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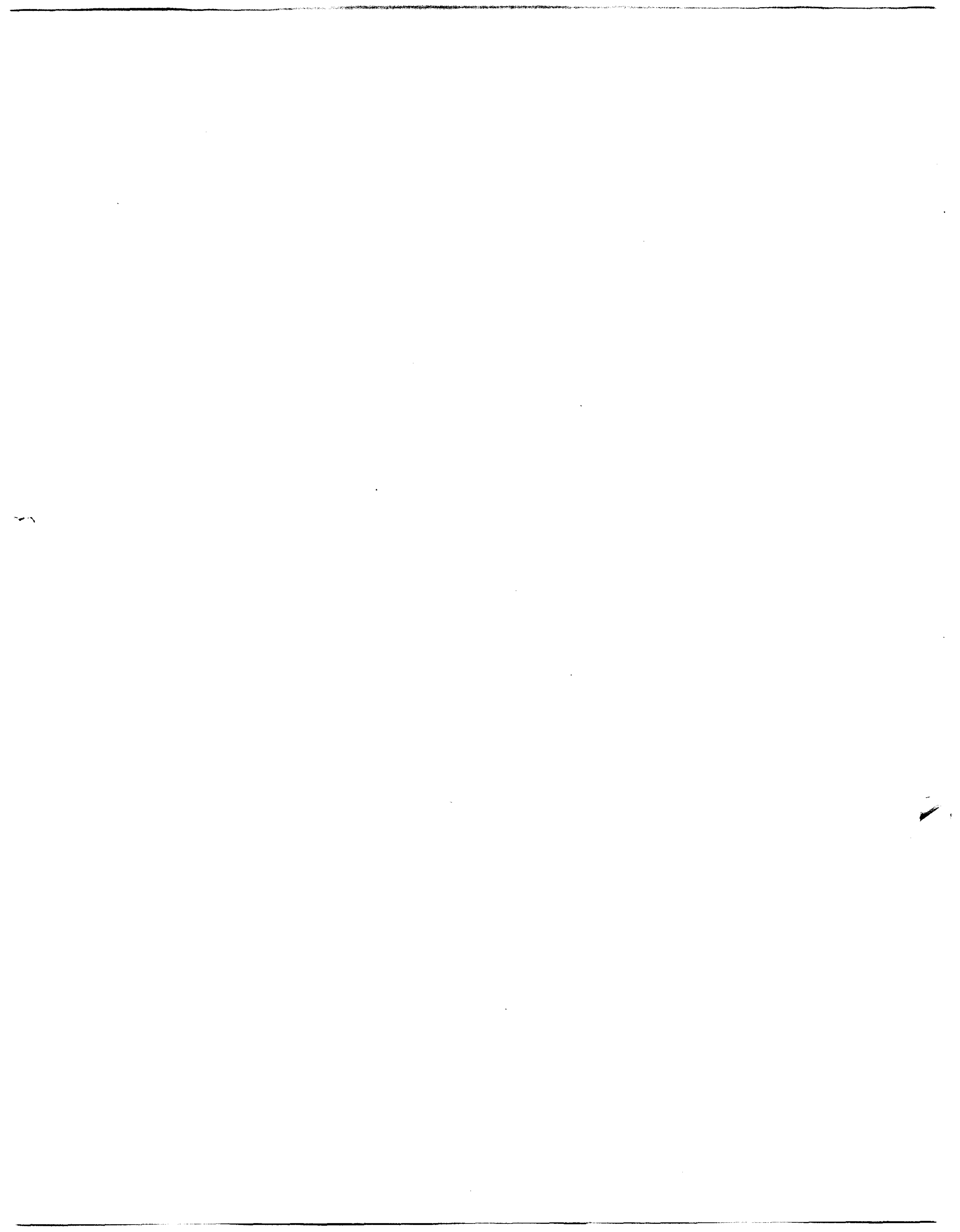
REPORT TO

THE HONORABLE MARVIN MANDEL

GOVERNOR

STATE OF MARYLAND

February 5, 1976



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Detailed Response of Major Bernard F. Norton, Director

Inspectional Services Division

ENCLOSURE (1) to the Report of the Police Commissioner to The Honorable Marvin Mandel, Governor, State of Maryland, February 5, 1976

/

POLICE DEPARTMENT
BALTIMORE, MARYLAND

January 27, 1976

TO: Police Commissioner Donald D. Pomerleau

FROM: Director, Inspectional Services Division

SUBJECT: Request of Honorable Marvin Mandel, Governor of the State of Maryland, concerning the report of the Senate Investigating Committee established pursuant to Senate Resolutions 1 and 151 of the 1975 Maryland General Assembly dated 31 December 1975

Sir:

I have read the report of the Senate Investigating Committee dated 31 December 1975 and take many exceptions thereto.

I find the report is one of conclusions alone and those conclusions apparently not based on any discernible evidence. I find it shocking that documentation and sources for their conclusions are not listed. This is doubtless because of secret testimony to which we are denied access.

I am dismayed that the report is so self-serving and I am going to take exception to it by response to you, line by line and step by step, of those statements pertaining to the men and women of the Inspectional Services Division, that I desire to challenge.

I want to do this by identifying the statement, locating it by page and paragraph, and then commenting with my response.

ENCLOSURE (1) to the Report of the Police Commissioner to The Honorable Marvin Mandel, Governor, State of Maryland, February 5, 1976.

Statement of Committee:
Page 3, Paragraph 2, Line 7...

"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."

My Response:

Information of a sensitive nature concerning the personal and private lives of individuals was never documented in our reports. This is not to say that information is never received concerning predilections of individuals as a result of their personal leanings. However, this was of no interest to us and was never recorded or disseminated. This kind of information was never solicited.

Statement of Committee:
Page 6, Paragraph 1, Line 1...

"Senate Resolutions 1 and 151 authorized the investigation of any law enforcement agency in the state alleged to have conducted unwarranted surveillance activities.

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."

My Response:

We have no way of knowing all of the allegations that have been made during the life of the Committee since a portion of the testimony given was held at secret hearings. I do deny emphatically that the allegations which were leaked and appeared in the media had any credibility.

Statement of Committee:
Page 7, Paragraph 3, Line 1...

"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. While the Committee made every 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."

My Response:

The Commissioner insisted and encouraged that a fair and objective investigation be conducted relative to the alleged activities of I.S.D. However, in pledging his complete cooperation, the Commissioner did not foresee the creation of an atmosphere poisoned by unsubstantiated newspaper accusations, allegations, inferences and innuendos. This deleterious situation was compounded by the questionable professional conduct of the Senate Investigating Committee. Also, the Commissioner encouraged the Senate inquiry in accordance with Resolution SR-1 and not the changed Resolution SR-151.

Statement of Committee:
Page 8, Paragraph 1, Line 7...

"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."

My Response:

Although the Committee was well aware that George L. Russell, Jr. had been retained as the appropriate counsel for past and present members of the Baltimore Police Department, and that he was to be notified of any impending interview of prospective witnesses, the Committee on occasions approached past and present members of the Baltimore Police Department for the purpose of interviewing them, without notifying Mr. Russell. Additionally, the Committee promised to keep the fact of the interview secret. Effective representation was therefore denied these witnesses.

This procedure given OK by Ethics Committee of Md Bar assoc. (See pg 127 SR-151 Report)

Statement of Committee:
Page 9, Footnote l...

"It is interesting that many members of the Baltimore City Police Department were, until many years after I.S.D. was established, unaware of the existence of the unit, since I.S.D. 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."

My Response:

General Order 66-2 dated June 25, 1966, explains the structure of the Department, to include I.S.D. and explains the functions of the I.S.D.'s Intelligence Section. In addition, on May 5, 1966, a news article appeared, announcing the genesis of the unit, in an evening edition of the Sunpapers. General Order 66-2 dated June 25, 1966, explains the organizational structure of the Department, to include the Inspectional Services Division. This General Order, among others, was distributed to all sworn personnel for their information. In addition, on May 5, 1966, the Baltimore Sun, morning edition, described the Intelligence Section as "...to be an inspectional unit watching the community for information on organized crime and vice from lottery rings, narcotics peddling, burglary gangs and secret organizations engaged in subversive activities."

"The unit will develop confidential informants within the underworld and maintain close liaison with other law enforcement agents on local, state and federal levels." High on the list of priorities recommended by the International Association of Chiefs of Police report entitled "A Survey of the Police Department - Baltimore, Maryland" dated December 30, 1965, indicated that intelligence is a control function and "It is intended to keep the Commissioner informed of the presence and activity of organized criminals--whether they are engaged in extortion, vice activities, burglary or other crimes. He should also have information concerning the structure, membership and plans of secret organizations engaged in subversive activities. These may include groups that threaten the national or community safety and welfare. They will also include confederations created to inflame religious and racial prejudices and those that foment disturbances and violence."

Continued Response:
Page 9, Footnote 1...

Additionally, numerous Education and Training Entrance Level classes received an indepth review of the Intelligence Section. This review was also covered in earlier In-Service Training classes to bring prior members of this Department up to date on the intelligence functions. (See Appendix B)

In the management of an agency the size of the Baltimore Police Department, with its tremendous responsibility, the Chief Executive must limit his span of control. The organizational structure of this agency is logically designed to maximize the ability of the operational forces to fulfill their mission. There are, in fact, three Staff Divisions whose Directors report directly to the Police Commissioner--the Planning and Research Division, the Public Information Division, and the Inspectional Services Division. Additionally, the Deputy Commissioners of the three Bureaus, Administration, Operations, and Services, report directly to the Police Commissioner. These six officials, coupled with the Police Commissioner's personal staff, insure the direction, control and logistical support for the operations of this agency.

It is obvious the State Senate Committee and its staff have no understanding of management principles or how to direct and control an urban area police force.

Statement of Committee:
Page 9, Paragraph 1, Line 1...

"I.S.D., 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."

My Response:

Our coverts, when given certain missions or goals, were provided only that information which he needed to conduct an intelligent observation or inquiry. He, the covert, would submit a report that was carefully scrutinized. He had no need to

Continued Response:
Page 9, Paragraph 1, Line 1...

know what other coverts were doing who could have been assigned another facet of this same general investigation. This accepted method of intelligence operations also had the effect of corroborating, verifying, and evaluating information furnished by coverts to supervision.

Statement of Committee:
Page 10, Paragraph 2, Line 1...

"The apparent newsworthiness of the investigation made more difficult the environment in which the Committee was expected to do its work."

My Response:

The atmosphere of sensationalism, etc., regarding the investigation was, in fact, created, orchestrated and nurtured by the Committee.

Statement of Committee:
Paragraph 2, Line 7...

"They strongly felt that through 'leaks' or otherwise, intense coverage by the media significantly decreased an individual's chances of remaining anonymous."

My Response:

This became apparent through information supplied to the news media by "sources close to the investigation."

Statement of Committee:
Page 17, Paragraph 1, Line 1...

"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

Statement of Committee:
Continued
Page 17, Paragraph 1, Line 1. . .

operative of the I. S. D. ; 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."

My Response:

Police Officers known and unknown to Congressman Mitchell were present in his campaign headquarters on election evening, November 3, 1970. These were troubled times and there were those among his followers who not only advocated violence but were quite capable of committing violence. Police were there so that Command Officials of the Police Department could be aware of the tenor of the meetings. The election was very close and surveillance continued for several days so that officials could move police in, in case of violence. If my memory serves me correctly, we had almost 500 troops ready to move in, in case they began burning, because it was your determination that this town never will burn again. There were those who encouraged violence and burning, even though Congressman Mitchell, himself, always discouraged such activity. I recall one particular incident among one of these meetings when Congressman Mitchell said, in effect, that if he lost, he would never run again. Someone in the audience shouted, "If you lose, you will not have a District to run in again," and with this statement that individual lit a match and held it up to the audience. There was much shouting of approval at this point.

With respect to Mr. Glenn, should he have taken part as a speaker at meetings, it is entirely possible our informant reports would have reflected his statements. Once again, it was not Mr. Glenn, personally, we were specifically interested in, but the activity of the group of that particular day or night. Once again, I cannot stress too strongly that we had no interest in political campaigns as such, but only the inflammatory potential that existed in groups such as the one described above with regard to the lighted match incident.

Statement of Committee:
Page 19, Paragraph 2, Line 4...

"Testimony received in these hearings concerned, among other things, various policies, practices and procedures of I. S. D. including the surveillance of persons not suspected of criminal activities and the collection and storage of data pertaining to these individuals."

My Response:

Surveillances of groups that advocated disruption of the streets and violence in the community, and we have had such experiences during the emotional days of the Vietnam War, the Cambodian Invasion, the Black Panthers, National State's Rights Party, Ku Klux Klan and American Nazi Party, Fighting American Nationalists, etc., were carried out, this is keeping with our sworn duties. Persons not suspected of criminal activities or those who never advocated violence were never surveilled. You and I both, I felt, made this perfectly clear to the Senate Committee on October 18, 1975, that our interest was only in groups that advocated violence and/or individuals bent on criminal acts.

Statement of Committee:
Page 19, Paragraph 2, Line 7...

