded from furnishing to law enforcement or other governmental personnel information respecting any consumer other than the name and current and former addresses and employment in the absence of a court order or except in other very limited circumstances. The proposed statute should create civil and criminal penalties for the violation of its provisions.

RECOMMENDATIONS TWO THROUGH FIVE

A number of years ago, when transistor radios were still a novelty, the world was amazed by several disclosures. One of these incidents involved a woodcarved American eagle installed in a key office at one of our embassies. It turned out that the eagle had been bugged to broadcast to agents of a foreign power all the sensitive information discussed in the office. At about the same time, there was discussion of a radio transmitter disguised as an olive skewered by a toothpick, used to bug a martini at diplomatic gatherings.

The utility of sophisticated electronic devices in the craft of intelligence-gathering during the sixties and the first half of this decade, led to the development of ultra-sophisticated eavesdropping equipment and techniques. In this warfare of electronic gadgetry, development of each "measure" was soon followed by development of a "counter-measure," and so forth, and the realities of what is possible in the electronic eavesdropping area are staggering.

Much of the technology in this area was either developed by or known to the intelligence services of the Armed Forces, and it is apparent that a significant amount of this technology has found its way to local police

organizations through training courses or the military backgrounds of law enforcement personnel. What hardware is not possessed by local authorities, is generally available through federal agencies. Eavesdropping equipment, moreover, can be purchased by anyone and the market for such devices appears to be constantly expanding.

The Committee believes that the potential for pervasive abuse of ultra-sophisticated electronic eavesdropping devices is so great and the public's power to protect itself from them is so minimal, that greater and more thorough legislative restrictions are needed concerning the conditions under which such devices may be possessed, transferred or employed.

Thus, the Committee recommends the passage of a comprehensive act regulating all facets of wiretapping and electronic surveillance in the state along the same lines as Title III of the federal Omnibus Crime Control and Safe Streets Act of 1968.¹ The current laws in the state regulating these matters are inadequate both in substance and in form and lack necessary specificity in such critical areas as wiretapping. These laws are located in various sections throughout the Maryland Code and many are all but obsolete in view of Maryland case law construing them and federal enactments. A compilation of pertinent laws detailing all aspects concerning the use and control of eavesdropping equipment is, in the opinion of the Committee, necessary for the proper guidance of law enforcement personnel and citizens generally.

1. 18 USC §§2510-2520.

Specific recommendations concerning the proposed comprehensive act are as follows:

1. State wiretapping and electronic surveillance statutes should be rewritten to conform to minimum federally legislated and constitutional standards. Detailed provisions similar to §2511 and §2518 of the federal act should be incorporated with respect to prohibited interceptions and the procedures to be followed in obtaining legal authorization. Currently a person who violates state wiretapping provisions is guilty of a misdemeanor and is subject to a fine of not more than \$1,000 and imprisonment for not more than 90 days. The applicable statute of limitations of one year is quite unrealistic in view of the fact that electronic eavesdropping is very difficult to detect and violations of the laws in this area are oftentimes not discovered until several years after their occurrence.

To deter improper conduct, unlawful interceptions should be a felony punishable by a fine of not more than \$10,000 and imprisonment for not more than ten years. As a felony, a violation would not be subject to the one year statute of limitations applicable to misdemeanors. In addition, the recovery of civil damages by any person whose communications are intercepted in violation of the law should be authorized.¹

2. Under the laws of this state, anyone can possess eavesdropping and wiretapping equipment so long as the devices are registered with the Superintendent of State Police.² Law enforcement agencies and their personnel are exempt from coverage under these laws. A review of the registration records kept pursuant to this law, as well as an investigation

1. See 18 USC §2520.

2. Article 27, §125D, Annotated Code of Maryland.

in the area, indicates that very few eavesdropping devices have been registered and that the current statute is ineffective insofar as the misuse of such equipment is concerned.

The Committee sees no valid reason for the use and possession of eavesdropping equipment by anyone other than law enforcement personnel, employees of common communications carriers, and manufacturers of such devices for sale or distribution to persons authorized to possess this equipment. Therefore, the Committee recommends that the manufacture, distribution and possession of any wire or oral communication intercepting device whose design renders it useful for the purpose of the surreptitious interception of wire and oral communications should be prohibited.¹ These provisions should not apply to those persons excluded under the federal statute² with the exception of officers, agents, employees of the State of Maryland or political subdivisions thereof who are not employees of a law enforcement agency within the state. In order for police personnel in the state to be exempt, the Committee proposes that the legislation require that the individual be specifically authorized by his employer to manufacture or possess the particular device, and, the particular device must be registered in accordance with applicable state laws.³

A violation of these provisions should be a felony punishable by a fine not more than \$10,000 and imprisonment not more than five years.

1. See 18 USC §2512.

2. 18 USC §2512(2).

3. See recommendation immediately following.

3. All law enforcement agencies in the state should be required to register all electronic wiretapping or eavesdropping devices owned or possessed by them, or their employer, or agents with the Director of Public Safety for the State of Maryland. All such devices should be registered within 10 days from the date of their receipt.

Investigation has shown that many members of law enforcement agencies have their own eavesdropping equipment. Personal ownership of these devices creates a situation susceptible to abuse whereby such equipment could be utilized without the knowledge and guidance of an individual's employer. Registration of such devices by law enforcement agencies is recommended for two main reasons: first, to compliment the proposed legislation discussed immediately prior to this which recommends that the possession of unregistered eavesdropping equipment by police personnel be prohibited; and second, to emphasize to law enforcement agencies the importance of exercising tight controls over the storage, use and dissemination of such equipment.

4. Legislation should be enacted prohibiting the breaking and entry, entry under false pretenses, or trespass upon any premises with the intent to place, adjust or remove surveillance, eavesdropping or wiretapping equipment without a court order. Such actions should be a felony punishable by imprisonment for not more than ten years. Currently, there is no law prohibiting these activities with the possible exception of simple trespass laws.

RECOMMENDATION SIX

As was pointed out previously in this section, the investigation disclosed that command echelons within the Baltimore City Police Department knew of certain abuses uncovered by this investigation and, until outside agencies began looking into these practices, they were not corrected. The Committee believes that this situation, to a significant degree, existed because the City Police Department and its administrators are not sufficiently accountable to the people they serve. This is the direct result of the fact that the Department is now an agency and instrumentality of the State of Maryland with its Commissioner appointed by the Governor. Although the Department's funds are provided by the Baltimore City Council, because the Department is a state agency the City Council is powerless to exercise oversight of the Department's operations in many vital areas or conduct an investigation of the Department along the lines of that performed by this Committee.

The genius of the democratic institutions of America has been their closeness to the people, with an abhorrence of intermediaries between the governed and the governors. It is founded, at least in part, on the realization that persons with unchecked power and unquestioned trust too often come to embrace the belief that their own perceptions of the common good coincide with the will of the people. This principle applies as strongly to the pervasive police power as other forms of governmental presence. The Baltimore City Police Department is the only local law enforcement agency in the state which is not directly responsible to the jurisdiction in which it carries out its duties. Today, there is no reason for the Department to

be responsible, and hence responsive, only to Annapolis.

Furthermore, the duties, obligations and functions of the Governor of Maryland with respect to the operation of state government are enormous. As chief executive, the Governor is responsible for the supervision and direction of every department and agency of the state and its officials, as well as all services provided by the state to the citizenry of Maryland. As a consequence, the time and effort that can be expended by the Governor in supervising the operations and administrative heads of purely local agencies such as the Baltimore City Police Department are severely restricted. It is, therefore, preferable to place the supervision over such an agency in the hands of officials whose responsibilities and span of control over government operations do not extend beyond the jurisdiction which the particular department services.

Thus, the Committee recommends to the General Assembly that, in order to inculcate in the Department the necessary responsiveness to those who are served by and subject to its police powers, control of the Department should be returned to the city where, by all that is logical, it belongs, after 115 years of temporary lodgment in Annapolis. The Committee further proposes that, upon the expiration of the current term of office in June 1978, the Police Commissioner of Baltimore be appointed or selected by methods determined by the people of Baltimore City. This would require the repeal of a number of provisions of Chapter 203, Acts of 1966 (Police Omnibus Bill), and the enactment of suitable legislation to carry out these recommendations.



SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21404

ELROY G. BOYER
CHESTERTOWN, MARYLAND 21620

COMMITTEE ON
ECONOMIC AFFAIRS

ADDENDUM TO RECOMMENDATION SIX

I am not persuaded that the proposed Mayoralty appointment of the Baltimore City Police Commissioner would be better than the present Gubernatorial appointment. I mean no slight to the present Mayor of Baltimore City who I count one of my better personal friends, but rather I direct remarks to the Office of the Mayor.

I cannot agree that the Police Commissioner is responsive only to Annapolis. This Committee is living proof that the Commissioner is responsible to the people - as we all are.

I therefore reluctantly object to a change in the current appointment process of the Police Commissioner of Baltimore City without being given some concrete evidence that it will bring about a more healthy atmosphere and will blow away some of the smoke enveloping the present situation.

Elroy G. Boyer

RECOMMENDATIONS SEVEN, EIGHT AND NINE

Organized intelligence-gathering is a practical reality to every citizen of Maryland since such functions are carried out on a state-wide basis by the Maryland State Police as well as locally by six county and city police departments. By virtue of the fact that these activities are conducted with the utmost of secrecy and in the absence of any independent oversight, the potential for abuse of these investigative powers is very real. There is no question but that the privacy of citizens is directly affected by the collection, maintenance, use and dissemination of personal information especially when one considers that information gathered by intelligence agencies as well as other governmental departments is widely disseminated to local, state and federal agencies. The opportunity for an individual to secure employment, governmental appointments, insurance, or credit may well be endangered by the dissemination of improper or erroneous personal information. The increasing use of sophisticated computer hardware has magnified the harm which can accrue to an individual.

As stated before, the Committee felt it an impossible task to define areas of legitimate police concern for surveillance and information-gathering practices without adversely affecting proper law enforcement activities. Rather, the Committee deemed it both necessary and preferable to provide for some type of outside vigilance wherein citizens are afforded the right to view those materials in the possession of law enforcement agencies respecting them personally. Such a right of disclosure should not, however, extend to those materials the divulgence of which would compromise the integrity and effectiveness of valid law enforcement endeavors.

Hence, the Committee recommends that Article 76A,¹ section 3, subsection (b) of the Annotated Code of Maryland (Vol. 7A, 1975 Repl.) be repealed and reenacted with amendments providing that a "person of interest" as defined in the statute may be denied the right to inspect records referred to in subsection (b) (i) thereof only to the extent that the production of such records would hamper or jeopardize valid law enforcement activities as particularly defined.

The question concerning the collection and dissemination of personal data is pertinent not only with respect to the operation of police departments but other governmental agencies as well. Because of the potential for harm inherent in the collection of such information, the Committee recommends the inclusion in Article 76A of a provision to the effect that any government or agency thereof in the state maintain in its records only such information about an individual as is relevant and necessary to achieve a purpose of the agency which is required to be accomplished by statute or executive order of the Governor or the chief executive of a local jurisdiction.

Finally, the Committee recommends that Article 76A should be amended to provide that civil remedies be available to an aggrieved person for the failure of an agency to comply with its provisions. Such legislation should empower the courts to enjoin the withholding of records and order their production, as well as to assess against the state reasonable attorney fees and other litigation costs reasonably incurred in any such case in which the complainant has substantially prevailed.

1. Commonly referred to as the "Freedom of Information Act."

RECOMMENDATION TEN

During the investigation an inquiry was made of twenty-five law enforcement agencies in the state¹ seeking specific information as to whether each agency had an intelligence unit and, if so, copies of written guidelines regulating the conduct of intelligence personnel with respect to the surveillance of, and the collection, storage and dissemination of data pertaining to individuals in the area of subversive and public security activities. Furthermore, copies of written guidelines, if any, concerning the use by department personnel of wiretapping and electronic surveillance equipment were requested.

Of the twenty-five police departments polled, three had separate intelligence divisions,² and three other agencies³ had criminal intelligence or organized crime units within their respective criminal investigation divisions. Thus, six Maryland law enforcement agencies have separate sections, be they divisions or units within a division, specifically carrying out intelligence functions.

-
1. Allegany County Sheriff's Department, Anne Arundel County Police Department, Baltimore City Police Department, Baltimore County Police Department, Calvert County Sheriff's Department, Caroline County Sheriff's Department, Carroll County Sheriff's Department, Cecil County Sheriff's Department, Charles County Sheriff's Department, Dorchester County Sheriff's Department, Frederick County Sheriff's Department, Garrett County Sheriff's Department, Harford County Sheriff's Department, Howard County Police Department, Kent County Police Department, the Maryland State Police, Montgomery County Police Department, Prince George's County Sheriff's Department, Queen Anne's County Police Department, St. Mary's County Sheriff's Department, Somerset County Sheriff's Department, Talbot County Sheriff's Department, Washington County Sheriff's Department, Wicomico County Sheriff's Department and Worcester County Sheriff's Department.
 2. Baltimore City, Baltimore County and the Maryland State Police.
 3. Anne Arundel County, Montgomery County and Prince George's County.