"Additionally, testimony concerning wiretapping without court authorization by C & P personnel at the request of members of the Department was heard."

My Response:

I feel compelled to state that I. S. D. never engaged in wiretapping without court authorization, that we never made any such thing as a "request" of the C & P, that the only wiretapping done was by court order in organized crime cases and wiretapping or other electronic surveillance was never used in the domestic intelligence field.

Statement of Committee:
Page 20, Paragraph 3, Line 2...

"The only statement concerning its investigation of I. S. D. in the six page report was as follows: 'The Grand Jury recommends that the I. S. D. 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.' "

My Response:
Page 20, Paragraph 3, Line 2...

It is interesting to note that the Committee stopped short of the full statement reported in the media, thus failing to tell the public the pertinent information of the outcome and comment on the Grand Jury inquiry. I should like to quote the addition which the Committee failed to put in their report: "The Grand Jury forewoman Emily Laisy made the following statement:

> 'The jury really didn't find anything questionable in the activities of I. S. D.'
> The News American, May 9, 1975
>
> 'The Grand Jurors were disturbed about a lot of irresponsible reporting about the investigation and of leaks possibly coming out of the Grand Jury itself.' "
> The Sun, May 10, 1975

Statement of Committee:
Page 21, Paragraph 1, Line 1...

"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 I. S. D., and the involvement by the Department and the C & P Telephone Company in the interception of telephone communications without legal authorization."

My Response:

I repeat once more that only with court orders in the organized crime field did I. S. D. use electronic interception of telephone communications and no electronic surveillance was ever carried out in the domestic intelligence field.

Statement of Committee:
Page 23, Paragraph 2, Line 1...

"I. S. D. 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."

My Response:
Page 23, Paragraph 2, Line 1...

I. S. D. does not differ from all other Divisions in the Department. As I have previously noted, three Deputy Commissioners, Planning and Research and Public Information Divisions report directly to the Commissioner without going through other management echelon.

Statement of Committee:
Page 23, Footnote 2

"Major William Rawlings, who served as the Lieutenant of the Intelligence Section of I. S. D. until 1974, should be specifically mentioned because of the instrumental role he played in the overall development of I. S. D. as an 'intelligence' unit. In 1974, Rawlings was promoted from lieutenant to major and placed in charge of the I. I. D."

My Response:

The Committee's date of Major Rawlings' promotion is incorrect. He was promoted on March 3, 1973, and appointed Director of the Internal Investigation Division. Major Rawlings did play an important role in the development of I. S. D. and always conducted himself in a highly professional manner.

Statement of Committee:
Page 24, Paragraph 1, Line 3...

"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 I. S. D. offices, but these were utilized only upon the individual's initiative."

My Response:
Page 24, Paragraph 1, Line 3...

I take exception to the Committee's report saying that there were "a few books and manuals scattered around the I. S. D. offices." This is an unconscionable attempt to picture the I. S. D. offices as being less than disciplined and businesslike. I am happy that the Committee states that newcomers were trained by experienced officers and that they were able to learn by their experiences. It is also interesting to note that the Committee contradicts itself on Page 25, Paragraph 2, of their report in which they say that "at least five I. S. D. officers were trained at the Army Intelligence School, Fort Holabird." Training and supervision were very strict at I. S. D.; and as you know, personnel's performance was evaluated on a continuing basis. There were several who could not stand the strict supervision and training and had to be reassigned to other divisions.

Statement of Committee:
Page 25, Paragraph 1, Line 1...

"Until the promulgation of G. O. 1-75, there were no written orders or guidelines concerning the operation of I. S. D. 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. 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."

My Response:

On January 17, 1975, Police Commissioner Pomerleau forwarded to the Chairman of the Senate Committee on Constitutional and Public Law, a detailed packet of directives and guidelines pertaining to the intelligence-gathering process. This was in response to several questions raised at a Committee hearing on January 14, 1975. Listed below is an accurate index of material given to Chairman Conroy.

Continued Response:
Page 25, Paragraph 1, Line 1...

(1) Inter-Office Memo dated January 17, 1974 from Major Bernard F. Norton to Lieutenant Donald E. Woods directing same to have the intelligence files (cards, folders) purged and to cease active domestic intelligence operations.
(2) Inter-Office Memo dated January 18, 1974 from Lieutenant Donald E. Woods to all members of the Inspectional Services Division, Intelligence Section directing that all members will actively participate in the purging of all intelligence files and to immediately disengage all domestic intelligence activities both overt and covert.
(3) Police Commissioner's Memorandum, February 2, 1973, regarding the use of Electronic Devices, Wire Interception and Interception of Oral Communication, Wiretapping and Eavesdropping.
(4) Police Commissioner's Memorandum 72-21, March 2, 1972, and "How Organized Crime Corrupts our Law Enforcers" - Reader's Digest.
(5) Police Commissioner's Memorandum 72-63, July 13, 1972, and Police Guide on Organized Crime - Law Enforcement Assistance Administration.
(6) Drug Abuse Manual - Federal Bureau of Narcotics and Dangerous Drugs in conjunction with the Baltimore Police Department, pages 137-152.
(7) Training Keys #3, 4, 5, 15, 37, 39, 51, 57, 64 and 71 - International Association of Chiefs of Police.
(8) Basic Elements of Intelligence - Law Enforcement Assistance Administration.
(9) "Roll Call Training Guide on Organized Crime" - Baltimore Police Department.

Of course, this index does not include the training that is provided within the unit by the commanding officer and supervisors of the Intelligence Section. It is obvious that thorough written directives and oral direction provided for tight controls and guidelines for the intelligence-gathering process as practiced by the Inspectional Services Division of the Baltimore Police Department.

It is apparent that the submitted documents were not read by the staff and committee; or if read were not assimilated.

Statement of Committee:
Page 25, Paragraph 2, Line 6...

"Training of I.S.D. personnel in the use of this equipment, was, again, rather informal. While a few officers were familiar with most I.S.D. hardware, most individuals developed discreet specialties, e.g., cameras or recording devices."

My Response:

Once again, the lack of understanding of the Committee with regard to the operation of an intelligence unit in a large urban area police department shows through. All officers in I.S.D. were not trained photographers; all were not trained to install legal eavesdropping devices, etc. There were only those that we thought we needed to operate efficiently who would be trained in these specialties. They were trained on a "need-to-know" basis. This is a cardinal rule, the hallmark of a professional intelligence unit.

Statement of Committee:
Paragraph 2, Line 9...

"At least five I.S.D. 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 I.S.D. had the means and the knowledge to carry out sophisticated surveillance activities."

My Response:

"Offensive" tactics taught by the Army Intelligence School at Fort Holabird, which were part of the curriculum of that school of the United States Army, were taught in order to defend against surreptitious entries at the Police Department. As you know, our old building had many security weaknesses and we were fortunate to have the Army train our men to shore-up those weaknesses and prevent attacks by bomb throwers upon the building or personnel. Extreme security measures were being taken at this time at all District Stationhouses and Headquarters Building because of the well-known attacks

Continued Response:
Page 25, Paragraph 2, Line 9...

against police installations throughout the country, and we were particularly vulnerable. There was even talk among patrol officers, judges, and defense attorneys that the Central District, after preventive measures were taken, resembled more of a fortress. You will also recall, there was an actual break-in of the I. I. D. headquarters. It was necessary, therefore, for our personnel to learn how these acts could take place.

Statement of Committee:
Page 26, Paragraph 1, Line 7...

"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."

My Response:

It is true many informants in criminal matters, of course, are persons of low character and untrustworthy; however, there is no other way to obtain criminal information but from fellow criminals. It appears to me that the Committee staff having had only experience in homicide and related criminal fields, is only familiar with informants whose backgrounds are that of a criminal nature.

In domestic intelligence, however, I tell you that some of our informants in the domestic intelligence field were persons who were bulwarks of society and certainly not a threat to society. Some were outstanding citizens in the community and persons of strong moral fiber. Some were carefully selected sworn police officers of this Department.

Finally, it is obvious to me, and the record reflects, that the Committee staff's experience is limited to the criminal field.

Committee interviewed informants for ISD in domestic intelligence area

Statement of Committee:
Page 26, Paragraph 1, Line 12...

"It is noted that there were no criteria by which I. S. D. officers were guided in evaluating the reliability of operatives and informants and the data they supplied."

My Response:
Page 26, Paragraph 1, Line 12...

The reliability of operatives and informants and the data they supplied were continually being evaluated by I. S. D. supervision. When, in this process, informants were found to be unreliable and when, upon re-evaluating they did not seem to be producing, they were terminated. As pointed out above, sometimes two informants, unknown to each other, would carry out a similar assignment. In this way, supervision had a check and balance on them to determine their credibility. Written guidelines in controlling informants, the background and training of myself and my immediate subordinate, the Lieutenant in charge of the Intelligence Unit, also provided the necessary checks and balances to establish and be alert to the reliability of operatives and informants and the data they supplied.

Statement of Committee:
Page 27, Line 1...

"'If there was a meeting in Baltimore City, we (I. S. D.) were there.' While I. S. D. surveilled groups such as the Workers Party of America, The Young Communists, Sparticus (sic), 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 I. S. D. Further, broader-based organizations like the Black United Front were subject to I. S. D. scrutiny. All strikes were covered, and information, including photographs, was obtained concerning participants in picket lines."

My Response:

Total disagreement - much testimony contrary to this

Once again, I must repeat that I. S. D. only was interested in groups that advocated violence or public disorders. The group itself, unless it was a group that publicly dedicated itself to violence, was of no interest. However, there were, from time to time, persons who attended these group meetings who were not of the same high caliber as the persons who directed groups

Continued Response:
Page 27, Line 1...

or had no interest in the purpose of the group itself. Their only purpose was to infiltrate and attempt to arouse the group to violence. The statement, "All strikes were covered..." was completely incorrect. All strikes were not covered but only where information was received that there could be disruption, as we learned in the Schmidt's Bakery strike, would be observed. There were times when, in support of Patrol, photographs were obtained of disruption in the strike area and disorderly conduct arrests made.

Statement of Committee:
Page 27, Paragraph 1, Line 1...

"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."

My Response:

I have repeatedly assured you that political campaigns were never infiltrated. There were individual cases, as you will recall, for instance, in the congressional election of Parren Mitchell when it was necessary to attend open meetings at the Candidate's Headquarters because some of his supporters threatened to burn the District if he lost.

Sworn testimony diametrically opposed to this

Additionally, no I.S.D. personnel attended meetings, at the direction of supervisors of I.S.D., of Candidates Milton Allen and Judge Joseph Howard. The political debate prominently mentioned in the media and the Senate Report, of Senator Clarence Mitchell and The Honorable George L. Russell, Jr., was covered to prevent violence as some in attendance had such propensities. I repeat, we had no interest in the political campaigns of any political aspirants.

Statement of Committee:
Page 27, Paragraph 1, Line 4...

"Finally, I.S.D. regularly monitored meetings of government agencies in Baltimore such as the City Council, the School

Statement of Committee:
Continued
Page 27, Paragraph 1, Line 4...

Board, the Liquor Board, utility rate increase hearings and expressway hearings."

My Response:

I wish to repeat myself in assuring you that I.S.D. did not regularly monitor meetings of community interests. Once again, it was only when there was reason to believe that disruptive groups would attend, so that in support of Patrol, we could identify the activity before it got out of hand. I think it necessary to note here also that Community Relations, upon invitation of community organizations, would attend meetings.

much evidence to contrary

As you know, government agencies such as City Council and other hearings such as utility rate increase hearings would request us to attend, sometimes depending on the nature of the issue coming before the hearing agency that day or night, because they were fearful of violence.

uniformed patrol officers handled this function

Statement of Committee:
Page 27, Paragraph 1, Line 6...

"On occasion, I.S.D. personnel utilized concealed recording devices to capture the proceedings."

My Response:

I emphatically deny that any concealed recording devices were used to capture proceedings of City Council, School Board, Liquor Board, utility rate increase hearings or expressway hearings.

Statement of Committee:
Page 28, Paragraph 1, Line 1...

"I.S.D. 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 leaders and speakers and an account of what they said and the names of every person in attendance including members of the press and media."

My Response:
Page 28, Paragraph 1, Line 1...

substantial evidence supports Committee's statement

Members of the press or media were not routinely mentioned in I.S.D. reports. The statement that "names of every person in attendance" is ridiculous; this would be impossible. It is more likely that only those whom the informants recognized were included in written reports. However, it must be stated that should speakers or members of the media engage in criminal activity, there would be no question about their names appearing in I.S.D. files.

Statement of Committee:
Page 28, Paragraph 1, Line 7...

"Certain reports were distributed inter-governmentally, to, for example, the F.B.I., Army Intelligence, the Mayor's Office, and the Attorney General's Office, while others stayed within the Department. Distribution was determined by I.S.D. supervisors."

My Response:

It is true that reports on a need-to-know basis were distributed inter-governmentally. It was quite appropriate to do so. Distribution was determined by the Director of the Division.

Statement of Committee:
Page 29, Line 4...

"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 I.S.D. personnel, upon the oral direction of a police superior."