What few written guidelines were in existence with respect to the conduct of intelligence personnel in these six agencies, in the opinion of the Committee, were far from sufficient.¹ The importance of guidelines concerning the operation of intelligence-gathering units cannot be over-emphasized. The Final Report of the Watergate Special Prosecutor's Office recently issued specifically addressed the matter.

"Much of what goes awry in intelligence functions can be laid to secret, subjective judgments about the establishment of priorities for intelligence-gathering, the selection of the kinds of information to be gathered, the failure to analyze gathered information adequately and the stubborn failure to reappraise decisions over time. The intelligence function should be subject to the same policy procedures as any other important government enterprise.

Therefore, each agency with significant intelligence-gathering responsibility...should formulate written policies that include the purposes for which intelligence is to be gathered, the methods to be used in obtaining information, the kinds of information to be sought, and provisions for periodic review of priorities in purging of records that no longer serve an important or legitimate purpose.

The general policy statements of each agency should be made public. This can be accomplished without any threat to the effectiveness of the intelligence function and serve as guides for press and citizen scrutiny of agency operations."

While written guidelines are certainly not a guarantee against unwarranted intelligence-gathering practices they can, to a great degree, decrease the likelihood that abuses will occur. Of course, this holds true

1. In late October of 1975, a few days before the SR-151 Committee's powers expired, the Baltimore City Police Department adopted written guidelines for the operation of its Inspectional Services Division. While the Committee did not review these guidelines, their sufficiency can be determined in accordance with the criteria outlined in this section.

not only with respect to guidelines concerning the conduct of intelligence personnel generally but also concerns the matter of the use and control of wiretapping and electronic eavesdropping equipment. Detailed guidelines should exist which, among other things, define the areas in which such surveillance procedures can be employed as well as the specific legal requirements for obtaining warrants for the execution of such surveillances.

It is recommended that those law enforcement agencies having intelligence units or divisions, namely Anne Arundel County, Baltimore City, Baltimore County, the Maryland State Police, Montgomery County and Prince George's County promulgate written guidelines concerning the conduct of their respective intelligence units. Such guidelines should include the purposes for which intelligence is to be gathered, the circumstances under which investigations are to be commenced, continued, and terminated, methods to be used in obtaining information, the kinds of information to be sought, procedures to be followed in the evaluation, storage and dissemination of data, and provisions for periodic review of priorities and purging of records that no longer serve an important or legitimate purpose. The attention of these agencies is directed to the Public Security Guidelines prepared by the Intelligence Division of the Police Department of the City of New York.

In addition, the Committee recommends that the respective jurisdictions of those law enforcement agencies having intelligence units or divisions provide for the regular, periodic review by attorneys of the guidelines, policies and procedures followed by intelligence personnel in the conduct of their intelligence-gathering activities. Written reports should be submitted to the chief executive of each department and of the jurisdiction itself by the reviewing attorneys with respect to each such appraisal addressing the adequacy and

appropriateness of the guidelines, policies and procedures in the intelligence area and recommendations, if any, for changes. The legal personnel conducting such reviews should not be employees of the particular police departments.

If operational guidelines and independent oversight procedures are not voluntarily adopted within a reasonable period of time, then it is recommended that the General Assembly enact legislation requiring their establishment.

The statutory authority for legislative investigating committees is Article 40, Sections 72-78 of the Annotated Code of Maryland (Volume 4A, 1971 Repl. Vol.). Since the current inquiry marks the first time a legislative investigation has been conducted in accordance with these provisions, there has been no practical way by which to determine the adequacy of its terms and related laws. The following are recommendations for legislation respecting the operation and functioning of legislative investigating committees and related matters.

RECOMMENDATION ELEVEN

During the course of the investigation it became apparent that there should be some mechanism by which investigating committees could procure pertinent evidence from individuals who could legally refuse to disclose such information on the ground that, in complying with the Committee's request, they would subject themselves to criminal liability. In fact, the inability of the Committee to provide immunity from criminal prosecution proved to be a problem during the current investigation. Although such a power would not be necessary to the conduct of certain types of investigations, it should be available to an investigating committee, upon express authority by the legislative body of whose membership the committee is composed, when needed to properly and effectively carry out the assigned investigative task. Such a power, if available, should, of course, be exercised judiciously and only when absolutely necessary. Thus, the Committee recommends the enactment of statutes providing for legislative immunity powers.

Specifically, the Committee proposes that Article 40, §§78-87 be amended to provide that a legislative committee, when so provided by law

or by the resolution or law by which it was established or from which it derives its investigatory powers, can, upon a 2/3 vote of the total committee membership, confer immunity on a witness who invokes the Fifth Amendment privilege against compulsory self-incrimination.

Furthermore, Article 40, §§78-87 should also be amended to provide that in the case of any individual who has been or may be called to testify or provide other information to an "investigating committee," a circuit court shall issue upon the request of the committee concerned, an order requiring such individual to give testimony or provide other information he refuses to give or provide on the basis of his privilege against self-incrimination. For such an order to issue, the committee must be authorized by law to confer immunity and the request to the court must be approved by two-thirds of the members of the full committee.

Companion legislation to complete the legislative scheme should be adopted to establish that when a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before or ancillary to an "investigating committee," and the person presiding over the proceeding communicates to the witness an order issued by a court to the witness to provide testimony or information, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination. However, no testimony or other information compelled under the order or any information directly or indirectly derived from such testimony or other information may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement or otherwise failing to comply with the order.¹

1. It should be noted that the statutory scheme and recommendations proposed by the Committee are nearly identical to federal immunity provisions, 18 USC §§6002 and 6005.

RECOMMENDATION TWELVE

According to law, the state Attorney General is responsible for representing many agencies, commissions and other governmental bodies. During the investigation, the Attorney General was called upon to represent both the Committee who was conducting the legislative inquiry and an agency under study and investigation, the Baltimore City Police Department. Because the potential for a conflict of interests in representing both agencies was so real, the Attorney General decided to represent only the General Assembly and authorized the Department to obtain private counsel.

Since there are no laws addressing this particular problem and because it is a matter of importance, the Committee recommends that legislation be adopted providing for the representation by private counsel of an agency under investigation by any committee of the General Assembly in those situations where representation of both the agency and the committee by the Attorney General would, in the opinion of the Attorney General, involve a conflict of interest. The legislation should further provide that all expenditures by an agency for private counsel, over a given amount, must be approved prior to being incurred, by the state Board of Public Works.

RECOMMENDATION THIRTEEN

In order to emphasize the importance to the General Assembly of receiving accurate information to assist in the carrying out of its law-making tasks, and to deter individuals from providing other than truthful evidence to legislative committees, specific legislation should be enacted respecting perjurious statements during committee proceedings.

The Committee recommends that Article 40, §§72-78 of the Annotated Code of Maryland be amended to provide that any person who commits perjury with respect to a proceeding of a legislative committee shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not more than ten years, or fined not more than ten thousand dollars, or both fined and imprisoned.

RECOMMENDATION FOURTEEN

So that a legislative committee may obtain assistance, when needed, in carrying out its various investigative duties, the Committee recommends that Article 40, §76 be amended to provide that upon the request of the chairman of an "investigating committee," the Superintendent of the Maryland State Police shall assign employees of the State Police to the committee to assist it in its work as it may direct.

RECOMMENDATION FIFTEEN

During the course of the investigation the issue was raised concerning the nature and scope of the representation of the Attorney General of Maryland with respect to the General Assembly, its membership and committees. This matter became of some concern to the Committee and the President of the Senate due to the lack of specificity of the laws pertaining to the issue. The Committee deems it vital that there should be no doubt concerning the representation of the General Assembly by the Attorney General, and, therefore, recommends that appropriate legislation be adopted to achieve the necessary clarity in the relevant law.

ACKNOWLEDGMENTS

The Committee wishes to express its thanks to those individuals and organizations who have aided us in so many ways in the performance of our assigned duties. Without their help and cooperation, the task could not have been completed.

The Committee also wishes to express to the Senate of Maryland and its President, appreciation for the trust shown in the Committee by the passage of Senate Resolutions 1 and 151 and their continued support of the Committee's efforts.

Lastly, the Committee applauds the vigilance of the public and the press over institutions which must live up to the expectations, and be worthy of the faith and confidence, of the people they serve.

APPENDIX A:

**CHARTER DOCUMENTS
AND
COMMITTEE RULES OF PROCEDURE**

SENATE OF MARYLAND

By: Senator Welcome
Introduced and read first time: January 9, 1975
Assigned to: Constitutional and Public Law

Committee Report: Favorable with amendments
Senate Action: Adopted
Read and adopted: January 29, 1975

SENATE RESOLUTION

No. 1

A Senate Resolution concerning 39

Police Surveillance - Legislative Investigating 42
Committee 43

FOR the purpose of [[calling on the Governor to appoint a 47
Commission to investigate allegations that the 48
Baltimore City Police Department has engaged in the 49
unwarranted surveillance of individuals]] 50
establishing the Constitutional and Public Law 51
Committee of the Senate as a legislative
investigating committee to investigate allegations 52
that certain Police Departments, in the State, have
engaged in the unwarranted surveillance of 53
individuals and to correct these activities by 54
making recommendations and suggesting future
legislation, and establishing the investigating 55
committee's purposes, powers, duties, duration, 56
subject matter, scope of its investigating
authority, and number of its members. 57

WHEREAS, It has been alleged that the Inspectional 59
Services Division of the Baltimore City Police Department 60
has engaged in the surveillance of individuals not 61
suspected of crime; and

WHEREAS, A report requested by the Governor from the 63
Commissioner of the Police Department is inadequate, as 64
it is the Police Commissioner who is suspected of 65
initiating the surveillance program; and 66

[[WHEREAS, The surveillance of individuals without 68
cause is contrary to the public interest in this country 69
and constitutes a breach of the civil rights of those 70
individuals; now, therefore, be it

EXPLANATION:

Underlining indicates amendments to the bill.
[[Double brackets]] enclose matter stricken out of bill.
Numerals at right identify computer lines of text.

RESOLVED BY THE SENATE OF MARYLAND, That the Senate 72
calls upon the Governor to appoint an independent, 73
nonpartisan committee to determine whether unwarranted 74
investigations have been made by the Baltimore City 75
Police Department, and to make recommendations for 76
eliminating the potential for making such unwarranted 77
investigations in the future; and be it further]]

WHEREAS, There have been disclosures which may 79
indicate that certain surveillances of individuals were 80
without cause, contrary to the public interest in this 81
country, and a breach of the civil rights of those
individuals; and 82

WHEREAS, It would be in the best interest of the 84
people of the State of Maryland to be aware of these 85
alleged surveillances, the reasons for conducting the 86
same, and the authority, purpose, powers, duties and
scope of operation of those Police Departments conducting 87
the same; and

WHEREAS, It would be to the best interest of the 89
people of the State of Maryland that their elected 90
officials carry out their public duties; now, therefore, 91
be it

RESOLVED BY THE SENATE OF MARYLAND, That the 93
Constitutional and Public Law Committee of the Senate is 94
established as a legislative investigating committee in 95
accordance with Article 40, Sections 72 through 87 of the
Annotated Code of Maryland, 1957 Edition (1971 96
Replacement Volume), to investigate the following: 97

1. Allegations, testimony and written 100
material relating to all unwarranted police 101
surveillances and the Police Departments, or any
part, division or arm thereof including all agents, 102
servants, employees, persons in charge, appointed, 103
elected or otherwise serving in a controlling
capacity, independent contractors or other persons 104
initiating, authorizing, or used to further these 105
surveillances.

2. The authority, purpose, powers, duties, 108
scope of operation, training programs, and chain of 109
command including those persons in charge of and in
direct control of Police Departments. 110

3. Types of recommendations and suggested 113
legislation to curtail future unwarranted 114
surveillance and unnecessary harassment by Police
Departments; and be it further 115

RESOLVED, That the purpose of the investigating 117
committee shall be to investigate these questions or 118

SENATE RESOLUTION No. 1

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matters in the interest of the preservation of the public good; and be it further 119

RESOLVED, That the investigating committee shall exercise its powers during the 1975 Regular Session and shall make either its final or interim report prior to the end of the 1975 Regular Session; and be it further 121
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RESOLVED, That the investigating committee shall have all powers necessary for the purposes of performing its duties in accordance with Article 40, Sections 72 through 87 of the Annotated Code of Maryland 1957 Edition, (1971 Replacement Volume), and the power to issue subpoenas, including subpoenas duces tecum, to any person or persons believed to have knowledge as to the above questions, to conduct hearings under oath or affirmation, to question witnesses it calls before it, to record and transcribe testimony and to do all things required in order to carry out its purposes, to consult with and seek opinions of the Judiciary on interrelated subjects; and be it further 125
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RESOLVED, That the investigating committee shall be composed of the eight members of the Constitutional and Public Law Committee of the Senate; and be it further 135
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RESOLVED, That a copy of this Resolution be sent to the Governor, the Honorable Marvin Mandel; the Mayor of Baltimore City, the Honorable William Donald Schaefer; and the Police Commissioner of Baltimore City, Donald Pomerleau. 139
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SENATE OF MARYLAND

By: Senators Conroy, Stone, Dypski, Hutchinson,
Helton and Cade
Introduced and read first time: April 4, 1975
Assigned to: Rules

Committee Report: Favorable with amendments
Senate Action: Adopted
Read and adopted: April 5, 1975

SENATE RESOLUTION

No. 151

A Senate Resolution concerning	38
Police Surveillance - Legislative Investigating Committee	41 42
FOR the purpose of establishing the Constitutional and Public Law Committee of the Senate as a legislative investigating committee to continue the investigation heretofore begun; to investigate allegations that certain Police Departments in the State have engaged in the unwarranted surveillance of individuals and to correct these activities by making recommendations and suggesting future legislation; establishing the investigating committee's purposes, powers, duties, duration, subject matter, scope of its investigating authority, and number of its members; and authorizing certain expenditures.	46 47 48 49 50 51 52 53 54
WHEREAS, By Senate Resolution No. 1 of the 1975 Session of the Maryland General Assembly the Senate established the Constitutional and Public Law Committee of the Senate as a legislative investigating committee in accordance with Article 40, Sections 72 through 87 of the Annotated Code of Maryland; and	56 57 58 59 60
WHEREAS, The SR-1 Committee was authorized to investigate the following:	62 63
1. Allegations, testimony, and written material relating to all unwarranted police surveillances and the Police Departments, or any part, division or arm thereof including all agents, servants, employees, persons in charge, appointed, elected or otherwise serving in a controlling capacity, independent	66 67 68 69 70

EXPLANATION:

Numerals at right identify computer lines of text.