My Response:

incorrect

The so-called dossier consisting of background reports were prepared only on persons engaging in or about to engage in criminal activities. File cards and activity folders were created, of course, in a business-like fashion, but no background

Continued Response:
Page 29, Line 4...

investigation was made of these individuals unless their activity subsequently indicated that they were about to engage in criminal activity. There was no need for background investigations on individuals who were active in the peace movement of the late 60's and early 70's and none were made simply because they were involved.

As you know, the Intelligence Section is required to conduct comprehensive inquiries of personnel being assigned to sensitive positions within the Department and those being considered for promotion. On a number of occasions we compiled full field backgrounds on these individuals.

While we have no way of knowing what testimony was received in this regard, it is possible that the person testifying had bits of information concerning comprehensive data we gathered during our involvement in the police corruption field. We had complete and comprehensive folders in this regard, and it is possible testimony before the Committee was such as the foregoing and they concluded these were "dossiers."

Statement of Committee:
Page 29, Line 9...

"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 I. S. D. 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.' "

My Response:
Page 29, Line 9...

Untrue - Dossiers were compiled on most major political & community figures in Balto & in some cases, state figures

It is assumed here that the Committee is talking about organized crime figures wherein detailed personal information is obtained within the scope of legal constraints such as the Fair Credit Act of October 26, 1970. Surveillances of criminals were carried out and information obtained reported. I do want it understood that in the domestic intelligence field such background reports were not made unless an individual or individuals crossed that line into the criminal field. Once again, I.S.D. was not interested in the personal habits or personal predilections of these individuals. Dossiers were not compiled in the domestic intelligence field.

Statement of Committee:
Page 30, Paragraph 1, Line 1...

"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."

My Response:

My response to this is to that portion of the sentence beginning "evidence clearly indicates that such files, etc.:" This did not happen and has been responded to previously.

Statement of Committee:
Paragraph 2, Line 6...

"Sources were developed, for example, within the C & P Telephone Company, Bureau of Vital Statistics, F.B.I., National Security Agency, credit bureaus, Baltimore City Liquor Board, State Real Estate Commission, Department of Education, Baltimore City Bureau of Water Supply and the State Department of Assessments and Taxation."

My Response:
Page 30, Paragraph 2, Line 6...

The sources mentioned are frequently used by law enforcement officers in the conduct of bona fide investigations. These are not unlawful sources. Information from any credit bureaus was legally obtained.

Statement of Committee:
Page 30, Paragraph 2, Line 10...

"Most sources supplied information upon informal oral requests; subpoenas were rarely, if ever, used."

My Response:

Subpoenas were not by law required for this kind of information. Oral requests were normal in the acquisition of public or law enforcement information.

Statement of Committee:
Page 31, Line 2...

"Indeed, there is evidence from I. S. D. personnel that often the source's employer did not know of his handiwork on behalf of I. S. D."

My Response:

Sources were never requested to release information that was not consistent with their employer's established guidelines.

Statement of Committee:
Paragraph 1, Line 1...

"An additional duty of I. S. D. 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 I. S. D. supervisory personnel and were filed, at a minimum, according to subject matter

Statement of Committee:
Continued
Page 31, Paragraph 1, Line 1...

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."

My Response:

Newspapers and magazines are public documents. It is necessary for the Police Commissioner and the Department to be informed regarding the feelings of the community towards the Department, in order that the Department be responsive to the community. At no time were articles filed according to author. Radio and television broadcasts would be subject to the same justification as newspapers and magazines. It is in this manner that a responsible officer maintains a sensitivity to the pulse of the community. Effective management needs these kinds of data.

Statement of Committee:
Page 31, Paragraph 3, Line 1...

"With respect to the day to day operation of the unit, supervision of I.S.D. personnel was generally lax. Once given their assignments, unit members 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 I.S.D. 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.' "

My Response:
Page 31, Paragraph 3, Line 1...

The Inspectional Services Division has an extremely low ratio of supervisors and detectives. All members are given detailed instructions on a daily basis. To ensure proper operation of the Division, all investigations must be reported in writing.

Surveillances of individuals suspected of criminal activity is a legitimate technique of a bona fide investigation. Also, it should be noted that Motor Vehicle Administration records are open to the public.

Statement of Committee:
Page 32, Paragraph 1, Line 1...

"Through the aforementioned procedures, I.S.D. 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."

My Response:

I also consider it the height of ridiculousness for the Senate Committee to approve a statement that we would "amass" information on persons who did no more than testify on legislation before the Baltimore City Council or peaceably walk a picket line.

It seems to me to be quite inappropriate for a Senate Committee to release speculative figures which can only contribute to the sensationalism of the issue. We, of course, did not amass data on those who did no more than testify before a legislative body or peaceably walk before a picket line. I could not resent this more.

They admitted, at least [illegible] that they did note everyone in attendance who they recognized. Logically, they kept these [illegible] reports

Statement of Committee:
Page 32, Paragraph 2, Line 1...

"Evidence indicates that in response to requests transmitted from the office of the Deputy Police Commissioner, Frank Battaglia, I.S.D. would furnish reports on many applicants for employment with city, state and

Statement of Committee
Continued
Page 32, Paragraph 2, Line 1...

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 I.S.D. 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. 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 shown."

My Response:

I had to cause an investigation at I.S.D. to find out what the Committee meant by this particular statement. I can never recall Deputy Commissioner Battaglia or his office requesting reports on applicants for federal employment, state, or city. It could be the Committee received incorrect testimony. The only material I can recall that was furnished to Deputy Commissioner Battaglia or his office would be police investigations such as promotions, transfers to the Vice Squad which are cleared by I.S.D., and the involved and complex investigations of police corruption.

Statement of Committee:
Page 35, Paragraph 2, Line 7...

"While I.S.D. 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 I.S.D. personnel to have regularly monitored meetings of community organizations and government 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

Statement of Committee
Continued
Page 35, Paragraph 2, Line 7...

in light of the substantial evidence provided by numerous former members of I.S.D. 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."

My Response:

I.S.D. personnel did not regularly monitor meetings of community organizations and governmental agencies, political campaigns, and picket lines. The history of disruption of City Council meetings, School Board hearings, gas rate and utility hearings, and some strike activities is inscribed in the media for all to know. Where we received information there could be danger to the community at any of these functions, we would be performing less than our duty if we did not keep our Patrol force informed of the build up of activity that might lead to disruption. We were only there for bona fide, legitimate law enforcement purposes.

As I have said previously, these meetings were often attended by revolutionaries who advocated disruption or violence. We knew this because of our covert domestic intelligence operations.

admits ISD there. why use intelligence personell. Uniformed personell already there. Why note everybody who spoke & what they said?

Statement of Committee:
Page 36, Paragraph 1, Line 1...

"When Commissioner Pomerleau and I.S.D. officials were questioned about an I.S.D. 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 I.S.D. 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."

My Response:
Page 36, Paragraph 1, Line 1...

This matter has been addressed on previous occasions, including the Senate Committee hearing of October 18, 1975, wherein you very clearly stated our purpose. The informant in this case reported what went on at the meeting. The informant never would have gone to the meeting in the first place if he had not, when making his rounds that evening, run into members of the Black Panther Party and Soul School who were going to attend the meeting and he was told to come along. Police officers are instructed in their training schools to report what they see and hear. This officer followed those instructions.

Statement of Committee:
Page 37, Paragraph 1, Line 3...

"As a result of these practices, even the most law-abiding citizen was likely to have been named in the I.S.D. intelligence collage if he exercised his constitutional right to speak at a public hearing of the Baltimore City Council or School Board."

My Response:

I.S.D. attended public hearings only upon receipt of information that violence could take place. Many speakers' names would appear in our reports, some of whom advocated violence, others of whom did not advocate violence but who were peaceful, well-intentioned citizens. But an administrator has to know which is which, for instance, a speaker advocates violence and we know this through our files, it would be necessary at the next meeting that they would have to perhaps beef up our Patrol forces in the outer perimeter in case of trouble. It is also the mark of a good administrator that when a speaker who advocates only peaceful measures is going to have a meeting to realize it would not be necessary to gear up for that occasion. This is a necessary element in intelligence gathering and effective management as well.

Statement of Committee:
Page 37, Paragraph 2, Line 1...

"I. S. D. prepared background reports containing very personal and sensitive information concerning various citizens."

My Respose:

We have addressed ourselves to this previously and, once again, a man's personal life and predilections are of no interest.

Then why didn't they purge this info, if "incidentally" obtained?

Statement of Committee:
Page 37, Paragraph 2, Line 4...

"...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."

My response:

No information was collected that was not in reference to possible criminal activity. Milton Allen, Verda Welcome, Orlinsky, Roland Patterson, Henry Parks Etc, etc...?

Statement of Committee:
Page 38, Paragraph 1, Line 1...

"All of I. S. D. 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 surveillances 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."

My Response:
Page 38, Paragraph 1, Line 1...

I consider this an improper conclusion drawn from the lack of credible evidence. Did not the Committee and its Staff ever read the material that the Department submitted to them with regard to detailed written criteria used in guidance of I.S.D. processes? If they did read it, perhaps they did not understand it. We had written and valid and responsible oral guidelines. Our men and women were selected and properly trained to the proper scope of investigative processes. They knew how to go about collecting data in a professional and efficient legal manner. My supervisors knew how to evaluate, as I do, and the storage and subsequent dissemination of intelligence data was performed in keeping with the highest principles of good business practice and responsible management. Our Intelligence personnel were guided, and I resent the accusation that we were neglectful.

If the Committee were aware of the urban problems of the times, they would have known quite clearly the relevance for such data as we collected and stored. I want to state to you now, there was a periodic review of our files as well as our file cards regardless of what the Committee has heard. I initiated this personally and it was carried out by a Lieutenant and a Sergeant on a periodic basis. It is difficult to know what the Committee means by "low level personnel having very broad discretion in vital and sensitive areas." This is very general. My personnel are supervised very strictly and perhaps some testimony has come from personnel who could not stand the supervision and who had to leave my Division for this reason. The statement "...likelihood of misuse of investigative powers was substantial" is among the worst McCarthy-like and cruel statements that has come out of this Senate Committee. There was not misuse of investigative powers and I resent this conclusion.

They keep referring to late 60's & early 70's — Pom Report says was continued thru 1974 until the Balto City grand jury investigation started. Only then did ISD activity stop

Statement of Committee:
Paragraph 2, Line 1

"A factor that was most important to consider with respect to the unit was the mental attitude of I.S.D. personnel about intelligence work and the atmosphere in which they were about performing their intelligence activities. The feeling seemed to prevail in I.S.D. that persons who deviated from the norm,

Statement of Committee:
Continued
Page 38, Paragraph 2, Line 1...

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 resulted in social and personal injustices to others. Indeed, the climate in I.S.D. in which intelligence-gathering activities were carried out, and unchallenged and subjective judgments concerning individuals and organizations were made, was an undesirable one."

My Response:

It is obvious to me that members of the Committee and its Staff have never had the privilege of living in an urban area such as ours during very troubled times. They obviously lack a sensitivity to the problems that were developing from day-to-day and month-to-month. It is unfortunate that they do not possess a keener awareness of an urban area and its problems.

Statement of Committee:
Page 39, Paragraph 1, Line 1

"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, I.S.D. 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 F.B.I."

My Response:

As previously pointed out, we disseminated information only on a strict need-to-know basis, adhering to strict written guidelines. Investigators were closely supervised, as was their report-writing and all dissemination was quite proper.

Why did the Mayor have to know about all meetings of govt agencies? Is this a "strict need-to-know basis"?

Statement of Committee:
Page 39, Paragraph 2, Line 7...

"Furthermore, evidence shows that I.S.D. 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."

My Response:

I.S.D. never issued reports to federal, local or state agencies on applicants. We never permitted these agencies to gain access to our intelligence information.

Statement of Committee:
Page 40, Line 10...

"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."

My Response:

Covert agents oftentimes lived and participated with revolutionaries for a period of years. Their judgments were not poetic--they were objective.

Statement of Committee:
Line 13...

"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."

My Response:

The statement, "absence of formal guidelines," is completely untrue. In I.S.D., during my tenure, with myself having 36 years of law enforcement training, my lieutenant's training

Continued Response:
Page 40, Line 13. . .

and other supervisors and their backgrounds, certainly we had the ability to evaluate data received and establish reliability of sources. It is completely incomprehensible to me that the Committee would expect us to identify our sources in a report. The lack of understanding of an intelligence operation is apparent.

Statement of Committee:
Page 42, Line 1. . .

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

My Response:

The energies of our men were needed to combat crime and potential crime and were so directed--that's what they were doing. I deny there were any abuses in intelligence-gathering as the Committee has concluded there was. I agree with the Committee that I. S. D. members are capable police officers. Once again, this dramatizes the absence of any understanding by the Committee of the intelligence process.

Statement of Committee:
Page 47, Paragraph 1, Line 1

"The Committee received sworn evidence that Mr. Josephson, while in the employ of the UCB, supplied information from consumer credit files to members of I. S. D. without an appropriate court order. 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 I. S. D. were aware that Mr. Josephson provided such information and suggested to division members that his services be utilized. "

My Response:
Page 47, Paragraph 1, Line 1...

The law on obtaining information under the Fair Credit Act of 1970, within my personal knowledge, has always been adhered to by members of I.S.D. Court orders were not needed to obtain credit information within appropriate constraints. Mr. Josephson, who was a civilian employee at the United Credit Bureau at the time, to my knowledge, never provided information outside the constraints of law.

Statement of Committee:
Page 48, Paragraph 2, Line 1

"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 I.S.D. Furthermore, evidence indicated that I.S.D. supervisors were aware that Mr. Josephson provided such information to I.S.D. and condoned this practice."

My Response:

It is denied. I have answered this previously.

CONCLUSION

I think that I would be neglectful if I did not address myself to the entire matter of the allegations against I.S.D. over the past 15 months, particularly the inflammatory sensationalism of the media.

We were accused in the media, all of its forms, without knowing the source or reliability of the information, of having conducted surveillances on elected or appointed officials, clergy, mostly blacks, the media, for no stated purpose. We were alleged, in sensational headlines, to have infiltrated political campaigns and conducted break-ins of elected officials' offices and lawyers' offices. We were accused of monitoring radio broadcasts and conducting indepth investigations of persons

who write letters to the Editor. There were sensational calls for your job and senseless cartoons picturing you, through I. S. D., as having blackmailed high government officials from Governor of the State down. We were cited as having planted concealed microphones illegally and having tapped telephones without a court order. We were alleged to have intimidated legal and legitimate strike activities. We were alleged to have "spied" on activitists. I assure you now as I have assured you before that none of these accusations are true. The men and women at I. S. D. have always conducted themselves in a highly professional, honorable, and legal fashion as they go about their day-to-day activities.

strikes

We heard, after your forthright stand on the illegal police strike of July, 1974, that the strikers "would get you." Shortly thereafter came contacts with the strikers by the media and then the sensational headlines, the Grand Jury investigation, the City Council's attempted probe, and finally the Senate of Maryland set up a committee with much rhetoric to look into I. S. D.

Well, one thing is absolutely true; that is, we infiltrated and "spied" upon the revolutionary activitist groups, the organized criminals of this City, and corrupt police and their corruptors. This perhaps is part of our problem. We were too effective and this seems to bother some.

The recent Senate report contained not a shred of evidence, that we have received, to indicate any legal or moral culpability on the part of I. S. D. or, for that matter, any other unit of this Department. The witnesses that they have heard have obviously been wildly imaginative persons who must have personal reasons for wanting to destroy us. For instance, how ridiculous could it be, and even the Senate Committee at a public hearing on October 18, 1975, was amused, that in testimony given by one of their witnesses at a previous public hearing, sensationalized in the media, had learned I. S. D. had "planted a bug in his clothing." If this is the caliber of the witnesses that they have relied upon in public and behind closed doors, what was the real reason for the probe?

SR 151 directed the Committee to look into all police departments, including the Maryland State Police, in its inquiry. After nine (9) months, the only information that was developed in all of the police agencies combined in the State of

Maryland was one (1) handgun violation and an allegation of improper plea bargaining. What was the true purpose of SR 151?

I could outline many other inconsistencies, ommissions, etc. contained in this lengthy public dispute over I. S. D., but this is not the time or place.

I do think what was most significant in the whole investigation of I. S. D. was the lengthy probe of the local Grand Jury, or two (2) Grand Juries, that sat for five (5) months on a daily basis and heard voluminous testimony from persons concerning I. S. D. The concluding statement of the forelady of that body was "not only nothing illegal but nothing even questionable."

Finally, when I reflect upon the happenings of the past fifteen (15) months, there is only one conclusion--there are those who, for whatever reason, have sought desperately but futilely to bring about your removal from office. They have tried to accomplish this through my Division. I deplore this action.

Respectfully,

Bernard F. Norton
Major

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Detailed Response of Colonel Joseph F. Carroll, Chief,

Criminal Investigation Division

ENCLOSURE (2) to the Report of the Police Commissioner to The Honorable Marvin Mandel, Governor, State of Maryland, February 5, 1976

POLICE DEPARTMENT
BALTIMORE, MARYLAND

26 January 1976

TO: The Police Commissioner

VIA: Official Channels

FROM: Chief - Criminal Investigation Division

SUBJECT: Senate Investigation Committee Report as pertaining to the Criminal Investigation Division, Vice Control Section

Sir:

In keeping with direction received from Deputy Commissioner Frank J. Battaglia, I am submitting this report regarding certain statements contained in the report of the Senate Investigating Committee relating to activities of the Criminal Investigation Division, Vice Section.

Please be advised particular exception is taken to:

STATEMENT OF COMMITTEE
Page 17, paragraph 1

> ".....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.

-continued-

ENCLOSURE (2) to the Report of the Police Commissioner to The Honorable Marvin Mandel, Governor, State of Maryland, February 5, 1976.

STATEMENT OF COMMITTEE
Page 17, paragraph 1 continued

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."

MY RESPONSE

The structure of the Vice Unit provides for close first and second line supervisory scrutiny during the course of each investigation and preparation of search and seizure affidavits insuring accuracy and reliability. All electronic surveillances are conducted under the rigid lawful guidelines you have established.

Present and former command personnel of this unit deny the alleged conspiring with employees of the C&P Telephone Company to circumvent the legal process involved in electronic surveillance.

Retired Lieutenant George Andrews, assigned to the Criminal Investigation Division, Vice Section from 9 November 1961 to December 4 1967 and 3 June 1968 to 19 December 1974 when he retired has denied any such activity by police personnel under his command. It should be noted that retired Lieutenant Andrews informed me that he was summoned before a committee investigator and informed of these allegations by the investigator. At that time he denied these allegations in full, relating that the only information obtained from the telephone company, except under court order was that lawful information pertaining to obscene/threatening telephone calls. After this meeting he was

-continued-

MY RESPONSE (cont)

never asked for a sworn affidavit, not asked to testify under oath before the committee. Nor was he subpoenaed even though he was the individual most familar with the Vice Unit over this time frame. Reportedly Lieutenant Andrews asked to be allowed to undergo a polygraph examination. This was not done.

Also, retired Captain John Cunningham, Commanding Officer of the Criminal Investigation Division, Vice Section from 1 October 1971 to 23 May 1975, related that the only information received from the telephone company was that authorized under law; at no time was there any electronic surveillance conducted by this unit except that authorized by a court order. At no time did any member of the telephone company intercept/monitor telephone calls for members of this unit.

Additionally, it should be noted Mr. George Guest was at no time a member of the Criminal Investigation Division, Vice Section. All his testimony is denied by present and former command members of this section.

Not all of them however. Many were Committee witnesses.

STATEMENT OF COMMITTEE
Page 18, paragraph 3

".....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."

MY RESPONSE

While no exception is taken to Mr. Rouse's statement, I find it necessary to point out that the mere supplying or acquisition of such information is not an illegal act, and other than verifying residency, had no

-continued-

MY RESPONSE (cont)

bearing on wiretaps. This telephone information was, and is still used only to assist in furthering investigations into criminal activities. Subsequent to October 1974, consistent with a change in their policy, the telephone company requested and has received subpoenas, signed by an Assistant State's Attorney, for the furnishing of non-published telephone numbers when members have only the name and address involved in the incident/crime currently under investigation; however, if the number is known the company will still furnish the name and address upon receipt of an official letter from command level personnel.

STATEMENT OF COMMITTEE
Page 49, paragraph 1

".....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."

-continued-

MY RESPONSE

As previously stated, present and former command personnel emphatically denied these allegations regarding the circumvention of the legal process. With regard to this illegal use of wiretap for a personal matter, this is emphatically denied. It borders on the ridiculous.

I would point out, Mr. Guest, having been a member of this Department for some ten years must have been aware of his obligation to notify his superiors or our Internal Investigation Division of such allegations if they were in fact brought to his attention. Obviously Mr. Guest abrogated this responsibility if he had this knowledge while a member of this Department.

STATEMENT OF COMMITTEE
Page 50, paragraph 2

".....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 Office and inform them of the telephone number and seek their assistance in obtaining information concerning thi s 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, the names of individuals mentioned in conversations,

-continued-

POLICE DEPARTMENT
BALTIMORE, MARYLAND

STATEMENT OF COMMITTEE
Page 50, paragraph 2 continued

gambling codes and other information concerning the illegal activity that was obtained by monitoring the telephone line."

MY RESPONSE

As stated previously in this report and in my sworn testimony before the Committee on October 18, 1975, the only information received from the C&P Telephone Company was that information we were lawfully entitled to. Where subpoenas were required they were provided.

STATEMENT OF COMMITTEE
Page 51, paragraph 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. As a safety precaution, the affiants would generally drive past the property in question 'to make sure it was still standing' and to obtain a physical description to include in the affidavits."

MY RESPONSE

Again, as previously stated, the Vice Section did not solicit or receive such information as proported in this allegation. Eavesdrops were conducted only in keeping with duly authorized court order.

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POLICE DEPARTMENT
BALTIMORE, MARYLAND

STATEMENT OF COMMITTEE
Page 51, footnote #2

".....One of the affidavits received by the Committee reads in part as follows: 'Affidavits of members of Vice often times 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 Telephone Company. 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."

-continued-

MY RESPONSE

This footnote is an elaboration of previously stated allegation and is likewise false.

STATEMENT OF COMMITTEE
Page 52, paragraph 1

".....Many Vice officers preferred taking their applications for search warrants to District Court judges rather than members of the Supreme Bench because several of the lower court judges did not scrutinize the affidavits very closely for legal sufficiency or the credibility of the affiant."

MY RESPONSE

There is absolutely no preference between these courts.

STATEMENT OF COMMITTEE
Page 52, paragraph 2

".....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."

-continued-

POLICE DEPARTMENT
BALTIMORE, MARYLAND

MY RESPONSE

The interception as described would be unlawful and we have never participated in unlawful intercepts.

STATEMENT OF COMMITTEE
Page 52, paragraph 3

".....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."

MY RESPONSE

This allegation is, again, denied by present and former Vice Section command personnel.

Committee said that they only had evidence that personell through the rank of CAPTAIN knew. Committee did not say that high-ranking officers knew.

STATEMENT OF COMMITTEE
Page 53, paragraph 1

".....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."

-continued-

MY RESPONSE

Present and former Vice Section command personnel deny this allegation. Furthermore, knowing the safegaurds we have had and have to ensure against mis-use of this equipment, it is frustrating that we now must defend against allegations of violations we have not committed.

Your longstanding policy regarding the utilization of electronic eavesdrops and electronic surveillances was and is that such devices shall not be used in any manner or for any purpose not consistent with law and that, this equipment may be used only after all other lawful means to obtain the necessary information have failed. This we have followed.

It may be helpful, to, once again, point out just what one of my officers must go through before he is allowed to use the department's equipment or even have it under his control. As you know, the Criminal Investigation Division does not have any departmental electronic surveillance equipment and departmental orders prohibit personnel from having such equipment privately.

When one of my Vice officers feels that all other investigative procedures have been exhausted, or they reasonably appear to be unlikely to succeed, if tried, or would be too dangerous, he takes his information to a designated Assistant State's Attorney. If the Assistant State's Attorney determines that the officer has justification for an Order to be issued, then the officer must obtain permission to move forward from the Police Commissioner, by means of a request through the Commanding Officer - approved by the Chief of Detectives and the Deputy Commissioner - Operations Bureau.

- continued -

MY RESPONSE (cont)

Upon receiving this permission, the officer then prepares an Affidavit relating his expertise, probable cause, the exhaustion of all other means of investigation, the justification for the requested Ex Parte Order, the time frame and the number of days the Order will stay in effect.

Based on the information in the officer's signed Affidavit, the Assistant State's Attorney will draw up an Application and an Ex Parte Order authorizing or approving the interception of conversations by described electronic devices. The State's Attorney presents the application and the order to a Judge of the Supreme Bench. If the Judge gives the authorization, then a signed copy is given to the telephone company at that time and the officer requests a lease line. If the telephone company finds the order to be sufficient, they will give the investigating officer approximately six locations where the conversations on the specific phone can be intercepted. Up to this point, even the officer does not know where he can intercept the telephone line in question. When the investigator selects the most suitable location, the telephone company will give him a lease line from that point back to the location of interception. After being apprised by the telephone company of the proper terminals, the investigator or some knowledgeable persons must make the physical connection as the telephone company will not do this.

A copy of the Ex Parte Order, with the full signature of the Chief of Detectives, must be given to the Inspectional Services Division in order to acquire the necessary equipment. Again, we do not have any electronic surveillance equipment under CID control; ISD maintains all such equipment. Contact with the Inspectional Services Division must be done through the Chief of Detectiv

-continued-

MY RESPONSE (cont)

Our follow-up system requires the equipment to be returned to the Inspectional Services Division on the day the order expires or as soon as he has obtained his evidence, whichever is sooner. In the event that electronic equipment to be used is acquired from another law enforcement agency, a representative of that agency must be shown a copy of the Ex Parte Order, and sign an acknowledgement to that effect, and indicate what equipment was loaned. Even if the equipment is borrowed, a copy of the Ex Parte Order, bearing the full signature of the Chief of Detectives, must be given to the Inspectional Services Division for accountability purposes. Supervision ensures adherence to these tight controls.