SENATE RESOLUTION No. 151

contractors or other persons initiating, authorizing, or used to further these surveillances.	71
2. The authority, purpose, powers, duties, scope of operation, training programs, and chain of command including those persons in charge of and in direct control of Police Departments.	74 75 76
3. Types of recommendations and suggested legislation to curtail future unwarranted surveillance and unnecessary harrassment by Police Departments; and	79 80 81
WHEREAS, In accordance with the mandate of Senate Resolution No. 1, the SR-1 Committee commenced its investigation and has held hearings on matters relevant to its inquiry, issued subpoenas, and has investigated various matters of concern pertaining to unwarranted police surveillance; and	84 85 86 87 88
WHEREAS, Evidence has been received by the SR-1 Committee concerning improper and possible illegal surveillance activities by law enforcement agencies in this State; and	90 91 92
WHEREAS, Although the Committee feels there is a need for corrective and preventive legislation, the Committee has not been able to define the specific areas in which to impose restrictions upon or guidelines for police surveillance and information gathering activities and will be unable to do so without further investigation to develop a more accurate and complete factual setting in which legislation can be more beneficially devised; and	94 95 96 97 98 99 100
WHEREAS, Because of the importance of the subject matter of the SR-1 inquiry and the need for further investigation in order to make proper recommendations concerning necessary legislation, it is, therefore,	102 103 104 105
RESOLVED BY THE SENATE OF MARYLAND, That the Constitutional and Public Law Committee of the Senate is established as a legislative investigating committee in accordance with Article 40, Sections 72 through 87 of the Annotated Code of Maryland, 1957 Edition (1971 Replacement Volume), to conduct and continue the investigation heretofore begun and to investigate the following:	107 108 109 110 111 112
1. Allegations, testimony, and written material relating to all unwarranted police surveillance and the Police Departments, or any part, division, or arm thereof including all agents, servants, employees, persons in charge, appointed, elected, or otherwise serving in a controlling capacity,	115 116 117 118 119

independent contractors or other persons initiating, authorizing, or used to further these surveillances.	120 121
2. The authority, purpose, powers, duties, scope of operation, operating procedures, policies, training programs, and chain of command including those persons in charge of and in direct control of Police Departments.	124 125 126 127
3. Types of recommendations and suggested legislation to curtail future unwarranted surveillance and unnecessary harrassment by Police Departments; and be it futher	130 131 132
RESOLVED, That the purpose of the Investigating Committee shall be to investigate these questions or matters in the interest of the preservation of the public good; and be it further	135 136 137
RESOLVED, That the Investigating Committee shall exercise its powers from the date of this Resolution until [[December 31, 1975]] <u>October 31, 1975</u> , and shall make its final report by [[January 31, 1976]] <u>December 31, 1975</u> ; and be it further	139 140 142 143
RESOLVED, That the Investigation Committee shall have all powers necessary for the purposes of performing its duties in accordance with Article 40, Sections 72 through 87 of the Annotated Code of Maryland, 1957 Edition, (1971 Replacement Volume), and the power to issue subpoenas, including subpoenas duces tecum, to any person or persons believed to have knowledge as to the above questions, to conduct hearings under oath or affirmation, to question witnesses it calls before it, to record and transcribe testimony, and to do all things required in order to carry out its purposes, to consult with and seek opinions of the Judiciary or other agencies on interrelated subjects; and be it further	145 146 147 148 149 150 151 152 153 154 155
RESOLVED, That the Investigating Committee is authorized to expend such funds as are reasonably necessary for the conduct of the investigation; and be it further	157 158 159
RESOLVED, That the Investigating Committee shall <u>submit on or before July 1, 1975 and on or before September 1, 1975 to the Legislative Council of Maryland for the Council's information, reports concerning expenditures of the Investigating Committee and administrative matters of the Investigating Committee which are not confidential.</u>	161 162 163 164 165
RESOLVED, That the Investigating Committee shall be composed of the eight members of the Constitutional and	167 168

Public Law Committee of the Senate; and be it further 169

RESOLVED, That a copy of this Resolution be sent to 171
the Governor, the Honorable Marvin Mandel; the Mayor of 172
Baltimore City, the Honorable William Donald Schaefer, 173
City Hall, Baltimore, Maryland 21202; and the Police 174
Commissioner of Baltimore City, Donald Pomerleau, 175
Baltimore City Police Department, Baltimore, Maryland
21202.

RULES OF PROCEDURE

Rules of procedure are hereby adopted by the Constitutional and Public Law Committee pursuant to S.R. 1 of the 1975 General Assembly Session. Any matters not covered by these rules shall be governed by the Code of Fair Procedures for Legislative Investigating Committees, Article 40 Sections 72-87 of the Annotated Code of Maryland.

1. The Investigating Committee, hereinafter called "the Committee", shall consist of the 8 members of the Constitutional and Public Law Committee. The members are: Sen. Elroy G. Boyer, Sen. Edward T. Conroy, Sen. John A. Cade, Sen. Cornell N. Dypski, Sen. Arthur H. Helton, Jr., Sen. Donald P. Hutchinson, Sen. Norman R. Stone and Sen. Robert E. Stroble.
2. Chairman of the Committee shall be Senator Edward T. Conroy. Vice-Chairman of the Committee shall be Senator Norman R. Stone.
3. Preliminary investigations may be initiated by the Committee staff with the approval of the Chairman or at his direction.

MEETINGS AND HEARINGS

4. The Committee at the call of the Chairman or his assignee, may hold hearings and meetings at such times and places as the Committee deems appropriate for the performance of its duties.
(Art. 40, Sec. 78a)
5. Members shall be given at least three days' written notice of

any hearing to be held when the General Assembly is in session. Such notices shall include a statement of the subject matter of the hearing. A hearing, and any action there taken, shall not be deemed invalid solely because notice was not given in accordance with this requirement. (Art. 40, Sec. 78b)

6. All hearings shall be public unless the Committee, by majority vote of all its members, determines that a hearing shall not be open to the public. (Art. 40, Sec. 81a)
7. No person shall be allowed to be present during a hearing or meeting held in executive session except members and employees of the Committee, the witness and his counsel, stenographers, and interpreters of the Committee. Other persons whose presence is requested or consented to by the majority of all members of the Committee may be admitted to such sessions.

HEARING PROCEDURES

8. Committee hearings and meetings shall be conducted by the Chairman. In the Chairman's absence or disability, the Vice-Chairman shall serve as presiding officer. In the absence or disability of both the Chairman and Vice-Chairman, the presiding officer shall be determined by majority vote of the members present.
(Art. 40, Sec. 81b)
9. A hearing shall not be conducted by the Committee unless a quorum is present. No action shall be taken by the Committee at any meeting unless a quorum is present. A quorum shall be five members, that being a majority of the authorized membership of the Committee. (Art. 40, Secs. 77c, 78c)

10. Any objection raised by a witness or his counsel to procedures or to the admissibility of testimony and evidence shall be ruled upon by the Chairman or presiding officer with the advice of Committee Counsel and such rulings shall be the rulings of the Committee.
11. The presiding officer shall conduct the examination of witnesses or supervise examination by other members of the Committee or legal counsel to the Committee. The time and order of questioning of witnesses appearing before the Committee shall be controlled by the presiding officer. (Art. 40, Sec. 81b)
12. All testimony given at a hearing shall be under oath or affirmation unless the requirement is dispensed with in a particular instance by majority vote of the Committee members present at the hearing. (Art. 40, Sec. 83b)
13. Unless the requirement is dispensed with in a particular instance by majority vote of the Committee members present at a hearing, all testimony given at a hearing shall be under the following oath:

"Do you solemnly declare and affirm under the penalties of perjury that the testimony you shall give, shall be the truth, the whole truth and nothing but the truth?"

The presiding officer or his designee shall administer the oath to each witness.

WITNESSES AND COUNSEL

14. Every witness at a hearing may be accompanied by counsel of his

choosing who may advise the witness as to his rights. Counsel for witnesses shall conduct himself in a professional, ethical, and proper manner. His failure to do so, upon a finding to that effect by a majority of the Committee members present, shall subject such counsel to disciplinary action which may include warning, censure, removal of counsel from the hearing room; or a recommendation of contempt proceedings. Such, and other, actions and limitations may be prescribed by the Committee to prevent obstruction of or interference with the orderly conduct of the hearing. (Art. 40, Sec. 82a)

15. A witness shall not be excused from testifying in the event his counsel is not present or is ejected. Counsel for a witness shall not answer for the witness. The failure of any witness to secure counsel shall not excuse such witness from attendance in response to a subpoena.

16. There shall be no direct or cross-examination by counsel representing a witness. However, any witness at a hearing, or his counsel, may submit to the presiding officer proposed questions to be asked of the witness or any other witness relevant to the matters upon which there have been questions or submission of evidence, and the Committee shall ask such of the questions as it may deem appropriate to the subject matter of the hearing. (Art. 40, Sec. 82b)

17. A witness or his counsel, with the consent of a majority of the Committee members present at the hearing, may file with the

Committee for incorporation into the record of the hearing sworn written statements relevant to the purpose, subject matter and scope of the Committee's investigation or inquiry. (Art. 40, Sec. 83e)

18. With the prior consent of a majority of the Committee members present at a hearing, a witness may make an oral statement to the Committee which shall be brief and relevant to the subject matter of the hearing. The presiding officer may establish time limitations on the duration of a statement. He shall have the power to terminate a statement at any time during its presentation.
19. A witness upon his advance request and at his own expense, shall be furnished a certified transcript of his testimony. (Art 40, Sec. 83f)
20. Testimony and other evidence given or adduced at a hearing closed to the public shall not be made public unless authorized by six members of the Committee, which authorization shall also specify the form and manner in which testimony or other evidence may be released. Nothing herein shall be construed to prevent a witness or other person supplying evidence from disclosing such of his own testimony or other evidence concerning which only he could claim a privilege against disclosure. No testimony or evidence made public pursuant to this rule shall be attributed to its source without the written consent thereof.

PERSONS WHO MAY PRESENT EVIDENCE

21. Any person whose name is mentioned or who is otherwise identified during a hearing and who, in the opinion of the Committee, may be adversely affected thereby, may upon his request or upon the request of any member of the Committee, appear personally before the Committee and testify in his own behalf, or with the Committee's consent, file a sworn statement of facts or other documentary evidence for incorporation into the record of the hearing.

(Art. 40, Sec. 84a)

Upon the consent of a majority of its members, the Committee may permit any other person to appear and testify at a hearing or submit a sworn written statement of facts or other documentary evidence for incorporation into the record thereof. No request to appear, appearance or submission of evidence shall limit in any way the Committee's power of subpoena. (Art.40 Sec.84b)

SUBPOENAS

22. By a majority vote of all of its members, the Committee may issue subpoenas, including subpoenas duces tecum, requiring the appearance of persons, production of relevant records, and the giving of relevant testimony. (Art.40, Sec.79a)
23. Service of a subpoena shall be made in the manner provided by law for the service of subpoenas in civil actions at least seven days prior to the time fixed in the subpoena for appearance or production of records. (Art. 40, Sec. 80a)

24. Any person who is served with a subpoena also shall be served with a copy of SR-1, a copy of these rules, a statement informing him of the subject matter of the Committee's investigation and, if personal appearance is required, a notice that he may be accompanied by counsel of his own choosing. (Art. 40, Sec. 80b)

25. A person subpoenaed to attend a hearing of the Committee shall receive the same fees and allowances as a person subpoenaed to give testimony in an action pending in a court of record. (Art. 40, Sec. 79b)

26. Except upon the consent of 6 members of the Committee, no member of the Committee, staff, or agent thereof, shall make public the name of any witness subpoenaed before the Committee or release any information to the public relating to a witness under subpoena or the issuance of a subpoena prior to the time and date set for his appearance.