A continuing log is maintained recording the precise time, date and duration and location of each intercepted communication or fragment thereof, as well as the parties thereto, and the subject matter thereof. Additionally, we advise the Honorable Court of the progress of the interception and the current status of the investigation at least once every 72 hours as required by law.

At the termination of the Order, or on obtaining necessary evidence, whichever is sooner, the original logs and tapes are taken to the Judge who signed the order. He seals them and gives custody of these logs and tapes to the State's Attorney. Duplicates of the original tapes and logs are maintained by the investigating officer(s) to be used as evidence in Court.

-continued-

MY RESPONSE (cont)

These controls, in this department, are more stringent than in any other law enforcement agency I know of. Perhaps if the Committee had more factual knowledge of such matters, they would realize this, too.

STATEMENT OF COMMITTEE
Page 53, paragraph 1

Current employee and supervisor in B.C.P.D. told Committee this.

".....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."

MY RESPONSE

This allegation is "absurd".

STATEMENT OF COMMITTEE
Page 53, Footnote #1

".....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."

MY RESPONSE

The allegations of employing false affidavits has been and is denied.

-continued-

STATEMENT OF COMMITTEE
Page 54, paragraph 2

".....it is clear 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."

MY RESPONSE

This allegation, alleging requesting and/or receiving information unlawfully obtained has been and is denied.

STATEMENT OF COMMITTEE
Page 55, Conclusions, paragraph 2

".....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 warrants prepared by certain members of the Vice Squad."

MY RESPONSE

This conclusion is based upon allegations we have previously denied. The conclusion is likewise denied.

STATEMENT OF COMMITTEE
Page 56, Conclusions continued, paragraph 1

".....It was common practice for members of the Vice Squad to knowingly include untrue information

-continued-

STATEMENT OF COMMITTEE (cont)
Page 56, paragraph 1

in their affidavits for search and seizure warrants, oftentimes upon the instruction of their supervisors, and generally with their knowledge."

MY RESPONSE

Previously denied. The conclusion is denied.

STATEMENT OF COMMITTEE
Page 56, Conclusions continued
paragraph 2

".....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."

MY RESPONSE

Such information has been and is obtained consistent with law and C&P Telephone Company policy. The law does not preclude the acquisition of subscribers' names, addresses, and non-published telephone numbers.

In rebutting the committee's report regarding the Vice Section, it must be pointed out that their own conclusion is that there exists "a reasonable possibility" not probable cause or direct evidence, only a "reasonable possibility" that the allegations as

-continued-

POLICE DEPARTMENT
BALTIMORE, MARYLAND

pertain to the Criminal Investigation Division, Vice Section are true.

Knowing the training, selection criteria, policies and procedures of this agency and the tireless efforts of the dedicated members of this Division, I am hard pressed to understand the Committee's indictment based upon allegations and heresay.

Committee based all its findings in this area on first-hand personal knowledge of sources.

I would hope any evidence they might have received regarding unlawful activity would be forthwith provided appropriate authority for thorough investigation.

Respectfully submitted,

Joseph F. Carroll

Joseph F. Carroll, Colonel
Chief
Criminal Investigation Division

/jrg

Observations of Counsel

The Honorable George L. Russell, Jr.

ENCLOSURE (3) to the Report of the Police Commissioner to The Honorable Marvin Mandel, Governor, State of Maryland, February 5, 1976

Comments of George L. Russell, Jr.
Esquire, Special Attorney for the
Baltimore City Police Department
Re: Report to The Senate of Maryland
by the Senate Investigating Committee
Established Pursuant to Senate Reso-
lutions 1 and 151 of the 1975 Maryland
General Assembly dated December 1975.

February 3, 1976.

ENCLOSURE (3) to the Report of the Police Commissioner to The Honorable Marvin Mandel, Governor, State of Maryland, February 5, 1976

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I

INTRODUCTION

The English historian, Sir Thomas Erskine May, writing in the middle of the 19th century, observed:

> "Next in importance to personal freedom is immunity from suspicions and jealous observation. Men may be without restraints upon their liberty; they may pass to and fro at pleasure: but if their steps are tracked by spies and informers, their words noted down for crimination, their associates watched as conspirators,--who shall say that they are free? Nothing is more revolting . . . than the espionage which forms part of the administrative system of continental despotisms. It haunts men like an evil genius, chills their gayety, restrains their wit, casts a shadow over their friendships, and blights their domestic hearth. The freedom of a country may be measured by its immunity from this baleful agency." (2 May, Constitutional History of England (1863) p.275.)

At the onset, it should be noted that intelligence gathering activities can be arbitrarily divided into two purposes: strategic and tactical. Tactical intelligence is that which has its purpose the enforcement of various penal code provisions at the terminal period of an investigation, directed against specified persons, and within a specific time frame.

Strategic intelligence refers to the collection of data on individuals, groups and places to determine whether penal code violations will take place. In the event violations later occur the persons responsible for the criminal

acts can be brought to justice. By their nature, strategic intelligence investigations may last for many years.

Police intelligence gathering activities have been historically directed against two major groups: the crime syndicate and subversive activities. The former target consists of professional criminals who conspire or act in concert to violate laws proscribing gambling, prostitution, narcotics and drug use, and similar offenses. Hijacking, the infiltration of legitimate businesses, extortion and bribery are related crimes perpetrated by organized crime figures.

Subversive activities refers to those persons or groups who commit sabotage, acts of terror, kidnapping, bombings, arson and lesser offenses for primarily, political purposes. Oftentimes the principals in politically motivated crimes involve themselves in or assume leadership of political action groups that ostensibly seek reform through peaceful methods such as picketing, protest assemblies and rallies.

Other common but less traditional police intelligence activities involve the investigation of labor racketeering, burglary rings, juvenile "gang" activities of a criminal nature, and corrupt practices by public employees.

No distinction will be made in discussing case law respecting the activity sought to be investigated, since the law on all activity questioned applies equally to organized

crime, subversive and other targeted investigations. All data accumulated by the Baltimore City Police Department dealt with criminal activity or the realistic possibility of eventual criminal prosecution.

There is a fine balance which must be struck between the citizen's need and right to be protected and his need and right not to be watched. The question inevitably arises which asks how much watching is required to insure adequate protection. The answer lies for the most part with the citizen himself and his ability to control his behavior and keep his activities within the confines of reasonable constraint. That is, to keep his behavior within such bounds as will assure that his activity will not produce harm or potential harm to his neighbor or himself.

For example, there are rules and regulations governing the operation of a motor vehicle along public streets and highways. One must observe and obey certain signals and signs, and one must give certain signals indicating a planned action with the vehicle, and one must stay within certain speed assigned to the particular thoroughfare upon which one travels. All of these rules and regulations are designed to insure the safety of the vehicle operator and his fellow traveler as well as the pedestrian. No motor vehicle operator need have fear of a police cruiser or an unmarked constabulary vehicle which lurks nearby unless he

has come close to the edge of breaking the rules of the road or unless he has been, frankly, guilty of engaging in excess or disregard of those laws. The only time one comes under the law is when one breaks the law. The fear of the law is in the heart of the evildoer continuously.

There is, however, another kind of fear which has little to do with guilt or with the knowledge that one has broken the law. It is the fear which is generated by concern about government exercising its power to infringe upon the privacy of the individual's person and property unwarrantly. This is brought about by several occurrences, some historical and others philosophic. The path has chronicled the unprincipaled behavior of the governing against the governed. This, I believe, has been transposed into the genetic structure of every individual who has ever felt oppression and has been passed down the generations. The technological advances which have made so many wonderful things possible for the maintenance and prolongation and ease of life have been as productive in securing the destruction of life and property, if not more so. Tension abounds because of the warlike stanches of nations all over the world in the capacity of great powers to cause mass annihilative assaults to come upon the populous at will at any time.

In the smallest sphere local law enforcement is sometimes abusive and punitive beyond reasonability in the

very forces which exist to protect are found to plunder. The black citizen in the inner city community frequently finds himself a potential victim of policeman and criminal at the same time--an unresolvable dilemma. The result is fear, the fear so deadly in many instances as to immobilize.

There are forces in our society which would trade upon the fears we have discussed to maintain their hold on the society and to strangle it until there is no initiative--no motivation for change. This is the gross <u>evil</u> of which we must be wary, and the small segment of that struggle which engages us here provides us with an opportunity to demonstrate to the citizen that we are basically concerned with his right to protection of person and property and because of this it is necessary to watch those who bring us to the brink of lawlessness with a diligence proportional to their desire to be protected. The citizen must also at the same time be assured that the protector will not invade the castle of those he protects unless they, too, approach lawlessness.

II

GENERAL OVERVIEW OF THE COMMITTEE REPORT

This imbroglio began in late 1974 in a large part as a result of purported investigative reporting of several newspaper reporters accusing representatives of the Inspectional Services Division of the Baltimore City Police Department (hereinafter referred to as ISD) of conducting illegal surveillance of individuals not suspected of criminal activities. These stories, that never revealed their source, accused the ISD and the Police Commissioner of various acts against citizens of Baltimore which, if true, would constitute crimes. The thread of commonality of the individuals named was that they virtually all were black. These stories we later learned for the most part emanated from disgruntled police officers who were disciplined and/or resigned as a result of an illegal police strike which virtually immobilized the entire City of Baltimore. Court action was instituted against the police officers who went on strike illegally; and as a result of the court action, the Police Union and its members received justice in accordance with due process of the law, much to their dislike.

As a further result of these news articles, on December 31, 1974, Governor Mandel requested a report from Commissioner Pomerleau, which report was submitted January 6,

1975. Senate Resolution 1 was introduced in the legislature calling for, *inter alia*, the Governor to impanel a "blue ribbon" committee to determine if these unsubstantiated stories were true or false. This resolution introduced into the Senate of Maryland was referred to a newly created committee called the Senate Constitutional and Public Law Committee, headed by a Senator from Prince George's County. The Police Commissioner of Baltimore was invited to speak before that committee which had before it, and to which the Commissioner spoke, Senate Resolution 1 requesting, *inter alia*, that a "blue ribbon" committee be appointed by the Governor. This must be emphasized since throughout the report the Police Commissioner is said to have refused to cooperate after requesting the Senate to pass Senate Resolution 1. The conclusion is inescapable that at the time the Commissioner appeared before this committee all it had before it was S.R.-1 as originally introduced on January 9, 1975, and to which the Commissioner addressed himself. Subsequent to the appearance of the Commissioner on January 14, 1975, S.R.-1 was amended and the Senate referred the matter to a standing committee on January 17, 1975, which was then styled the Senate Legislative Investigating Committee, which was directed to investigate:

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 contractors or other persons initiating, authorizing, or used to further these surveillances.

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 Department.

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

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

4. Matters in the interest of the preservation of the public good.

At this posture the rules changed in that the Senate set up what was labeled as an investigating committee but what we now know to have functioned as an inquisitorial/accusatorial investigative committee and which also operated ultra vires. The hallmark of the committee's deliberations was secrecy, in that, those individuals who accused the Commis-

sioner and the Police Department of these alleged acts reported in the media for the most part were not available to be confronted by the Commissioner, Counsel for the Commissioner, or the members of the Department who were accused and at no time was the opportunity afforded to cross-examine in any fashion those who have accused the Commissioner and the Baltimore City Police Department of illegal acts.

After approximately one year, the committee produced a 56-page report which did not cite one single legal authority for any aspect concerning the existence of the committee, the functioning of the committee, the method utilized by the committee in making findings of fact, and how they resolved conflicting issues of fact. Indeed, the 56-page report is totally void of any facts that even remotely support their bias conclusions, sweeping dogmatic statements, and demonstrates that the committee was on a rush to a preconceived judgment. The document itself is shamefully disingenuous in that the author with surgeon-like precision deleted from paragraphs of reports such as the Grand Jury report of Baltimore City, information which may have lent favor or credibility to the Department. The report, either by willful design or as a result of a total deficit of the author's ability to transpose acquired knowledge into practical application, was accusatorial and reflec-

ted clearly that this committee was set upon the goal in collaboration with others to discredit the Police Commissioner of Baltimore City regardless of what the facts showed to the contrary.

Curiously, the report disclosed nothing exculpatory that the committee received regarding the Commissioner and the Department. There was not one person who alleged by way of personal knowledge or credible evidence that he or she was a victim. It was no mere coincident that the leaders of the striking Police Union were in constant attendance and indeed enjoyed the privileges of the office of the chairman of the committee and was in constant contact with counsel for the committee, as well as the alleged investigative reporters. The committee, with particular reference to the chairman, seized this opportunity for this newly created committee to go to glory on the back of Commissioner Pomerleau and the Baltimore City Police Department. It should be noted here that all but one member of the committee were from the counties of Maryland, and the city member of the committee did not reflect, in any way, that he had the slightest perception of the problem.

The chairman of the committee on February 19, 1975, stated, as reported in THE EVENING SUN that,

> "I felt the pressure--for he saw the probe of ISD as a patriotic issue."