27. The Committee shall cause a record to be made of all proceedings in which testimony or other evidence is received or adduced, which shall include rulings of the chair, questions of the Committee and its staff, the testimony or responses of witnesses, sworn written statements which the Committee authorizes a witness to submit and such other matters as the Committee or its Chairman may direct. (Art. 40, Sec. 83a)

28. Any hearing that is open to the public may be covered by still photography provided that prior permission is obtained from

the presiding officer, and such coverage is orderly and unobtrusive. No hearing, or part thereof, may be televised, filmed or broadcast.

29. No witness served a subpoena by the Committee shall be required against his will to be photographed at any hearing.

MISCELLANEOUS

30. Nothing in these rules shall be construed to limit or prohibit the acquisition of evidence or information by the Committee by any lawful means not provided for herein. (Art. 40, Sec. 87)
31. These rules may be modified, amended, or repealed by a decision of the Committee, provided that a notice in writing of the proposed change has been given to each member at least 24 hours prior to the respective action.

APPENDIX B:

STATUTORY MATERIALS

Article 40, §§72-87
of the Annotated Code of Maryland
(Vol. 4A, 1971 Repl.)

LEGISLATIVE INVESTIGATING COMMITTEES: CODE OF FAIR PROCEDURES

§ 72. Establishment and purpose of code.

A code of fair procedures for legislative investigating committees is hereby established to provide for their operation in a manner which will enable them to execute properly the powers and duties vested in them, including the conduct of hearings in a fair and impartial manner, consistent with protection of the constitutional rights of persons involved in their proceedings and preservation of the public good. (1968, ch. 520.)

§ 73. Definitions.

As used in this subtitle:

(a) "*Investigating committee*" means any of the following which has the power to compel the attendance and testimony of witnesses or the pro-

duction of books, records, papers and documents to secure information on a specific subject for the use of the General Assembly:

1. A standing committee of either house of the General Assembly.
2. A joint committee of both houses.
3. A subcommittee of a standing or joint legislative committee.
4. The Legislative Council or any of its committees or subcommittees, when acting at the direction of the General Assembly.

(b) "Hearing" means any meeting in the course of an investigatory proceeding, other than a preliminary conference or interview at which no testimony is taken under oath, conducted by an investigating committee for the purpose of taking or adducing testimony or receiving other evidence. (1968, ch. 520.)

§ 74. Establishment of investigating committees; when powers may be exercised.

(a) An investigating committee may only be established by resolution of either house of the General Assembly.

(b) An investigating committee may exercise its powers during sessions of the General Assembly, and also in the interim between sessions when so provided by law or by the resolution or law by which the committee was established or from which it derives its investigatory powers.

(c) The resolution establishing an investigating committee shall state the committee's purposes, powers, duties, and duration, the subject matter, and scope of its investigatory authority, and the number of its members. (1968, ch. 520.)

§ 75. Adoption of rules.

Each investigating committee shall adopt rules, not inconsistent with law or any applicable rules of the General Assembly, governing its procedures, including the conduct of hearings. (1968, ch. 520.)

§ 76. Employment of personnel.

Each investigating committee may employ professional, technical, clerical or other personnel as necessary for the proper performance of its duties, to the extent of funds made available to it for such purpose and subject to such restrictions and procedures relating thereto as may be provided by law or any applicable rules of the General Assembly. (1968, ch. 520.)

§ 77. Membership; quorum; voting.

(a) An investigating committee shall consist of not less than five members.

(b) A quorum shall consist of a majority of the total authorized membership of the committee.

(c) No action shall be taken by a committee at any meeting unless a quorum is present. Unless it is specified in this subtitle that action must be taken by a majority or greater vote of all of the members of the committee, action may be taken by a majority vote of the members present and voting at a meeting at which there is a quorum. (1968, ch. 520.)

§ 78. Hearings.

(a) An investigating committee may hold hearings as it deems appropriate for the performance of its duties, at such times and places as the committee determines.

(b) The committee shall provide by its rules that its members be given at least three days' written notice of any hearing to be held when the General Assembly is in session and at least seven days' written notice of any hearing to be held when the General Assembly is not in session. Such notices shall include a statement of the subject matter of the hearing. A hearing, and any action there taken, shall not be deemed invalid solely because notice was not given in accordance with this requirement.

(c) A hearing shall not be conducted by any investigating committee unless a quorum is present. (1968, ch. 520.)

§ 79. Issuance of subpoenas; witness fees and allowances.

(a) By a majority vote of all of its members, an investigating committee may issue subpoenas, including subpoenas duces tecum, requiring the appearance of persons, production of relevant records, and the giving of relevant testimony.

(b) A person subpoenaed to attend a hearing of an investigating committee shall receive the same fees and allowances as a person subpoenaed to give testimony in an action pending in a court of record. (1968, ch. 520.)

§ 80. Service of subpoenas.

(a) Service of a subpoena authorized by this subtitle shall be made in the manner provided by law for the service of subpoenas in civil actions at least seven days prior to the time fixed in the subpoena for appearance or production of records.

(b) Any person who is served with a subpoena also shall be served with a copy of the resolution or law establishing the committee, a copy of the rules under which the committee functions, a statement informing him of the subject matter of the committee's investigation or inquiry and, if personal appearance is required, a notice that he may be accompanied by counsel of his own choosing. (1968, ch. 520.)

§ 81. Conduct of hearings.

(a) All hearings of an investigating committee shall be public unless

the committee, by majority vote of all of its members, determines that a hearing should not be open to the public.

(b) The chairman of an investigating committee, if present and able to act, shall preside at all hearings of the committee and shall conduct the examination of witnesses or supervise examination by other members of the committee, and members of the committee's staff who have been authorized to examine witnesses. In the chairman's absence or disability, the vice-chairman shall serve as presiding officer. The committee shall provide by its rules for the selection of a presiding officer to act in the absence or disability of both the chairman and vice-chairman. The chairman and vice-chairman may be appointed by the resolution or law creating the committee or, if not by a majority vote of all the members of the committee.

(c) No hearing, or part thereof, may be televised, filmed or broadcast. (1968, ch. 520.)

§ 82. Witnesses' right to counsel; submission of proposed questions.

(a) Every witness at a hearing of an investigating committee may be accompanied by counsel of his own choosing who may advise the witness as to his rights. Limitations may be prescribed by the committee to prevent obstruction of or interference with the orderly conduct of the hearing.

(b) Any witness at a hearing, or his counsel, may submit to the committee proposed questions to be asked of the witness or any other witness relevant to the matters upon which there have been questions or submission of evidence, and the committee shall ask such of the questions as it may deem appropriate to the subject matter of the hearing. (1968, ch. 520.)

§ 83. Testimony and other evidence.

(a) *Record of proceedings.*—An investigating committee shall cause a record to be made of all proceedings in which testimony or other evidence is received or adduced, which shall include rulings of the chair, questions of the committee and its staff, the testimony or responses of witnesses, sworn written statements which the committee authorizes a witness to submit and such other matters as the committee or its chairman may direct.

(b) *Requirement of oath or affirmation.*—All testimony given at a hearing shall be under oath or affirmation unless the requirement is dispensed with in a particular instance by majority vote of the committee members present at the hearing.

(c) *Administering oath or affirmation.*—Any member of an investigating committee may administer an oath or affirmation to a witness.

(d) *Directing witness to answer or furnish documents; contempt.*—The

presiding officer at a hearing may direct a witness to answer any relevant question or furnish any relevant book, paper or document. Unless the direction is overruled by majority vote of the committee members present, disobedience shall constitute grounds for citation for contempt, except that production of any book, paper or document may be required only by subpoena.

(e) *Filing sworn written statements.*—A witness, or his counsel, with the consent of a majority of the committee members present at the hearing may file with the committee for incorporation into the record of the hearing sworn written statements relevant to the purpose, subject matter and scope of the committee's investigation or inquiry.

(f) *Certified transcript of testimony.*—A witness upon his advance request and at his own expense, shall be furnished a certified transcript of his testimony.

(g) *Disclosure of testimony and other evidence adduced at closed hearing.*—Testimony and other evidence given or adduced at a hearing closed to the public shall not be made public unless authorized by majority vote of all of the members of the committee, which authorization shall also specify the form and manner in which testimony or other evidence may be released. Nothing herein shall be construed to prevent a witness or other person supplying evidence from disclosing such of his own testimony or other evidence concerning which only he could claim a privilege against disclosure. (1968, ch. 520.)

§ 84. Persons who may present evidence upon request.

(a) Any person whose name is mentioned or who is otherwise identified during a hearing and who, in the opinion of the committee, may be adversely affected thereby, may upon his request or upon the request of any member of the committee, appear personally before the committee and testify in his own behalf, or with the committee's consent, file a sworn statement of facts or other documentary evidence for incorporation into the record of the hearing.

(b) Upon the consent of a majority of its members, an investigating committee may permit any other person to appear and testify at a hearing or submit a sworn written statement of facts or other documentary evidence for incorporation into the record thereof. No request to appear, appearance or submission of evidence shall limit in any way the investigating committee's power of subpoena. (1968, ch. 520.)

§ 85. Contempt.

(a) A person shall be in contempt if he:

1. Fails or refuses to appear in compliance with a subpoena or, having appeared, fails or refuses to testify under oath or affirmation.
2. Fails or refuses to answer any relevant question or fails or refuses

to furnish any relevant book, paper or document subpoenaed by or on behalf of an investigating committee.

(b) An investigating committee may, by majority vote of all of its members, apply to the General Assembly or the house thereof by which it was established for a contempt citation. The application may be considered as though the alleged contempt had been committed in or against such house or the General Assembly itself. If the investigating committee is an interim committee, its application shall be made to the circuit court for any county or any judge of the Supreme Bench of Baltimore City. (1968, ch. 520.)

§ 86. Penalties; failure of committee to comply with subtitle.

(a) A person found guilty of contempt under the provisions of § 85 of this subtitle, in addition to any penalty imposed by the court, shall be subject to such other punishment as the General Assembly or the appropriate house thereof may impose in the exercise of its inherent powers.

(b) If any investigating committee fails in any material respect to comply with the requirements of this subtitle, any person subject to a subpoena who is prejudiced by such failure shall be relieved of any requirement of compliance. Such failure shall be a complete defense in any proceeding against such person for contempt or other punishment.

(c) Any person who violates § 83 (g) of this subtitle shall be subject to a fine of not more than one thousand dollars (\$1,000.00) or imprisonment for not more than thirty (30) days, or both. The State's Attorney, on his own motion, or on the application of any person claiming to have been injured or prejudiced by an unauthorized disclosure may institute proceedings for the trial of the issue and imposition of the penalties provided herein. Nothing in this subsection shall limit any power which the General Assembly or either house thereof may have to discipline a member or employee or to impose a penalty in the absence of action by a State's Attorney or the court. (1968, ch. 520.)

§ 87. Acquisition of evidence or information by other means.

Nothing contained in this subtitle shall be construed to limit or prohibit the acquisition of evidence or information by an investigating committee by any lawful means not provided for herein. (1968, ch. 520.)

Fair Credit Reporting Act, Title 15, USC §§1681-1681t

FAIR CREDIT REPORTING

1681. Findings and purpose.—(a) The Congress makes the following findings:

(1) The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system.

(2) An elaborate mechanism has been developed for investigating and evaluating the credit worthiness, credit standing, credit capacity, character, and general reputation of consumers.

(3) Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers.

(4) There is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy.

(b) It is the purpose of this title [§§1681-1681t of this title] to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such

information in accordance with the requirements of this title [§§ 1681-1681t of this title]. (May 29, 1968, P. L. 90-321, Title VI, § 602, as added Oct. 26, 1970, P. L. 91-508, Title VI, § 601, 84 Stat. 1128.)

Short title.—Section 601 of Act May 29, 1968, cited to text, as added by § 601 of Act Oct. 26, 1970, cited to text, provided: "This title [§§ 1681-1681t of this title] may be cited as the Fair Credit Reporting Act."

Effective date.—Section 504(d) of Act May 29, 1968, cited to text, as added by § 602 of Act Oct. 16, 1970, cited to text, provided: "(d) Title VI [§§ 1681-1681t of this title] takes effect upon the expiration of one hundred and eighty days following the date of its enactment [Oct. 26, 1970]."

1681a. Definitions and rules of construction.—(a) Definitions and rules of construction set forth in this section are applicable for the purposes of this title [§§ 1681-1681t of this title].

(b) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(c) The term "consumer" means an individual.

(d) The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (1) credit or insurance to be used primarily for personal, family, or household purposes, or (2) employment purposes, or (3) other purposes authorized under section 604 [§ 1681b of this title]. The term does not include (A) any report containing information solely as to transactions or experiences between the consumer and the person making the report; (B) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or (C) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to the consumer required under section 615 [§ 1681m of this title].

(e) The term "investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal inter-

views with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(f) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(g) The term "file," when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(h) The term "employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

(i) The term "medical information" means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities. (May 29, 1968, P. L. 90-321, Title VI, § 603, as added Oct. 26, 1970, P. L. 91-508, Title VI, § 601, 84 Stat. 1128.)

1681b. Permissible purposes of reports.—A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

(1) In response to the order of a court having jurisdiction to issue such an order.

(2) In accordance with the written instructions of the consumer to whom it relates.