The chairman felt that he found himself being watched long

and hard for the first time and that eyes on him may well belong to interested parties outside of Maryland as well as inside of Maryland. He is further quoted as saying,

> "This is the biggest issue down here this year. There's never been anything like it -- ever. Other states are going to be running into this same business they've had up in Baltimore, too. They'll be looking to us to see what we've done. We can't afford to make any mistakes."

As the committee's report reflects that which started out as a tornado ended as merely being a gust of wind. While the report credits me and the Commissioner as impeding the progress of the committee, I respectfully suggest that I cannot accept the honor, since the committee from its inception was in a rudderless boat on an unchartered sea and wound up in quicksand and sank in the quagmire of the venomous racism and paternalism that polluted the entire inquisition.

A quick perusal of the committee's report will show that it is a compilation of a potpourri of anonymous allegations without a scintilla of fact to undergird them. It is rumored that some of the secret witnesses interrogated were in fact convicted felons. This, of course, has not been substantiated since the committee has refused to give the Commissioner and the Baltimore City Police Department the names, addresses or even a copy of the allegations made against the Commissioner and the Department by the secret witnesses so that they could more intelligently respond to them. This committee was born

with evil intent and died and will be buried in inequity.

Senate Resolution No. 1 ("S.R.-1") was adopted by the Maryland Senate, without the Governor's concurrence, on January 29, 1975. A copy of S.R.-1 is attached hereto and incorporated herein as Exhibit A. Its accusatorial preamble announces the establishment of the committee ". . . to investigate allegations that certain Police Departments, in the State, have engaged in the unwarranted surveillance of individuals . . .", and Baltimore City Police Department is indicted by the second and third recitals:

> "WHEREAS, a report requested by the Governor from the Commissioner of the Police Department is inadequate (emphasis supplied), as it is the Police Commissioner who is suspected of initiating the surveillance program; and
>
> "WHEREAS, there have been disclosures which may indicate that certain surveillances of individuals were without cause, contrary to the public interest of this country, and a breach of the civil rights of those individuals . . ."

The indictment contained in the recitals of S.R.-1 was followed by an implied, preconceived judgment in Section 3's authorization to investigate:

> "Types of recommendations and suggested legislation to curtail future unwarranted surveillance and unnecessary harassment by Police Department . . ."

The duration of the committee was limited by S.R.-1 to the "1975 Regular Session," but the committee was reborn by S.R. No. 151 adopted April 5, 1975, a copy of which is

attached hereto and incorporated herein as Exhibit B. S.R.-151, after reciting implied judgment of improper conduct, continued the investigation to October 31, 1975. The committee's report was prepared December 31, 1975, and made public January 14, 1976, the date the 1976 Session of the General Assembly convened.

III

SPECIFIC OBSERVATIONS

A - THE FUNCTIONING OF THE COMMITTEE

It is anomalous that both S.R.-1 and S.R.-151 arose by authorization by Sections 72 thru 87 of Article 40 of the Annotated Code of Maryland. Section 72 requires:

> "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." (Emphasis supplied).

The committee was neither fair and impartial nor did it protect the constitutional rights of anyone involved in their proceedings including particularly the Police Commissioner and members of the Baltimore City Police Department.

No one would contend that legislative trials or adjudicatory proceedings as well as state juvenile court trials are subject to no federal constitutional limitations. *In re Gault*, 387 U.S. 1, held that although the 14th Amendment does not require (in juvenile cases) that the hearing . . . conform with all the requirements of a criminal trial or even the usual administrative proceeding, the Due Process Clause does require application during the adjudicatory hearing of the "essentials

of due process and fair treatment." The committee by its action in concealing the accusers, accepting hearsay as truth, denying confrontation and cross-examination in any form of the secret witness amounts clearly to "a lack of fundamental fairness" required under Article 40 Section 72 of the Annotated Code of Maryland and the "due process" clause of the Constitution. The committee's report fails to delineate any standard, if any, it used to come to it's sweeping dogmatic conclusions. Did they use, for example, proof beyond a reasonable doubt standard as is required in a criminal case or the preponderance of evidence rule used in civil cases? Here, where criminal activity is alleged by the committee without disclosing the identity of the accusers, it would appear, at the very least, the standard used for juveniles, the reasonable doubt standard should be used.

In the case In the Matter of Samuel Winship, 397 U.S. 358, the Supreme Court stated:

> "The reasonable-doubt standard plays a vital role in the American scheme of criminal procedure. It is a prime instrument for reducing the risk of convictions resting on factual error. The standard provides concrete substance for the presumption of innocence--that bedrock 'axiomatic and elementary' principle whose 'enforcement lies at the foundation of the administration of our criminal law.' Coffin v. United States, supra, 156 U.S., at 453, 15 S.Ct., at 403. As the dissenters in the New York Court of Appeals observed, and we

> agree, 'a person accused of a crime * * * would be at a severe disadvantage, a disadvantage amounting to a lack of fundamental fairness, if he could be adjudged guilty and imprisoned for years on the strength of the same evidence as would suffice in a civil case.' 24 N.Y. 2d, at 205, 299 N.Y.S.2d, at 422, 247 N.E.2d, at 259."

Since the committee's report fails miserably to reflect any facts to undergird it's conclusions, the report is inherently and intrinsically worthless and can in no way shift the burden of "going forward with the evidence to negate it." Of course, it is axiomatic that the burden of proof never shifts to the accused. However, it appears from the mania created by the news media and some public figures who rushed to judgment without hearing the other side, that the accused for the first time in America must prove himself innocent. This posture is, of course, absurd.

In re Samuel Winship, supra, further held:

> "The requirement of proof beyond a reasonable doubt has this vital role in our criminal procedure for cogent reasons. The accused during a criminal prosecution has at stake interest of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction. Accordingly, a society that values the good name (emphasis supplied) and freedom of every individual should not condemn a man for commission of a crime when there is reasonable doubt about his guilt. As we said in Speiser v. Randall, supra, 357 U.S., at 525-526, 78 S.Ct., at 1342: 'There is always in litigation a margin of error, representing error in factfinding,

which both parties must take into account. Where one party has at stake an interest of transcending value--as a criminal defendant his liberty--this margin of error is reduced as to him by the process of placing on the other party the burden of * * * persuading the factfinder at the conclusion of the trial of his guilt beyond a reasonable doubt. Due process commands that no man shall lose his liberty unless the Government has borne the burden of * * * convincing the factfinder of his guilt.' To this end, the reasonable-doubt standard is indispensable, for it 'impresses on the trier of fact the necessity of reaching a subjective state of certitude of the facts in issue.' Dorsen & Rezneck, In Re Gault and the Future of Juvenile Law, 1 Family Law Quarterly, No. 4, pp. 1, 26 (1967).

"Moreover, use of the reasonable-doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law. It is critical that the moral force of the criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned. It is also important in our free society that every individual going about his ordinary affairs have confidence that his government cannot adjudge him guilty of a criminal offense without convincing a proper factfinder of his guilt with utmost certainty."

I might state here that it is a bald-faced lie and the committee and counsel know it, where they state that the ISD "watched" or "infiltrated" (apparently illegally) my campaign as stated on page 27 of the Report. The committee never questioned me or anyone associated with my campaign. Further, it would not have mattered if they had watched my campaign. The committee simply attempted as did elements of

Ironically exhibit C of this report contains a transcript of witness stating that Mr. Russell's campaign was monitored. The witness was the ISD supervisor who directed the surveillance

the media to involuntarily thrust me into the morass. The committee does not possess a scintilla of fact to support this allegation and I challenge it to produce it.

On pages 33 and 34 of the Report, the committee adjectively characterized the Commissioner in the last paragraph on page 33 and the first paragraph on page 34 based on unnamed and unknown persons. This can really only be viewed as "gutter type" accusations which support the unfairness of the procedure of the committee. This besmirching of a man by phantoms, it was perceived, was a "license" reserved only for what is euphemistically called the "fair press." Let those who judge stand to be judged--it is only fair to know the identity and the credibility of these individuals.

The Supreme Court case of In re Samuel Winship, supra, contains an excellent discussion of the social disutility of the committee's actions and the manner in which it operated.

B - PERJURY

The chairman of the committee in his statement to the Maryland State Senate on April 5, 1975, stated:

> "Furthermore, all testimony received by the committee was taken under oath and under the penalties of perjury."

This statement by the chairman was false. See Exhibit C.

Further, as a result of the implications and innuendos of the committee's report, it is essential and vital that the issue of perjury be discussed and treated specially. It is perceived by many and reported in the media from its usual "reliable source" or "persons close the the committee" that there exists a possibility that the "police" lied to the committee. This inference also arises from the basic fabric of the report itself.

Article 27, Section 435 of the Annotated Code of Maryland provides:

> "An oath or affirmation, if made willfully and falsely in any of the following cases, shall be deemed perjury: First, in all cases where false swearing would be perjury at common law; secondly, in all affidavits required by law to be taken; thirdly, in all affidavits to accounts or claims made for the purpose of inducing any court or officer to pass the accounts or claims; fourthly, in all affidavits required to be made to reports and returns made to the General Assembly or any officer of the government; fifthly, in all affidavits or affirmations made pursuant to the Maryland Rules or Maryland District Rules. (An. Code, 1951, § 531; 1939, § 527; 1924, §449; 1912, § 404; 1904, § 356; 1888, § 226; 1692, ch. 16, § 4; 1809, ch. 138, § 8; 1828, ch. 165, § 6; 1858, ch. 414, § 10; 1957, ch. 399, § 17; 1975, ch. 435.)

Further, Article 27, Section 437 provides:

> "Any person who shall make oath or affirmation to two contradictory statements, each of them in one of the cases enumerated in § 435 and in either case shall make oath or affirmation wilfully and falsely, shall be deemed guilty of perjury; and to sustain an

> indictment under this section it shall be sufficient to allege and prove that one of the said two contradictory statements is or must be false and wilful, without specifying which one. (An. Code, 1951, § 533; 1939, § 528; 1924, § 450; 1912, § 405; 1904, § 357; 1894, ch. 262, § 226A.)

The committee pretended that they had authority to give "Miranda" warnings when in fact Article 40, Sections 72-87 of the Annotated Code of Maryland no where provides for the Committee to give a "Miranda" oath. See Miranda v. Arizona, 384 U.S. 439 (1966).

Show me the law that gives policemen "the authority" to give miranda warnings?

Further, as is evident from a Memorandum from the Department of Legislative Reference on the Subpoena Power of the General Assembly, dated July 15, 1975, to Members of the State Senate Policy Committee prepared by one Michael I. Volk, Policy Committee Reporter, it only has authority to issue subpoenas including subpoenas duces tecum (See Exhibit No. D attached hereto). It should be noted that in the same Memorandum, false swearing by any witness before the Legislative Council constitutes and is punishable as perjury (See Article 40, Section 30 - Legislative Council).

In order for testimony to be perjury at common law, the false swearing must be in a judicial proceedings (See Brown vs. State, 171, A.2d, 456). Hence, since the committee and its counsel are presumed to know the law, this portion of the committee proceedings was not only disingenious but

law also has been interpreted to include administrative and quasi-judicial proceeding

was a "sham."

In the Brown case, supra, the Maryland Court of Appeals approved the lower court's instructions to the jury on perjury as follows:

> 'The pertinent language in the statute defining the crime of perjury is as follows: "An oath or affirmation if made wilfully and falsely in any of the following cases shall be deemed perjury. First in all cases where false swearing would be perjury at common law."
>
> 'The essential features of perjury at common law are the wilful making, when under oath in a judicial proceeding or court of justice, of a false statement material to the issue or point of inquiry.
>
> 'The offense consists in the swearing falsely and corruptly and not through a mistake. There must be a specific evil intent to falsify or deceive.
>
> 'If the defendant believed her testimony to be true at the time she testified under oath, then she is not guilty of perjury but if she knew her testimony was false, then she may be guilty of the charge.'

Therefore assuming arguendo that the committee had authority to give "Miranda" warnings and oath it could not constitute perjury at common law and there is no statutory authorization for such a charge.

Any doubt regarding this position is removed by a reading of a pre-filed Bill No. 85 in the House of Delegates by Delegate Doctor providing, inter alia, under proposed new sections of Article 40, Sections 105-111, in Section 110(b)

that a person who knowingly gives false testimony under oath before a Standing Committee shall be guilty of perjury. (See Exhibit E attached hereto).

C - IMMUNITY

On page 19 of the committee's report, the following is stated:

> "--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."

did give transcript to Balto City SAO.

If this statement is true, then the committee did in fact hear evidence of crimes as early as March 1975 which should have been given at that time to appropriate prosecutorial authorities as repeatedly requested by the Commissioner. The chairman of the committee is quoted in the media as follows:

a. THE NEWS AMERICAN, Monday, April 3, 1975:

> "However, most of the committee proceedings have been conducted in private in order to avoid putting witnesses in the position of having to testify publicly they committed or knew of illegal acts by police engaged in spying work."

b. THE NEWS AMERICAN, Monday, April 7, 1975:

> "The committee has been forced to meet in secret to take testimony from witnesses who did npot(sic) ewant(sic) to admit publicly that they committed acts such as illicit breaking and entering and wiretapping for the decret(sic) police Inspectional Services Division."

c. THE SUN, Sunday, April 6, 1974, Mr. Conroy stated:

> "That they (Baltimore City Police Department) also engaged in 'unlawful wiretapping' with the help of employees of the telephone company."

d. THE SUN, Monday, April 7, 1975:

> "Senator Edward T. Conroy (D., Prince Georges), the committee chairman, reported to the Senate Saturday that the investigation had turned up evidence of unlawful wiretapping and other surveillance of private citizens by the ISD."