(3) To a person which it has reason to believe—

(A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(B) intends to use the information for employment purposes; or

(C) intends to use the information in connection with the underwriting of insurance involving the consumer; or

(D) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(E) otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer. (May 29, 1968, P. L. 90-321, Title VI, § 604, as added Oct. 26, 1970, P. L. 91-508, Title VI, § 601, 84 Stat. 1129.)

1681c. Obsolete information.—(a) Except as authorized under subsection (b), no consumer reporting agency may make any consumer report containing any of the following items of information:

(1) Bankruptcies which, from date of adjudication of the most recent bankruptcy, antedate the report by more than fourteen years.

(2) Suits and judgments which, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.

(3) Paid tax liens which, from date of payment, antedate the report by more than seven years.

(4) Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years.

(5) Records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than seven years.

(6) Any other adverse item of information which antedates the report by more than seven years.

(b) The provisions of subsection (a) are not applicable in the case of any consumer credit report to be used in connection with—

(1) a credit transaction involving, or which may reasonably be expected to involve, a principal amount of \$50,000 or more;

(2) the underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of \$50,000 or more; or

(3) the employment of any individual at an annual salary which equals, or which may reasonably be expected to equal \$20,000, or more. (May 29, 1968, P. L. 90-321, Title VI, § 605, as added Oct. 26, 1970, P. L. 91-508, Title VI, § 601, 84 Stat. 1129.)

1681d. Disclosure of investigative consumer reports.—(a) A person may not procure or cause to be prepared an in-

vestigative consumer report on any consumer unless—

(1) it is clearly and accurately disclosed to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics and mode of living, whichever are applicable, may be made, and such disclosure (A) is made in a writing mailed, or otherwise delivered, to the consumer, not later than three days after the date on which the report was first requested, and (B) includes a statement informing the consumer of his right to request the additional disclosures provided for under subsection (b) of this section; or

(2) the report is to be used for employment purposes for which the consumer has not specifically applied.

(b) Any person who procures or causes to be prepared an investigative consumer report on any consumer shall, upon written request made by the consumer within a reasonable period of time after the receipt by him of the disclosure required by subsection (a)(1), shall make a complete and accurate disclosure of the nature and scope of the investigation requested. This disclosure shall be made in a writing mailed, or otherwise delivered, to the consumer not later than five days after the date on which the request for such disclosure was received from the consumer or such report was first requested, whichever is the later.

(c) No person may be held liable for any violation of subsection (a) or (b) of this section if he shows by a preponderance of the evidence that at the time of the violation he maintained reasonable procedures to assure compliance with subsection (a) or (b). (May 29, 1968, P. L. 90-321, Title VI, § 606, as added Oct. 26, 1970, P. L. 90-508, Title VI, § 601, 84 Stat. 1130.)

1681e. Compliance procedures.—(a) Every consumer reporting agency shall maintain reasonable procedures designed to avoid violations of section 605 [§ 1681c of this title] and to limit the furnishing of consumer reports to the purposes listed under section 604 [§ 1681b of this title]. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in section 604 [§ 1681b of this title].

(b) Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates. (May 29, 1968, P. L. 90-321, Title VI, § 607, as added Oct. 26, 1970, P. L. 91-508, Title VI, § 601, 84 Stat. 1130.)

1681f. Disclosures to governmental agencies. — Notwithstanding the provisions of section 604 [§ 1681b of this title], a consumer reporting agency may furnish identifying information respecting any consumer, limited to his name, address, former addresses, places of employment, or former places of employment, to a governmental agency. (May 29, 1968, P. L. 90-321, Title VI, § 608, as added Oct. 26, 1970, P. L. 91-508, Title VI, § 601, 84 Stat. 1131.)

1681g. Disclosures to consumers.—(a) Every consumer reporting agency shall, upon request and proper identification of any consumer, clearly and accurately disclose to the consumer:

(1) The nature and substance of all information (except medical information) in its files on the consumer at the time of the request.

(2) The sources of the information; except that the sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed: Provided, That in the event an action is brought under this title [§§ 1681-1681t of this title], such sources shall be available to the plaintiff under appropriate discovery procedures in the court in which the action is brought.

(3) The recipients of any consumer report on the consumer which it has furnished—

(A) for employment purposes within the two-year period preceding the request, and

(B) for any other purpose within the six-month period preceding the request.

(b) The requirements of subsection (a) respecting the disclosure of sources of information and the recipients of consumer reports do not apply to information received or consumer reports furnished prior to the effective date of this title [180 days following Oct. 26, 1970] except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date. (May 29, 1968, P. L. 90-321, Title VI, § 609, as added Oct. 26, 1970, P. L. 91-508, Title VI, § 609, 84 Stat. 1131.)

Cross reference.—Effective date, see § 1681 note of this title.

1681h. Conditions of disclosure to consumers. — (a) A consumer reporting agency shall make the disclosures re-

quired under section 609 [§ 1681g of this title] during normal business hours and on reasonable notice.

(b) The disclosures required under section 609 [§ 1681g of this title] shall be made to the consumer—

(1) in person if he appears in person and furnishes proper identification; or

(2) by telephone if he has made a written request, with proper identification, for telephone disclosure and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

(c) Any consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to him pursuant to section 609 [§ 1681g of this title].

(d) The consumer shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in such person's presence.

(e) Except as provided in sections 616 and 617 [§§ 1681n and 1681o of this title], no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency, any user of information, or any person who furnishes information to a consumer reporting agency, based on information disclosed pursuant to section 609, 610, or 615 [§§ 1681g, 1681h, or 1681m of this title], except as to false information furnished with malice or willful intent to injure such consumer. (May 29, 1968, P. L. 90-321, Title VI, § 610, as added Oct. 26, 1970, P. L. 90-508, Title VI, § 601, 84 Stat. 1131.)

1681i. Procedure in case of disputed accuracy.—(a) If the completeness or accuracy of any item of information contained in his file is disputed by a consumer, and such dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall within a reasonable period of time reinvestigate and record the current status of that information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant. If after such reinvestigation such information is found to be inaccurate or can no longer be verified, the consumer reporting agency shall promptly delete such information. The presence of contradictory information in the consumer's file does not in and of itself constitute reasonable grounds for believing the dispute is frivolous or irrelevant.

(b) If the reinvestigation does not resolve the dispute, the consumer may

file a brief statement setting forth the nature of the dispute. The consumer reporting agency may limit such statements to not more than one hundred words if it provides the consumer with assistance in writing a clear summary of the dispute.

(c) Whenever a statement of a dispute is filed, unless there is reasonable grounds to believe that it is frivolous or irrelevant, the consumer reporting agency shall, in any subsequent consumer report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification or summary thereof.

(d) Following any deletion of information which is found to be inaccurate or whose accuracy can no longer be verified or any notation as to disputed information, the consumer reporting agency shall, at the request of the consumer, furnish notification that the item has been deleted or the statement, codification or summary pursuant to subsection (b) or (c) to any person specifically designated by the consumer who has within two years prior thereto received a consumer report for employment purposes, or within six months prior thereto received a consumer report for any other purpose, which contained the deleted or disputed information. The consumer reporting agency shall clearly and conspicuously disclose to the consumer his rights to make such a request. Such disclosure shall be made at or prior to the time the information is deleted or the consumer's statement regarding the disputed information is received. (May 29, 1968, P. L. 90-321, Title VI, § 611, as added Oct. 26, 1970, P. L. 91-508, Title VI, § 601, 84 Stat. 1132.)

1681j. Charges for certain disclosures.—A consumer reporting agency shall make all disclosures pursuant to section 609 [§ 1681g of this title] and furnish all consumer reports pursuant to section 611(d) [§ 1681i(d) of this title] without charge to the consumer if, within thirty days after receipt by such consumer of a notification pursuant to section 615 [§ 1681m of this title] or notification from a debt collection agency affiliated with such consumer reporting agency stating that the consumer's credit rating may be or has been adversely affected, the consumer makes a request under section 609 or 611(d) [§ 1681g or 1681i(d) of this title]. Otherwise, the consumer reporting agency may impose a reasonable charge on the consumer for making disclosure to such consumer pursuant to section 609 [§ 1681g of this title], the charge for which shall be indicated to the consumer prior to making disclosure; and for furnishing notifications,

statements, summaries, or codifications to person designated by the consumer pursuant to section 611(d) [§ 1681i(d) of this title], the charge for which shall be indicated to the consumer prior to furnishing such information and shall not exceed the charge that the consumer reporting agency would impose on each designated recipient for a consumer report except that no charge may be made for notifying such persons of the deletion of information which is found to be inaccurate or which can no longer be verified. (May 29, 1968, P. L. 90-321, Title VI, § 612, as added Oct. 26, 1970, P. L. 91-508, Title VI, § 601, 84 Stat. 1132.)

1681k. Public record information for employment purposes.—A consumer reporting agency which furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment shall—

(1) at the time such public record information is reported to the user of such consumer report, notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; or

(2) maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported. (May 29, 1968, P. L. 90-321, Title VI, § 613, as added Oct. 26, 1970, P. L. 91-508, Title VI, § 601, 84 Stat. 1133.)

1681l. Restrictions on investigative consumer reports.—Whenever a consumer reporting agency prepares an investigative consumer report, no adverse information in the consumer report (other than information which is a matter of public record) may be included in a subsequent consumer report unless such adverse information has been verified in the process of making such subsequent consumer report, or the adverse information was received within the three-month period preceding the date the subsequent report is furnished. (May 29, 1968, P. L. 90-321, Title VI, § 614, as added Oct. 26, 1970, P. L. 91-508, Title VI, § 601, 84 Stat. 1133.)

1681m. Requirements on users of consumer reports.—(a) Whenever credit or insurance for personal, family, or household purposes, or employment involving a consumer is denied or the charge for such credit or insurance is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency, the user of the consumer report shall so advise the consumer against whom such adverse action has been taken and supply the name and address of the consumer reporting agency making the report.

(b) Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable period of time, upon the consumer's written request for the reasons for such adverse action received within sixty days after learning of such adverse action, disclose the nature of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer his right to make such written request at the time such adverse action is communicated to the consumer.

(c) No person shall be held liable for any violation of this section if he shows by a preponderance of the evidence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the provisions of subsections (a) and (b). (May 29, 1968, P. L. 90-321, Title VI, § 615, as added Oct. 26, 1970, P. L. 91-508, Title VI, § 601, 84 Stat. 1133.)

1681n. Civil liability for willful non-compliance.—Any consumer reporting agency or user of information which willfully fails to comply with any requirement imposed under this title [§§ 1681-1681t of this title] with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1) any actual damages sustained by the consumer as a result of the failure;

(2) such amount of punitive damages as the court may allow; and

(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court. (May 29, 1968, P. L. 90-321, Title VI, § 616, as added Oct. 26, 1970, P. L. 91-508, Title VI, § 601, 84 Stat. 1134.)

1681o. Civil liability for negligent non-compliance.—Any consumer reporting agency or user of information which is negligent in failing to comply with any requirement imposed under this title [§§ 1681-1681t of this title] with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1) any actual damages sustained by the consumer as a result of the failure;

(2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court. (May 29, 1968, P. L. 90-321, Title VI, § 617, as added Oct. 26, 1970, P. L. 91-508, Title VI, § 601, 84 Stat. 1134.)

1681p. Jurisdiction of courts—Limitation of actions.—An action to enforce any liability created under this title [§§ 1681-1681t of this title] may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within two years from the date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under this title to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this title [§§ 1681-1681t of this title], the action may be brought at any time within two years after discovery by the individual of the misrepresentation. (May 29, 1968, P. L. 90-321, Title VI, § 618 as added Oct. 26, 1970, P. L. 91-508, Title VI, § 601, 84 Stat. 1134.)

1681q. Obtaining information under false pretenses.—Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined not more than \$5,000 or imprisoned not more than one year, or both. (May 29, 1968, P. L. 90-321, Title VI, § 619, as added Oct. 26, 1970, P. L. 91-508, Title VI, § 601, 84 Stat. 1134.)

1681r. Unauthorized disclosures by officers or employees.—Any officer or employee of a consumer reporting agency who knowingly and willfully provides information concerning an individual from the agency's files to a person not authorized to receive that information shall be fined not more than \$5,000 or imprisoned not more than one year, or both. (May 29, 1968, P. L. 90-321, Title VI, § 620, as added Oct. 26, 1970, P. L. 91-508, Title VI, § 601, 84 Stat. 1134.)

1681s. Administrative enforcement.—(a) Compliance with the requirements imposed under this title [§§ 1681-1681t of

this title] shall be enforced under the Federal Trade Commission Act [§§ 41-46, 47-58 of this title] by the Federal Trade Commission with respect to consumer reporting agencies and all other persons subject thereto, except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other government agency under subsection (b) hereof. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act [§§ 41-46, 47-58 of this title], a violation of any requirement or prohibition imposed under this title [§§ 1681-1681t of this title] shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a) of the Federal Trade Commission Act [§ 45(a) of this title] and shall be subject to enforcement by the Federal Trade Commission under section 5(b) thereof [§ 45(b) of this title] with respect to any consumer reporting agency or person subject to enforcement by the Federal Trade Commission pursuant to this subsection, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act [§§ 41-46, 47-58 of this title]. The Federal Trade Commission shall have such procedural, investigative, and enforcement powers, including the power to issue procedural rules in enforcing compliance with the requirements imposed under this title [§§ 1681-1681t of this title] and to require the filing of reports, the production of documents, and the appearance of witnesses as though the applicable terms and conditions of the Federal Trade Commission Act [§§ 41-46, 47-58 of this title] were part of this title [§§ 1681-1681t of this title]. Any person violating any of the provisions of this title [§§ 1681-1681t of this title] shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act [§§ 41-46, 47-58 of this title] as though the applicable terms and provisions thereof were part of this title [§§ 1681-1681t of this title].

(b) Compliance with the requirements imposed under this title [§§ 1681-1681t of this title] with respect to consumer reporting agencies and persons who use consumer reports from such agencies shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act [12 § 1818], in the case of:

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), by the Federal Reserve Board; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than

members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation.

(2) section 5(d) of the Home Owners Loan Act of 1933 [12 § 1464(d)], section 407 of the National Housing Act [12 § 1730], and sections 6(i) and 17 of the Federal Home Loan Bank Act [12 §§ 1426 (i), 1437] by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;

(3) the Federal Credit Union Act [12 § 1751 et seq.], by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

(4) the Acts to regulate commerce [49 § 1 et seq.], by the Interstate Commerce Commission with respect to any common carrier subject to those Acts;

(5) the Federal Aviation Act of 1958 [49 § 1301 et seq.], by the Civil Aeronautics Board with respect to any air carrier or foreign air carrier subject to that Act; and

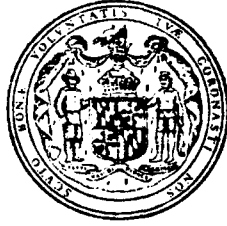
(6) the Packers and Stockyards Act, 1921 [7 § 181 et seq.] (except as provided in section 406 of that Act [7 § 226, 227]), by the Secretary of Agriculture with respect to any activities subject to that Act.

(c) For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title [§§ 1681-1681t of this title] shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title [§§ 1681-1681t of this title] any other authority conferred on it by law. (May 29, 1968, P. L. 90-321, Title VI, § 621, as added Oct. 26, 1970, P. L. 91-508, Title VI, § 601, 84 Stat. 1134.)

1681t. Relation to State laws.—This title [§§ 1681-1681t of this title] does not annul, alter, affect, or exempt any person subject to the provisions of this title [§§ 1681-1681t of this title] from compliance with the laws of any State with respect to the collection, distribution, plying with the laws of any State with or use of any information on consumers, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. (May 29, 1968, P. L. 90-321, Title VI, § 622, as added Oct. 26, 1970, P. L. 91-508, Title VI, § 601, 84 Stat. 1136.)

APPENDIX C:

CORRESPONDENCE



SENATE OF MARYLAND

ANNAPOLIS, MARYLAND 21404

EDWARD T. CONROY
STATE SENATOR
24TH LEGISLATIVE DISTRICT
PRINCE GEORGE'S COUNTY
CHAIRMAN, CONSTITUTIONAL
AND PUBLIC LAW COMMITTEE

JAMES OFFICE BUILDING
ROOM 400
ANNAPOLIS, MARYLAND 21404

October 1, 1975

Commissioner Donald D. Pomerleau
Baltimore City Police Department
Baltimore Street
Baltimore, Maryland

Dear Commissioner Pomerleau:

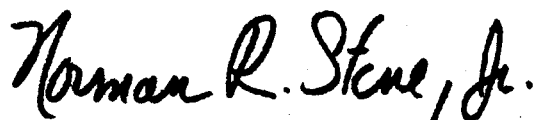
In accordance with Senator Conroy's letter to you dated September 23, 1975, may this correspondence serve to apprise you of the areas of concern of the SR-151 Committee. They are as follows:

- (1) Surveillance and investigation by department personnel of individuals and organizations not suspected of criminal activity or advocating unlawful objectives or purposes
- (2) Collection, storage and dissemination of personal data by intelligence personnel of individuals and organizations not suspected of criminal activity or advocating unlawful objectives or purposes
- (3) The nature and adequacy of the instruction, training and supervision of intelligence personnel and covert operatives
- (4) The disproportionate use of intelligence personnel and resources in the investigation of subversives as opposed to organized crime
- (5) The use of intelligence personnel for monitoring the news media and reporting all instances where the Baltimore City Police Department or you are criticized
- (6) The relationship of departmental covert operatives with practicing criminal defense attorneys and other professionals
- (7) Procurement of personal information regarding citizens from businesses and governmental agencies

8. Procurement of personal information regarding citizens from consumer credit bureaus without proper legal authorization
9. The relationship between Terry Josephson and the Baltimore City Police Department during the time he was employed with the United Credit Bureau
10. Cooperation between various members of the Baltimore City Police Department and members of the C&P Telephone Company Security Division in the interception of telephone communications without legal authorization
11. The sufficiency of orders, directives or guidelines pertaining to the use by department personnel of wiretapping and electronic surveillance equipment and the control of this equipment
12. Entry by intelligence personnel into private premises without legal authorization
13. Use of department personnel in the infiltration and surveillance of union activities and the collective bargaining process
14. The nature and adequacy of guidelines
 - a. delineating the purpose and scope of investigations undertaken by intelligence personnel
 - b. for the collection, storage and dissemination of data pertaining to individuals and organizations not suspected of criminal activity or advocating unlawful objectives or purposes
 - c. regulating the conduct of intelligence personnel and covert operatives and
 - d. concerning the procurement of personal information regarding citizens from businesses and governmental agencies
15. The need for oversight and supervision of intelligence units by an independent agency

16. The relationship between Mr. Marshall Meyer and businesses with which he is associated and the Baltimore City Police Department

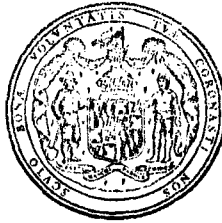
Very truly yours,



Norman R. Stone, Jr.
Vice Chairman, SR-151 Committee

NRS/ie

cc: SR-151 Committee
George Russell, Jr., Esq.
George Nilson, Esq.



SENATE OF MARYLAND

ANNAPOLIS, MARYLAND 21404

EDWARD T. CONROY
STATE SENATOR
24TH LEGISLATIVE DISTRICT
PRINCE GEORGE'S COUNTY
CHAIRMAN, CONSTITUTIONAL
AND PUBLIC LAW COMMITTEE

March 31, 1975

JAMES OFFICE BUILDING
ROOM 400
ANNAPOLIS, MARYLAND 21404

Norwood B. Orrick, Esquire
1800 Mercantile Bank & Trust Building
Baltimore, Maryland 21201

Dear Mr. Orrick:

In accordance with Committee counsel's telephone conversation with you on March 19, 1975, I am directing this letter to you as Chairman of the Maryland State Bar Ethics Committee, on behalf of the attorney-members and counsel to the Senate Committee investigating police agencies in this State. The Senators in the Committee who are members of the Maryland Bar are Norman P. Stone, Elroy G. Boyer, and myself. Diane G. Schulte is Committee counsel. I am enclosing a copy of Senate Resolution - 1 which established this Committee, and other pertinent correspondence and material.

Briefly, I shall provide the Committee with some background material. Subsequent to the passage of Senate Resolution - 1, Deputy Attorney General Henry Lord advised Police Commissioner Pomerleau that the Attorney General's Office could not advise both the legislative agency investigating the Police Department and, the Police Department itself. Mr. Lord decided that the Attorney General's Office would not, therefore, represent the Baltimore City Police Department.

Thereafter, Commissioner Pomerleau engaged Mr. George Russell as attorney, "for the Police Department". As reflected in correspondence attached hereto, the Committee has requested Mr. Russell on several occasions to provide us with the names of his clients, but he has refused to do so. The individuals Mr. Russell represents on behalf of the Baltimore City Police Department seem to be an ever-increasing number and the Committee was advised on March 27th that Mr. Russell now represents retired police officers as well as current employees of the Department.

March 31, 1975

The Committee has been requested by Mr. Russell not to communicate directly with his clients but to contact him as their legal representative. As pointed out in our letter of March 28th to Mr. Russell, the attorney members of the Committee and counsel would be subjected to possible disciplinary action by the Bar if we were to violate such a request, assuming it to be well founded. Since Mr. Russell has refused to name the individuals he purports to represent, the attorney members of this Committee and counsel are placed in a precarious position when an individual is contacted by the Committee and Committee counsel with respect to this investigation. The Committee may, for example, become aware that a person has knowledge of pertinent information and have no idea whatsoever if the person is or was a member of the Police Department, or whether, if he was a member, he retired or resigned. The Committee could not reasonably ascertain this information until the Committee had, in fact, contacted the person in question. It might well be contended that the attorney Committee members or Committee counsel had violated the Code of Professional Responsibility by merely contacting an individual who turned out to be one of Mr. Russell's clients. While it might be contended that the Committee could check with counsel for the Police Department every time it wished to contact an individual with respect to the investigation, it would be ridiculous to require the Committee to disclose to an agency under investigation the identity of every person who is a potential source of information.

As further pointed out in my letter of March 28th to Mr. Russell, an important ramification of his failure to identify his clients and his request that the Committee contact him directly rather than communicate with the persons he represents is the unfair position in which certain former and present employees of the Department are now placed. Allegations and testimony before the Committee indicate that the Police Department employees not only have information pertinent to our inquiry but may themselves have been a subject of improper surveillance. These employees may wish to communicate such information to the Committee. It may well be that their interest as employees of the Department would be best served and protected if such communications were made without the knowledge of their superiors and members of the Department's Administration. Also, an employee may wish to be represented by counsel of his own choosing or waive his right to be represented by counsel. In such instances, an employee would indeed be hard pressed to tell the Department that he does not wish to avail himself of the services of counsel personally selected by the Police Commissioner. Such an employee would be placed in an extremely unfair and awkward position.

The Committee fully recognizes and upholds the right of every individual to avail himself of counsel. It is the Committee's opinion, however, that this is a personal right and a choice that should be exercised freely by each individual. It is fundamentally unfair for an individual to be placed in a situation where he, practically speaking, must accept the services of an attorney of his employers, rather than his own choosing.

March 31, 1975

As members of the Bar who are deeply concerned with conducting this investigation in a fair and ethical fashion, we ask that the Ethics Committee render an opinion with respect to the following questions.

Would it be unethical for Committee members, their counsel or their agents to contact any person with respect to this investigation, other than Commissioner Donald Pomerleau who is personally represented by Mr. George Russell? Of course it would be explained to each individual contacted that they did not have to speak with us and if they wished to avail themselves of counsel, they could do so. Those persons who the Committee ascertained were members of the Baltimore City Police Department and who indicated that they wished to consult with or be represented by counsel, would be advised that Mr. George Russell has been retained by the Baltimore City Police Department and he would represent them at their request.

Additionally, the Committee respectfully requests that you address yourselves to any other ethical problems you perceive as being associated with or arising out of the above matter.

We appreciate your guidance and respectfully request that this matter be handled as expeditiously as possible.

Very truly yours,

Senator Edward T. Conroy
Chairman

ETC:je

cc: President Steny Hoyer
George L. Russell, Jr., Esquire

LAW OFFICES OF
NOLAN, PLUMHOFF & WILLIAMS

204 WEST PENNSYLVANIA AVENUE

TOWSON, MARYLAND 21204

JAMES D. NOLAN
J. EARLE PLUMHOFF
NEWTON A. WILLIAMS
WILLIAM M. HESSON, JR.
KENNETH H. MASTERS
THOMAS J. RENNER

AREA CODE 301
TELEPHONE
823-7800

April 18, 1975

The Honorable Edward T. Conroy
Chairman, Constitutional & Public Law Committee
James Office Building, Room 400
Annapolis, Maryland 21404

Re: Committee Inquiry of Ethics Committee

Dear Senator Conroy:

Following the meeting of the Ethics Committee of the Maryland State Bar Association held in Baltimore on April 14, 1975, the Chairman, Norwood B. Orrick, Esquire, directed me to write you advising of the Committee's opinion relative to your inquiry of March 31, 1975.

The Committee reviewed the several correspondence received from your Committee and from George L. Russell, Jr., Esquire, as well as the pertinent provisions of Senate Resolution No. 151 and Article 40, Sections 72-87 of the Annotated Code of Maryland. It was the consensus of the Committee that the proposal outlined in your letter of March 31, 1975, specifically page 3 thereof, is ethically acceptable under the pertinent provisions of the Code of Professional Responsibility.

Disciplinary Rule 7-104 of the Code of Professional Responsibility which has been adopted by the Maryland Court of Appeals under Rule 1230 is titled "Communicating With One of Adverse Interests". While a very strong argument can be made to the effect that the exercise of the investigative powers of your Committee on interviewing witnesses does not constitute communication with persons of adverse interest, the Ethics Committee was, nevertheless, persuaded that the issue did not have to be decided upon the question of what constitutes "adverse interest". The provisions of DR 7-104(A)(1) proscribe communication with a party known to be represented unless "authorized by law to do so." Accordingly, the Ethics Committee believes that, in fact, you are authorized by law to conduct the investigation under the provisions of Senate Resolution No. 151, and that your Committee is therefore excepted from the ethical proscriptions of DR 7-104(A)(1).