The above are just illustrations since there exists reams of newspaper articles and television interviews where the chairman of the committee stepped out of his pocket of legislative immunity and made public accusations of crimes against the Police Commissioner and the Department. All of this culminated in the interview of the chairman in U. S. NEWS & WORLD REPORT, dated June 9, 1975, which alleged information was obtained at secret hearings, a copy of which is attached and marked Exhibit F.

This article precipitated the court action in the U. S. District Court of Maryland and contrary to the nonchalant statement on page 21 of the committee's report achieved its

primary objective and that was to close the chairman's mouth as tight as his closed mind. This was achieved, for his mouth was sealed. It is interesting to note here that, in light of a recent 7th Circuit Federal Court of Appeals case, decided January 5, 1976, the culpability of the chairman may be open in that he may have waived his privilege. However, this is a matter that may be discussed in futuro.

Notwithstanding the opinion of the Attorney General that no powers of immunity were vested in the legislature and the clear language of the Bowie case discussed below, the committee, willfully in violation of the law and the rights of its' alleged witnesses, went ahead with closed hearings. (Cf See Withrow, et al. v. Larkin, decided by the U. S. Supreme Court, April 16, 1975, 43 L.W. 4459). This was a rank denial of due process and denial of fundamental fairness to the Commissioner, the members of the Baltimore Police Department and the alleged witnesses as well.

The Court of Special Appeals in the case of Bowie vs. State, 287 A.2d 782 stated:

> "There is no inherent, common law power in the State's Attorney or in the Grand Jury or in the judge or in anyone else to confer immunity from prosecution. Immunity is exclusively a creation of statute and can only exist where a statute has brought it into being. Maryland has no general immunity statute. There are limited statutory provisions providing for the granting of immunity for certain crimes. See, for example, Article 27, Section 23 (Bribery of

Public Officials); Article 27, Section 24 (Bribery in Athletic Contests); Article 27, Section 39 (Conspiracy to Bribe); Article 27, Section 262 (Gambling); Article 27, Section 371 (Lottery); Article 27, Section 400 (Obtaining Liquor by Minors); Article 27, Section 540 (Sabotage); Article 33, Section 26-16(c) (Fair Election Practices); and see State v. Comes, 237 Md. 271, 206 A.2d 124; State v. Panagoulis, 3 Md.App. 330, 239 A.2d 145. None of those apply to the case at bar. It is universally recognzied that, absent a statutory grant of power, the prosecuting attorney is not entitled, solely by virtue of his office, to confer immunity upon a witness. 21 AmJur.2d, Criminal Law, § 150, 'Who may grant immunity'; 8 Wigmore, Evidence (McNaughton Edition 1961); § 2281, 'Expurgation of criminality; . . . . Statutes granting amnesty, indemnity or immunity from prosecution for the offense: In general'; 1 Wharton's Criminal Law and Procedure (Anderson Edition), § 165, 'Immunity from prosecution'; 4 Jones, Evidence § 862, 'Immunity from Conviction--Promise of Prosecuting Attorney'; McCormick, Evidence, § 135, 'Termination of Liability to Punishment: Immunity Statutes'; 22 C.J.S. Criminal Law § 46(2), 'Constitutional and Statutory Provisions for Immunity'; United States v. Ford, 99 U.S. 594, 25 L.Ed. 399. See also the thorough discussion in Apodaca v. Viramontes, 53 N.M. 514, 212 P.2d 425, 13 A.L.R.2d 1427, and the excellent annotation thereto, 'Power of prosecuting attorney to extend immunity from prosecution to witness claiming privilege against self-incrimination,' 13 A.L.R. 2d 1439."

The Court further stated:

"It may be, as the appellant asserts, that he furnished to law enforcement officials information about other crimes and other criminals. If this be so and that information in no way incriminated this appellant, he would be bereft of even an arguable claim of immunity. If the information furnished was not incriminating as to him, he could claim

no privilege against self-incrimination. If there was no privilege to be displaced, there could be no immunity as the displacing agent. Upon a proper summons, he could be required to furnish such information before a Grand Jury or before a trial court, and he would not be privileged to withhold it. As Professor McCormick points out, in Evidence at p. 286, 'Immunity statutes have as their purpose not a gift of amnesty but the securing of testimony which because of privilege could not otherwise be procured.' The point is well articulated in 21 Am Jur. 2d, Criminal Law, § 148, at p. 218:

> 'To be entitled to immunity from prosecution under a constitutional or statutory provision granting immunity, the witness must have given testimony or produced evidence to which the privilege against self-incrimination applies. In other words, the witness becomes immune only if he could have properly refused to testify because his answers could tend to incriminate him or his testimony was of a character he was privileged to withhold.'

See also Henderson v. State, 103 Tex.Cr.R. 502, 281 S.W. 557 (Texas).

"If, on the other hand, the appellant did furnish information to law enforcement officials about other crimes and other criminals and if such information did incriminate him, even then his arguable claim of immunity (assuming a compulsion, assuming a statutory authority for the prosecutor to confer immunity and assuming an actual grant to him of such immunity) would go only to such other crimes and not to the ones at bar. The appellant is not immune, and his prosecution may proceed."

Further, the Supreme Court as far back as 1856 stated:

"In Murray's Lessee v. Hoboken Lane & Improv. Co., 18 How. 272, 15 L.Ed. 372 (1856), an issue was whether a 'distress warrant' issued by the Solicitor of the Treasury under an act of Congress to collect money due for taxes offended the Due Process Clause. Justice Curtis wrote:

> 'That the warrant now in question is legal process, is not denied. It was issued in conformity with an Act of Congress. But is it "due process of law?" The constitution contains no description of those processes which it was intended to allow or forbid. It does not even declare what principles are to be applied to ascertain whether it be due process. <u>It is manifest that it was not left to the legislative power to enact any process which might be devised. The article is a restraint on the legislative as well as on the executive and judicial powers of the government, and cannot be so construed as to leave congress free to make any process "due process of law," by its mere will.'</u> Id., at 276 (Emphasis supplied.)

This case was cited with approval in the case of <u>In the Matter of Samuel Winship</u>, 397 U.S. 358 (1970) by the majority of the Supreme Court in footnote 5 page 1077.

It is clear that the hearings were not investigatory as authorized by statute but <u>accusatorial/inquisitional contrary to the Maryland law and therefore blatantly illegal.</u> The committee has only those powers that are authorized by statute.

<u>U. S., et al. v. Bisceglia</u> decided February 19, 1975, the Supreme Court stated:

> "In Blair v. United States, 250 U.S. 273 (1919), petitioners were summoned to appear

before a grand jury. They refused to testify on the ground that the investigation exceeded the authority of the court and grand jury, despite the fact that it was not directed at them. Their subsequent contempt convictions were affirmed by this Court:

> '[The witness] is not entitled to set limits to the investigation that the grand jury may conduct.... It is a grand inquest, a body with powers of investigation and inquisition, the scope of whose inquiries is not to be limited narrowly by questions of propriety or forecases of the probable result of the investigation, or doubts whether any particular individual will be found properly subject to an accusation of crime. As said before, the identity of the offender, and the precise nature of the offense, if there be one, normally are developed at the conclusion of the grand jury's labors, not at the beginning.' 250 U.S. 282.

The holding of Blair is not insignificant for our resolution of this case. In United States v. Powell, supra, Mr. Justice Harlan reviewed this Court's cases dealing with the subpoena power of federal enforcement agencies, and observed:

> '[T]he Federal Trade Commission . . . "has a power of inquisition, if one chooses to call it that, which is not derived from the judicial function. It is more analogous to the Grand Jury, which does not depend upon a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not." While the power of the Commissioner of Internal Revenue derives from a different body of statutes, we do not think that analogies to other agency situations are without force when the scope of

> the Commissioner's power is called into question.' 379 U.S. 57, quoting United States v. Morton Salt Co., 383 U.S. 632, 642-644.'"

The Commissioner, because of the committee's open defiance of the law, on June 27, 1975, requested the intervention of the United States Attorney for Maryland. A copy of the Commissioner's letter and the reply are self-explanatory and are attached hereto and marked as Exhibit G.

D - QUALITY OF "EVIDENCE" RECEIVED BY THE COMMITTEE

The "evidence" that the Committee states it possesses was obtained in secret hearings either by affidavits or sworn testimony without the presence of the Commissioner, the attorney for the Police Department or the particular police officer or officers allegedly involved. It should be noted that the Rules of Procedure adopted pursuant to S.R.-1 and S.R.-151 gave the chairman of the committee staff authority to initiate investigations and the direction of the inquisition (See Rule 3 - Rules of Procedure attached hereto and marked Exhibit H.)

While the proceedings before the committee amounted to a "legislative trial" and were not judicial proceedings, the quality of the evidence as measured by the accepted legal standards is the same.

In Deinhardt v. State, 348 A.2d 286, the Court of Special Appeals stated:

> "Ordinarily, of course, out of court state-

ments offered for their truth are inadmissible as hearsay, absent circumstances bringing the statements within a recognized exception to the rule excluding hearsay evidence. Smith v. Jones, 236 Md. 305, 312, 203 A.2d 865 (1964); Morrow v. State, 190 Md. 559, 561, 59 A.ed 325 (1948); Myers v. State, 137 Md. 496, 501, 113 A.92 (1921); Thomas v. Owens, Md. App., 346 A.2d 662 (1975). As stated by McCormick, Evidence § 246, 584 (2d ed. 1972):

> 'Hearsay evidence is testimony in court or written evidence of a statement made out of court, the statement being offered as an assertion to show the truth of matters asserted therein, and thus resting for its value upon the credibility of the out-of-court asserter.'

"The mere fact that the statement is reduced to writing does not change its character as hearsay, or bring it within an exception to the hearsay rule. Heil v. Zahn, 187 Md. 603, 608, 51 A.2d 174 (1947)."

The so-called affidavits allegedly obtained are inherently untrustworthy as a matter of law.

The Court of Special Appeals of Maryland further stated in recent case of Deinhardt v. State, supra:

"On September 23, 1975, this Court in State v. DeLawder, Md.App., 344 A.2d 446, 449 (1975), observed that under the Sixth Amendment to the Constitution, the right to be confronted with the witnesses against him, included the '". . . 'primary interest secured by . . . the right of cross-examination.' Douglas v. Alabama, 380 U.S. 415, 418, 85 S.Ct. 1074, [1076,] 13 L.Ed.2d 934 (1965)."' The Supreme Court in Davis v. Alaska, infra, 415 U.S. at 316, 94 S.Ct. at 1110, pointed out that '"Cross-examination is the principal means by which the believability of a witness

and the truth of his testimony are tested."' 344 A.2d at 449. Our adversary system permits, if not encourages, the advocate to inquire into the witness's testimony in order to test memory and perception, as well as to impeach the witness so as to discredit his testimony. Cross-examination, however, is not without bounds. The trial judge is vested with broad discretion so as ' . . . to preclude repetitive and unduly harassing interrogation . . ..' 344 A.2d at 449.

"Chief Judge Orth, in DeLawder, noted that a witness may be discredited by a' . . . cross-examination directed toward revealing possible biases, prejudices, or ulterior motives of the witness as they may relate directly to issues or personalities in the case at hand.' 344 A.2d at 449. Bringing to the surface, for view and scrutiny the witness's motivation for testifying is both a proper and important function of cross-examination and, as such, is a constitutionally protected right. Greene v. McElroy, 360 U.S. 474, 496, 79 S.Ct. 1400, 3 L.Ed.2d 1377 (1959). DeLawder declares that the denial of effective cross-examination is constitutional error of such magnitude that it is immaterial whether prejudice is not shown or is even totally lacking. See Greene v. McElroy, supra; Smith v. Illinois, 390 U.S. 129, 131, 88 S.Ct. 748, 19 L.Ed.2d 956 (1968); Brookhart v. Janis, 384 U.S. 1, 3, 86 S.Ct. 1245, 16 L.Ed.2d 314 (1966).