The Honorable Edward T. Conroy

-2-

April 18, 1975

If you have any questions concerning the decision of the Ethics Committee, please feel free to call Norwood Orrick, Chairman, or the undersigned.

Respectfully yours,

A handwritten signature in black ink, appearing to read "J. Earle Plumhoff". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

J. Earle Plumhoff

JEP:ak

cc: George L. Russell, Jr., Esquire
704 Jefferson Building
2 East Fayette Street
Baltimore, Maryland 21202

cc: All members of the MSBA Ethics Committee

APPENDIX D:

**DEPARTMENTAL ORDERS
AND MISCELLANEOUS**

February 2, 1973

**TO: Deputy Commissioner Frank J. Battaglia
Operations Bureau**

**Deputy Commissioner Thomas J. Keyes
Services Bureau**

**Deputy Commissioner C. Jared Glauser
Administrative Bureau**

**Major Bernard F. Norton
Inspectional Services Division**

**Director Dennis S. Hill
Public Information Division**

**Captain William F. Rochford
Planning and Research Division**

**RE: Electronic Devices, Wire Interceptions and Interception of Oral
Communications, Wiretapping and Eavesdropping**

**My policy of longstanding regarding the utilization of
electronic eavesdrop devices remains in full force and effect --
such devices shall not be used in any manner or for any purpose not
consistent with law.**

**The Court of Appeals of Maryland on July 3, 1972 examined
the constitutionality of the state and federal wiretapping and eaves-
dropping statutes in State vs. Siegel 266 Md. 256. The court held
for such official wiretapping and eavesdropping to be constitutionally
permissible such interceptions must be obtained in accordance
with the dictates of the federal wiretapping and eavesdropping
statute 18 USC 2510-2520. (Title 18 of the United States Code
sections 2510-2520 is commonly known as Title III of the
Omnibus Crime and Control and Safe Streets Act of 1968.)**

POLICE DEPARTMENT
BALTIMORE, MARYLAND

COPY
Form 70/312

Accordingly any provision within the State statutes, Art. 35, Sec. 92-99, Art. 27, Sec. 125 A-D that are less restrictive than the federal statutes are void.


To further insure adherence to my policy all such electronic devices as may be employed for purposes defined under the federal act -- whether purchased or donated or manufactured in a homemade fashion -- shall be placed under the direct physical control of the Director of the Inspectional Services Division.

The Director of Inspectional Services shall be responsible for the safekeeping of these devices as proscribed by separate memorandum. He shall maintain complete and total inventories to include the whereabouts of all devices at all times.

Additionally he shall insure they are not released to anyone, for any purpose, at anytime except for lawful purposes as authorized by court order.

Prior to the issuance of this equipment, in keeping with a lawful pursuit under court order, the Director of Inspectional Services must receive a copy of the court order authenticated by the full original signature of the Chief of Detectives or the Deputy Commissioner of Operations or the Deputy Commissioner of Administration. Exemplars shall be maintained on file for comparison purposes. These copies of court orders shall become permanent records of the Inspectional Services Division.

Additionally the Director of Inspectional Services shall insure such devices issued pursuant to lawful purpose as authorized by court order are returned immediately upon the expiration of the time period specified by the court.


D. D. Pomperleau
Commissioner

cc: Mr. Millard S. Rubenstein
Legal Advisor

Police Department
City of Baltimore, Maryland

General Order 1-75

B-9

January 10, 1975

Index as: Intelligence Section
Inspectional Services Division

Subject: Intelligence Section of the Inspectional Services Division

REFERENCES

1. National Advisory Commission on Criminal Justice Standards and Goals, Washington, D. C., January 23, 1973
2. Task Force Report: Organized Crime, The President's Commission on Law Enforcement and Administration of Justice, Washington, D. C., 1967
3. The Municipal Management Series, Municipal Police Administration, 6th Edition, The International City Management Association, Washington, D. C., 1969

BACKGROUND

The National Advisory Commission on Criminal Justice Standards and Goals, Police Standard 9.11, states in part:

"Every police agency and every State immediately should establish and maintain the capability to gather and evaluate information and to disseminate intelligence in a manner which protects every individual's right to privacy while it curtails organized crime and public disorder...." (1)

BACKGROUND (Con't.)

"In many ways organized crime is the most sinister form of crime in America. The men who control it have become rich and powerful. Organized crime is not merely a few preying upon a few. In a very real sense it is dedicated to subverting not only American institutions, but the very decency and integrity that are the most cherished attributes of a free society." (2)

(It is) "Because of the nature of organized criminal activity and the problems involving civil disorder today, (that) every police agency should develop and maintain the capability to gather and evaluate information and to disseminate intelligence to the proper sources." (1)

"Intelligence in the police sense, is awareness. Awareness of community conditions, potential problems and criminal activity -- past, present, and proposed -- is vital to the effective operation of law enforcement agencies and continued community safety and security. Intelligence activities must be continued, and they must constitute a system. When the system is effective, it always produces action programs." (1)

PURPOSE

The purpose of this order is to codify within one directive the longstanding policy and procedural guidelines under which the Baltimore Police Department's Inspectional Services Division, Intelligence Section, functions.

RESPONSIBILITY AND AUTHORITY

The Inspectional Services Division was established by General Order 66-2, June 25, 1966, effective July 1, 1966 -- George M. Gelston, Acting Police Commissioner.

RESPONSIBILITY AND AUTHORITY (Con't.)

The primary mission of the Inspectional Services Division's Intelligence Section is to keep the Police Commissioner informed of organized criminal activities, internal integrity problems and potential public disorder. Consistent with this, the Intelligence Section shall be responsible for the lawful collection, collation, evaluation and analysis of data gathered in the normal intelligence process. "Additionally, the periodic publication and distribution of informational reports is an integral part of the intelligence function." (1)

"Intelligence operations directed toward organized crime and (public) disorder shall be separate, cooperating but never merging." (1)

Ideally, the primary mission of an intelligence unit should be its only mission. However, to insure maximum utilization of this agency's resources, Intelligence Section personnel are on a need basis called upon to perform such strategic assignments as collection and control of letters received through the department's confidential Post Office Box 222-3333; collection of suggestions from the departmental Suggestion Boxes; applicant investigation and background investigations on personnel being considered for promotion, assignment to the Vice Control Section or attendance at special educational programs outside the department; supportive protective services for prominent public officials; and upon request render assistance to the operational forces in the accomplishment of their peace-keeping responsibilities.

In carrying out these duties the Intelligence Section shall at all times function within the rule of law and scrupulously observe and insure the individual's right to privacy.

The unlawful invasion of privacy as defined by the various criminal statutes shall not be tolerated. Any member of this agency found to be in violation of privacy legislation or any other criminal statutes shall be dealt with consistent with law.

RESPONSIBILITY AND AUTHORITY (Con't.)

Any indication, from whatever source, to the effect that any individual's civil rights have possibly been violated shall immediately be brought to the attention of the Police Commissioner or in his absence the designated Acting Police Commissioner for appropriate action.

Every member is reminded that violations of Civil Rights falls within the investigative and prosecutorial authority of the United States Department of Justice.

Reporting and Records System: The Intelligence Section shall maintain an independent and well-secured reporting and records system. (1)

Information as may be on file in the Intelligence Section shall be protected against access by unauthorized persons. Information and reports as may be disseminated shall also be protected in a manner commensurate with their sensitivity. Under no circumstances shall such information be given to other than authorized persons on a need-to-know basis.

Informants shall be secure in their anonymity and shall be assured that their covert contributions will not be revealed. (1)

Coordination of Efforts: "Organized criminal activity and civil disorder are not restricted to limited geographic areas but are widespread and highly mobile." (1)

"Coordination of efforts and exchange of information between a police agency's intelligence operation and other governmental agencies with similar operational responsibilities increases operational efficiency." (1)

RESPONSIBILITY AND AUTHORITY (Con't.)

Coordination of Efforts (Con't.)

While a cooperative posture is to be maintained with all other bona fide criminal justice agencies, such cooperative efforts shall be consistent with the rule of law and policies of the Baltimore Police Department.

Inquiry into Criminal Activity: The Director of the Inspectional Services Division shall promptly initiate appropriate inquiry into allegations regarding criminal activity or internal integrity as may be brought to his attention through his established sources -- no prior approval is required.

Immediately upon establishment of the substance of such allegations the information at hand shall be promptly forwarded to the appropriate operational unit or agency for follow up investigation.

Surveillance of Non-Criminal Activity: Surveillance of non-criminal activity or of any person or persons not the subject of criminal allegations shall not be initiated without prior written approval of the Police Commissioner. Requests for such approval must include specifics to be accomplished by such undertakings. They shall be in writing and become part of the investigative files of the Intelligence Section, subject to review by competent authority.

Likewise, the Police Commissioner shall be informed in writing of the cessation of such previously approved mission -- such written notification to be made a part of the investigative file of the Section, subject to review by competent authority.

RESPONSIBILITY AND AUTHORITY (Con't.)

Investigative Files: The Director of the Inspectional Services Division may cause an investigative file to be opened on any group or individual whenever he becomes knowledgeable of corroborated allegations as to such group or individual's involvement in organized criminal activity, public disorder or internal integrity.

No investigative file shall be opened or maintained on any group or individual for any reason other than involvement in organized crime, public disorder or internal integrity.

Electronic Devices, Wire Interceptions of Oral Communications, Wiretapping and Eavesdropping: My policy of longstanding regarding the utilization of electronic eavesdrop devices remains in full force and effect -- such devices shall not be used in any manner or for any purpose not consistent with law.

The Court of Appeals of Maryland on July 3, 1972, examined the constitutionality of the state and federal wiretapping and eavesdropping statutes in State vs. Siegel 266 Md. 256. The court held for such official wiretapping and eavesdropping to be constitutionally permissible such interceptions must be obtained in accordance with the dictates of the federal wiretapping and eavesdropping statute 18 USC 2510-2520. (Title 18 of the United States Code sections 2510-2520 is commonly known as Title III of the Omnibus Crime Control and Safe Streets Act of 1968)

Accordingly, any provision within the State statutes, Art. 35, Sec. 92-99, Art. 27, Sec. 125 A-D, that are less restrictive than the federal statutes are void.

To further insure adherence to my policy all such electronic devices as may be employed for purposes defined under the federal act -- whether purchased or donated or manufactured in a homemade fashion -- shall be placed under the direct physical control of the Director of the Inspectional Services Division.

RESPONSIBILITY AND AUTHORITY (Con't.)

Electronic Devices, Wire Interceptions of Oral Communications,
Wiretapping and Eavesdropping (Con't.)

The Director of Inspectional Services shall be responsible for the control and safekeeping of these devices. He shall maintain complete and total inventories to include the whereabouts of all devices at all times.

Additionally, he shall insure they are not released to anyone, for any purpose, at any time except for lawful purposes as authorized by court order.

Prior to the issuance of this equipment, in keeping with a lawful pursuit under court order, the Director of Inspectional Services must have in his possession a copy of such court order authenticated by his full original signature or must receive a copy of such court order authenticated by the full original signature of the Chief of Detectives or the Deputy Commissioner of Operations or the Deputy Commissioner of Administration. Exemplars shall be maintained on file for comparison purposes. These copies of court orders shall become permanent records of the Inspectional Services Division.

Additionally, the Director of Inspectional Services shall insure such devices issued pursuant to lawful purpose as authorized by court order are returned no later than the expiration of the time period specified by the court.

REVIEW AUTHORITY

Recipients of this directive are advised the Police Commissioner has requested the Attorney General, State of Maryland, from time-to-time review the activities of the Inspectional Services Division, Intelligence Section.

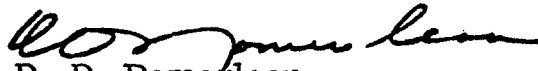
All members are instructed to cooperate with the Attorney General or his designee appointed from his office in the performance of this vital function.

RECISIONS

This order supercedes and rescinds all previously communicated directives dealing with the duties and responsibilities of the Inspectional Services Division, Intelligence Section.

EFFECTIVE DATE

This order is effective on January 10, 1975.


D. D. Pomerleau
Commissioner

Distribution - Limited

I certify that I have read and fully understand this Order.

Signature

"POLICE DEPARTMENT
BALTIMORE, MARYLAND

RECEIVED

January 2, 1975

TO: Commissioner D. D. Pomerleau

FROM: Director, Inspectional Services Division

SUBJECT: Request of Honorable Marvin Mandel,
Governor for State of Maryland,
Concerning Intelligence Activities,
Baltimore City Police Department's
Inspectional Services Division

Sir:

The primary mission of the Intelligence Section, Baltimore Police Department, in the active surveillance of individuals or groups outside the normal criminal behavior, has always been to attempt to spot potential areas for violence and to inform; with intelligence data, the Operations Bureau so that logical commitment of forces in Patrol and Traffic could be made.

Political surveillances have never been conducted. Neither occupation nor race has been a basis for opening a case for investigation in any field at I. S. D.

We have never conducted surveillances of elected or appointed officials. We have never placed the clergy or media persons under surveillance, unless there has been a solid allegation of criminal activity. Elected and/or appointed officials have spoken at many rallies during the civil rights and anti-war movements of the late Sixties and early Seventies, and so their

"
POLICE DEPARTMENT
BALTIMORE, MARYLAND

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names, through informant reports as being present at the various rallies, would be interlaced throughout our files. There could have been temporary folders created which reflected their presence at the various rallies through duplicated reports, but these were merely activity folders and are not to be confused with investigative files on these officials. All of these were destroyed when the movement fell flat. There has never been an investigation opened on any elected official because of his appearance at a rally.

The clergy likewise addressed many groups during the civil rights and anti-war movements. An investigative file was never opened on any of these clergy because of their appearance. Their names likewise would be interlaced throughout our files through informant reports. It should also be noted that the clergy permitted their churches to be used for rallies during the days when emotion was high and threats of trashing the Downtown area were being made by the dissidents. We covered these rallies so that we could effectively inform the Operations Bureau. In many instances, our Community Relations Division attended these rallies and would meet with the clergy or elected and appointed officials in the interest of keeping peace in our streets. We never opened an investigative file because these churches were used for rallies.

We have never had an investigative file opened on any media person.

Some of the allegations recently raised concerning the above three (3) groups--appointed and/or elected officials, the clergy, and media persons--I think need to be clarified:

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MEDIA PERSONS

1. Russ Johnson Talk Show, W. S. I. D. Radio --

We had three (3) good reasons for monitoring this talk show:

1. John Clarke, head of the Black Panther Party, was due for an appearance on this show. At the time, we were actively investigating the Panther Party which was a violent, militant group. There was also a federal warrant for Clarke's arrest.
2. The talk show included a session with Olugbala, head of the S. O. U. L. School, who discussed narcotics and organized crime. During this session, he mentioned the name of "Little Willie Adams."
3. The talk show was extremely critical of police, and we desired a verbatim transcript so that we could rebut their charges

At no time did we approach the radio station to have the talk show deleted. It is our recollection that it was deleted very shortly after his show on organized crime.

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2. Art Geiselman, Channel 11-TV --

We had reliable information that Mr. Geiselman had City property illegally in his possession and was returning it on a certain day. A "stake-out" was conducted at various buildings in the Downtown area where it was felt he might make the return. It must be stressed that this "stake-out" was made not because he was a newscaster, but because of the allegation that he had committed a criminal act.

3. Al Sanders, WJZ-TV --

Mr. Sanders covered the funeral, with his television camera, of Frank Whitby in May, 1974. Two (2) I. S. D. men observed Mr. Sanders talking to and leaving in the automobile of an individual who has had several arrests for false pretenses, bribery, extortion, and malfeasance in office. One I. S. D. man made mention of the observation to the other. One of these I. S. D. men subsequently went out on strike and resigned from the Department. Mr. Sanders, at no time before, during, or after the Whitby funeral, which was attended by over a thousand persons, was placed under surveillance. There was never a written record made of the incident at I. S. D.

4. Michael Davis, Evening Sun Reporter --

We received a report that Mike Davis was in the pay of organized crime figure Bernie Brown. No file

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Michael Davis (Cont'd.) --

was ever opened on this information on Mr. Davis and no further action was taken on the report, as we were awaiting corroboration of the information from the informant. Mr. Davis subsequently left the state.

There have been further published reports that I.S.D. has investigated news reporters because they have contacted former I.S.D. personnel. This is absolutely untrue. We have received voluntary calls at I.S.D. from several former I.S.D. persons, who have since resigned from the Department and are in the business world, that they have been contacted by reporters concerning their former activities in I.S.D. and they wanted to volunteer this information to I.S.D. personnel. I want to stress that the initiative for these contacts with these people came from them and not from any surveillances of the newsmen.

I even received a call from a former Cadet in I.S.D. who has resigned from the Department and is in the Air Force in South Dakota, who had received a telephone call from the newspaper reporters.

A newspaper reporter asked a cleaning lady the identity of the cleaning woman who has keys to I.S.D. spaces. She reported this voluntarily.

Almost all members of my Division, both Staff Inspections as well as Intelligence, back into the early Seventies, have been contacted by the reporters. My personal secretary has been contacted. These officers and my secretary reported these contacts to me voluntarily.

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ELECTED OR APPOINTED OFFICIALS

There was a story published recently in The Morning Sun showing a report of an undercover man concerning a rally that he attended with elements of the Black Panthers and the S. O. U. L. School. The rally happened to be a political debate between Judge George Russell and Senator Clarence Mitchell. The article inferred that we were guilty of "political spying." I received assurances from the undercover man, his control agent, and the Acting Head of Intelligence--since I was absent during the time--that the undercover man, who was new at the time, attended only to increase his credibility with the Panthers and S. O. U. L. School. This was a most difficult time to obtain any coverage of these groups who had sought and carried out the assassination of a police officer and wounded another. This was not a directed effort by I. S. D. or this Department to effect a surveillance of appointed or elected officials.

CLERGY

As noted above, we have never placed the clergy under surveillance, nor opened investigative files on them.

I must add, at this point, something concerning strike coverage by I. S. D. during last July. During the strike, Mr. Thomas Rapannotti, President of Police Council #27, American Federation of State, County & Municipal Employees, was placed under surveillance to determine whether the court injunction issued against the Union was being violated. This was by order of an Assistant Attorney General. During the strike, we took numerous photographs, together with our Crime Lab, of picketing at all Stationhouses and Headquarters, as

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well as picketing activities at various Municipal Buildings in Baltimore. This was done to obtain unmistakable identification of strikers and irrefutable evidence for use in later trial boards. We also taped TV coverages by the three (3) local channels on a twenty-four-hour basis.

We had live coverage by sources on the day of the strike at the Union Hall, 305 W. Monument Street, as well as coverage during several subsequent days at the Lord Baltimore Hotel where the Steering Committee of the Union was holding its meetings. At no time, and under no circumstances, were any of our sources "wired." At no time was such action ever considered by this Division.

I believe I should mention at this time that there were numerous instances where, because of our intelligence gathering, we were able to keep two (2) diverse protesting groups from tearing each other apart. I remember one occasion at C. O. R. E. Headquarters, in a heavily black populated section of Baltimore, the Ku Klux Klan decided to parade in white sheets. I recall another occasion at Ritter's Bar where, in a predominantly white area, large groups of blacks assembled to protest and the whites threatened violence. At the extremely emotional National States Rights Party (NSRP) rallies in Patterson Park, in 1967, much intelligence was gathered that the blacks were going to counter-protest. Our intelligence provided that there would have been bloodshed, but we were able to head it off.

We have also provided much intelligence on the possibility of unrest at rock concerts by contacting our sources throughout the country who have had similar experiences with a particular group. We have provided assistance to the Secret Service on many occasions for the protection of the President

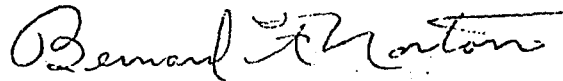
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and the Vice President; and I firmly believe that the relative quietness of the streets of Baltimore, compared to other cities in the country during the late Sixties and early Seventies, was due to the effective gathering of data by I.S.D. so that potentially dangerous situations were averted.

A listing of the organizations and persons under active surveillance by I.S.D. back to 1966, for activities outside the normal range of intelligence work of a criminal nature, is appended.

Respectfully,



Bernard F. Norton
Major

BFN/dlt

[ISD REPORT]

A debate was held between Clarence Mitchell and City Solicitor George Russell, the two (2) major black candidates for Mayor of Baltimore, at St. Gregory's Church, Gilnor and Baker Streets, on 21 July 1971.

A panel composed of the following individuals presented questions to Mr. Mitchell and Mr. Russell, pursuant to their qualifications and views on certain issues of interest to the black community.

1. William Allen - Attorney
2. Kitty Broady - Radio Station W.E.E.B.
3. Clarence Mitchell, Jr. - Lobbyist for the N.A.A.C.P.
4. William Murphy, III - Attorney
5. Charles Dixon - Bail Bondsman
6. An unidentified negro male, described as 25 - 30 years of age, 5'9", 175 lbs., light brown complexion

The meeting was attended by between 800 and 1000 persons.

Each candidate was permitted ten (10) minutes to present his views, after which questions were directed to the candidates by members of the panel.

Mr. Mitchell began by naming his accomplishments in the Maryland House of Delegates. He stated that he had been on the street with the black people during the 1968 riots and mentioned that he would run a "right on" campaign; adding that the opposite of "right on" is "left off", and that the blacks have "left off" too long.

Mr. Russell pointed out the need to work within the system, and that his record of accomplishment regarding black people included going before the courts and rewriting the law on search and seizure. He also stated that he had demonstrated through his position as City Solicitor, that a black man could handle such a position fairly.

During the debate and questioning period which followed, no mention was made of the Police Commissioner, or any future meetings of the black community regarding the candidacy of Mr. Mitchell and Mr. Russell.

The following individuals were observed in attendance:

1. Paul Coates - Black Panther Party
2. Kenneth Webster - Maryland House of Delegates
3. Olugbala - S.O.U.L. School
4. Barnett Brooks - Committee to Free Angela Davis [This particular individual is the ISD member who prepared and submitted the report.]

APPENDIX E:

EXCERPTS FROM TRANSCRIPTS

Transcript of testimony concerning distribution of credit information

by Terry Josephson:

Q Do you know Terry Josephson?

A Very well.

Q You know him well. In what capacity do you know Terry Josephson?

A He was with our unit at one time.

Q Did you know him when he was in ISD?

A Yes, I did.

Q Do you recall when he left ISD? Not so much the date, but do you remember when he left?

A I remember when he left.

Q What employment did he obtain upon leaving ISD?

A Well, he resigned to take this job, I think it was the Credit Bureau of America...some credit bureau.

Q United Credit Bureau of America?

A Right. That was it. It was a very good job.

Q Did you and other members of ISD contact Mr. Josephson while he was at the United Credit Bureau?

A Many times.

Q For what reason did you contact Mr. Josephson?

A Well, we no longer could get information from the Credit Bureau of Baltimore, but we could obtain the same information and sometimes more through Terry. So we began to use Terry to get credit background.

Q What type of information did you obtain from Mr. Josephson?

A Well, we would get present, prior addresses, telephone numbers, real estate if known, property, marital status, number of children, employment, past employment, and even how much debt the person may be in.

Q The name of the creditors of the particular individual, like who he owed money to?

A We could get that, right. We could get that.

Q Okay. During what period of time did you and other members of ISD obtain this information from Mr. Josephson?

A Well, I used it from the time that he resigned, because we were told that we were to call Terry.

Q Who told you?

A Terry told us that, you know, he would help us in this way. And your Sergeant, and "Why don't you call Joe?" and this sort of thing. If you were stuck, they would suggest that you call Joe. I knew I could call him. I knew this. There wasn't any doubt in my mind as to whether or not I could call him and get information.

Testimony of Department officials concerning preparation of search and seizure warrants:

COLONEL CARROLL: What was your question, sir?

COMMISSIONER POMERLEAU: He wants to know what safeguards you have established in the accomplishment of a warrant so that men that are filling out a warrant are not imagining and/or making up things to go into that warrant. How do you handle warrants in your division?

COLONEL CARROLL: We receive information on complaints and they are given to the Lieutenant and passed through to the Sergeant and a man is put on surveillance and he records whatever he sees or what happens in front of him, what his expertise tells him is happening. This warrant is brought back to the Sergeant and checked by the Sergeant and checked by the Lieutenant and then it is taken before a judge and sworn to.

Q Any occasions to build a record for a warrant on information that was obtained through eavesdropping that was not a part of an authorized eavesdropping mechanism?

COMMISSIONER POMERLEAU: He just said, that was not an authorized eavesdropping .

Q Is that right?

COMMISSIONER POMERLEAU: We have not conducted any unlawful eavesdropping activity in the Department. I have challenged you previously to come up with it and I reiterate that. We have not. I will now refer back to him (indicating Colonel Carroll). He will respond to your wiretapping, eavesdropping question and don't take it out of context. Every activity he will tell you is backed up with an Order of the Court.

COLONEL CARROLL: We don't engage in any unauthorized eavesdropping activities at all. Every tap we put on a telephone or eavesdropping equipment that we use is used after an ex parte order is obtained through the State's Attorney's Office and signed by a Judge of the Supreme Bench.

Testimony of Department officials concerning information Department obtained from C&P Telephone Company:

Q You have never used the Telephone Company to obtain any other information other than the unlisted phone number?

MAJOR NORTON: Not to my knowledge.

Q I would like to address that same question to Chief Carroll. You heard the question, Chief, with respect to C&P Telephone Company and what kind of information you obtain from them?

COLONEL CARROLL: Mostly address, location of a number, name. On some occasions toll charges. That requires a Subpoena too. If we want toll charges, let's say a narcotics man is calling New York and we know it's back and forth and we submit a Subpoena and they will submit the toll charges of that phone.

Q How long have you been in charge of the detectives, did you say?

COLONEL CARROLL: Since June 7, 1973.

Q Where were you before that?

COLONEL CARROLL: I was in the CID Property Crime Section. I was the captain of the Property Crime Section.

Q So that your detailed knowledge, for instance of the procedures of the vice squad probably dates from 1973; is that correct?

COLONEL CARROLL: Yes, sir.

Q To your knowledge, have personnel in the vice squad obtained any other kinds of information, with or without Subpoena, from the Telephone Company, other than what you described?

COLONEL CARROLL: Not to my knowledge, sir.

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SECRETARY