"In Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974), the Court considered a case wherein Davis was convicted of burglary and grand larceny, largely upon the testimony of a juvenile who had been adjudged to be a delinquent as a result of his participation in a burglary. The juvenile had been placed on probation. Davis's counsel sought to cross-examine the juvenile witness as to the witness's motivation for testifying. Defense counsel wanted to explore the possibility that the

juvenile '. . . made a hasty and faulty identification of . . . [Davis in order] to shift suspicion away from himself as one who robbed the Polar Bar, . . . [and to show that the juvenile] might have been subject to undue pressure from the police and made his identifications [of Davis] under fear of possible probation revocation.' 415 U.S. at 311, 94 S.Ct. at 1108. The State court refused to allow that cross-examination, although the defense was permitted to interrogate solely as to whether the witness was biased. The Supreme Court observed that '. . . counsel was unable to make a record from which to argue why [the witness] . . . might have been biased or otherwise lacked that degree of impartiality expected of a witness at trial.' 415 U.S. at 318, 94 S.Ct. at 1111. The Alaska Supreme Court had affirmed Davis's conviction on the ground that the scope of the permitted cross-examination was sufficient to convey the concept of the bias of the witness to the jury for its consideration. Davis v. State, 499 P.2d 1025, 1036 (Alaska 1972). Mr. Chief Justice Burger, for the majority of the Court, said, 415 U.S. at 318, 94 S.Ct. at 1111:

> '. . . On the basis of the limited cross-examination that was permitted, the jury might well have thought that defense counsel was engaged in a speculative and baseless line of attack on the credibility of an apparently blameless witness . . .. On these facts it seems clear to us that to make any such inquiry effective, defense counsel should have been permitted to expose to the jury the facts from which the jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witness.'

"The opinion of the majority in Davis makes clear that the refusal to allow the defense

to demonstrate bias on the part of the prosecutor's principal witness through cross-examination is a denial of Due Process under the Fourteenth Amendment as well as an infringement upon Davis's Sixth Amendment rights. See State v. DeLawder, supra.

"Although the case now before us was tried non-jury, we believe the holdings of Davis and DeLawder to be, nevertheless, controlling. That Davis and DeLawder were jury trials does not make a scintilla of difference in the application of their rationale to non-jury trials. Where, as here, the trial judge, as trier of the fact and of credibility, limits cross-examination of a witness so as to preclude a demonstration of bias, prejudice or other unworthy motivation on the part of the witness, he prevents the defense from presenting all of the facts, forestalls an adequate basis for assessment of credibility and erodes the purpose of cross-examination, i.e., the search for truth. In short, he places himself in the precarious position of rendering a judgment based upon an incomplete factual predicate.

"Paraphrasing Davis and DeLawder, we cannot speculate whether the revelation of the witness's motivation in testifying would have brought about a different result than that reached by the trial judge. On the other hand, we are unable to state that a disclosure of bias, prejudice or ulterior motives would not have produced a serious question as to the credibility of the witness and possibly injected a reasonable doubt as to the culpability of the accused."

In view of the aforesaid, a fortiori, the committee's report does not contain a scintilla of fact and is totally void of any careful and conscientious resolution of sharply conflicting testimony. The report contains nothing of any probative value

hence it and the conclusions and recommendations contained therein are worthless.

IV

THE PROPRIETY OF INTELLIGENCE GATHERING

The protection of society as a whole demands that intelligence gathering techniques be utilized by the police. Chief Justice Weintraub, writing for a unanimous Supreme Court of New Jersey in Anderson v. Sills, 57 N.J.S. Ct. 210, 265 A.2d 678 (1970), the landmark case concerning information gathering activities by police authorities:

> "Here we are dealing with the critical power of government to gather intelligence to enable it to satisfy the very reason for its being - to protect the individual in his person and things."

and,

> "The First Amendment would be meaningless if there were no constituted authority to protect the individual from suppression by others who disapprove of him or the company he keeps (page 687)."

The "constituted authority" in our government which is responsible for the protection of the individual in his person and property, and in his rights, in the law enforcement apparatus of the state: the police, the prosecution and the courts. The "front line troops" in the law enforcement establishment are, of course, the police--federal, state and local--who have the executive duty of enforcing the law. We turn again to Anderson v. Sills, ibid, for what we believe to be as good a definition of the police function as can be found:

"The police function is pervasive. It is

> not limited to the detection of past criminal events. Of at least equal importance is the responsibility to prevent crime.... In the current scene, the preventive role requires an awareness of group tensions and preparations to head off disasters as well as to deal with them if they appear. To that end, the police must know what forces exist, what groups or organizations could be enmeshed in public disorders. (265 A.2d, at 684)."

It is not optional with the police to forearm themselves with knowledge of potential or threatened criminal activities or activities threatening disruptions of society, it is their duty. The right of every individual to the preservation of the "domestic tranquility", cited in the Preamble to the Constitution of the United States as one of the reasons for the creation of that document, depends in large measure on the preparedness of our law enforcement forces to anticipate and meet the challenge of criminality. This can only be done through efficient police intelligence gathering activities. The Report of the National Advisory Committee on Civil Disorders in its "Supplement on Control of Disorders" cited in the Anderson v. Sills opinion, 265 A.2d at page 685, called specifically for enhanced police intelligence gathering activities with regard to civil disorders, but civil disorders are not the only instances in which intelligence is necessary. Today -- here and now -- the very police intelligence gathering techniques complained of are vitally necessary to cope with the wave of terroristic criminality which is threat-

ening to destroy the social fabric of this country. Terroristic crimes -- those directed at our society itself and at the rule of law upon which our society is based -- are typified by the current wave of bombings and arson and attacks on law enforcement officers. The incidence of these crimes is at an unprecedented level in this country and the level is rising.

The armed robber must, perforce, go to the scene of his crime in order to commit his depredation, but the bomber and the sniper who shoots at an unsuspecting police officer from ambush are not under such a disability. An explosive charge can be concealed long in advance of its detonation time and the sniper can fire from his concealed position and then disappear. When police are dealing with crimes of this type or with clandestine conspiracies to commit such crimes, the only way in which they can hope to prevent them effectively is to have a sufficiently alert intelligence apparatus to learn about the planned acts in advance and so that they will be able to stop them before they happen.

There can be no question but that this nation faces a crisis of terroristic activity. If a revolutionary happens to dislike his government he shows his dislike by bombing a government building; if a militant believes that the police are "repressive", he kills a policeman; if an extremist opposes school desigregation by means of "bussing", he blows up school

busses. Crimes such as these threaten our society to at least as great an extent as do riots and civil disorders, and they are precisely the secret sort of crimes that only police intelligence can hope to cope with effectively. Never in the history of this country has accurate police intelligence been more desperately needed. Rather than considering enjoining such activities as surveillance and infiltration of groups which threaten our national security, courts should be encouraging such activities in every way possible, for only through foreknowledge of the plans of those who would destroy our society can the police protect the right of the law-abiding to live in a free society.

The investigatory techniques of infiltration and surveillance of groups which pose a threat to society have, of late, come under legal attack from various quarters. The leading case in this area is Anderson v. Sills, supra, in which the Supreme Court of New Jersey reversed a lower court injunction against the use of intelligence gathering forms by the New Jersey law enforcement agencies.

Anderson v. Sills further held that based on an exhaustive analysis of the relevant law by Chief Justice Weintraub, stands foursquare for the principle that intelligence gathering activities by police officers do not, in and of themselves, constitute a violation of the First Amendment's guarantees of freedom of speech and freedom of assembly.

Anderson v. Sills dealt with the question of surveillance, primarily because the intelligence forms which were at issue in that case were geared to surveillance of dissident groups. We would point out, with respect to the question of infiltration of such groups that the Court in Anderson v. Sills quoted with approval portions of the Report of the National Advisory Commission on Civil Disorders which recommended that law enforcement agencies should set up intelligence units which . . . "should use undercover police personnel and informants but it should also draw on community leaders, agencies, and organizations in the ghetto." 265 A.2d at 685 (emphasis added).

In addition to Anderson v. Sills, there is a long line of jurisprudence from the United States Supreme Court which has recognized the need for police investigatory tactics such as surveillance, undercover infiltration and the use of informants and has given explicit sanction to such techniques. The question of the use of undercover agents and informants against actual or potential lawbreakers was raised and, for all practical purposes, settled by the Court in two 1966 cases, Lewis v. United States, 385 U.S. 206, 87 S.Ct. 424 and Hoffa v. United States, 385 U.S. 293, 87 S.Ct. 408. Lewis was a fairly typical undercover operation case wherein a narcotics agent, misrepresenting his identity to Lewis, induced Lewis to sell narcotics to him. The sale transpired in Lewis' house.

The Court affirmed Lewis' conviction explicitly recognizing that ". . . in the detection of many types of crimes, the Government is entitled to use decoys and to conceal the identity of its agents." (385 U.S. 206 at 209). In a footnote to the Lewis opinion the Court quotes, with approval, the comment of former Chief Justice Highes upon the use of official deception in combating criminal activity.

> "Artifice and stratagem may be employed to catch those engaged in criminal enterprises . . . the appropriate object of this permitted activity, frequently essential to the enforcement of the law, is to reveal the criminal design; to expose the illicit traffic, the prohibited publication, the fraudulent use of the mails, the illegal conspiracy, or other offenses, and thus to disclose the would-be violators of the law. (395 U.S. 206 ft. 3)."

In Hoffa the Court upheld the use of a government informant who infiltrated his way into the Hoffa confidence and who was admitted to Hoffa's trust so that he was able to overhear incriminating statements relating to the attempted bribery of members of a jury who were then trying Hoffa on another charge. The Court rules that the use of the informant and the use of his testimony at Hoffa's trial for attempting to bribe the jurors did not violate Hoffa's rights under the Fourth, Fifth or Sixth Amendments. See also Osborn v. U.S., 385 U.S. 323, 87 S.Ct. 429 (1967).

In a recent decision upholding the use of undercover officers, the United States District Court for the Central

District of California dismissed a suit brought by students and faculty members of the University of California at Los Angeles to enjoin police officers from going on the campus without disclosing their status as police officers. The Court ruled, inter alia, that: (1) the use of undercover agents to obtain evidence relating to past, present, or future crimes is a lawful technique; (2) the admissibility of evidence gathered by undercover surveillance has no bearing on the right of police to gather evidence in this manner; and (3) plaintiff's fear that this technique will be used against them in some manner is not based upon facts or allegations. (Bagley v. City of Los Angeles Police Dept., U.S. District Court, Central District of California, No. 71-166-jWC, April 22, 1971).

The use of confidential informants to gather evidence has similarly been upheld by the Supreme Court, and, in fact, so important did the Court consider the use of informants to the effectiveness of law enforcement that it ruled in McCray v. Illinois, 386 U.S. 300, 78 S.Ct. 1056, that the identity of a confidential informant who merely provides information to the police concerning the commission of crimes is privileged from disclosure. See also Metros v. District Court, CA 10, No. 432-70 (1970) wherein the U.S. Court of Appeals for the 10th Circuit issued a Writ of Prohibition forbidding a U.S. District Court judge from requiring a Denver police detective to name a confi-

dential informant in a narcotics case.

Thus we see, in the area of the use by police of informants and undercover tactics to ferret out crime, an extremely realistic body of Supreme Court jurisprudence which takes into consideration the very basic fact that without the use of such tactics the police would be, to a great extent, unable to enforce the law.

In addition to this judicial authority, the Congress of the United States in 1968 gave implicit approval to the use of "normal" intelligence gathering techniques in Title III of the Omnibus Crime Control and Safe Streets Act of 1968, Title 18, Sec. 2158. In this Title Congress empowered certain federal and state officers to engage in electronic surveillance provided that prior judicial approval for the surveillance was obtained. One of the requirements for a court authorization to engage in electronic surveillance is that:

> "Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous. 18 U.S.C. 2158(2)(c). (emphasis supplied)

The "normal investigative procedures" which must be exhausted prior to a wiretap order surely include surveillance and infiltration, indicating a legislative attitude by Congress that these techniques can and should be utilized by law enforcement officers in the discharge of their duties.

This is precisely the attitude that should be taken

towards surveillance and infiltration of groups which provide an actual or potential threat to the national security. In order to know whether such groups do, in fact, pose a threat, the police must know the nature of the group itself and this information is best gained by the use of intelligence gathering techniques which have been upheld by the highest Court in the land.

In the case of Katz vs. U.S., 389 U.S. 355, 88 S.Ct. 507 (1967) the Supreme Court stated:

> "For the Fourth Amendment protects people, not places. What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. See Lewis v. United States, 385 U.S. 206, 210, 87 S.Ct. 424, 427, 17 L.Ed.2d 312; United States v. Lee, 274 U.S. 559, 563, 47 S.Ct. 746, 748, 71 L.Ed. 1202. But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected. See Rios v. United States, 364 U.S. 253, 80 S.Ct. 1431, 4 L.Ed.2d 1688; Ex parte Jackson, 96 U.S. 727, 733, 24 L.Ed. 877."

The Court further stated,

> "As the Court's opinion states, 'the Fourth Amendment protects people, not places.' The question, however, is what protection it affords to those people. Generally, as here, the answer to that question requires reference to a 'place.' My understanding of the rule that has emerged from prior decisions is that there is a twofold requirement, first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable.' Thus a man's home is, for most purposes, a place where he expects privacy, but objects, activities, or statements that he exposes to the 'plain view'

> of outsiders are not 'protected' because no intention to keep them to himself has been exhibited. On the other hand, conversations in the open would not be protected against being overheard, for the expectation of privacy under the circumstances would be unreasonable. Cf. Hester v. United States, supra."

The Supreme Court has upheld, as reasonable under the Fourth Amendment, admission at trial of evidence obtained (1) by an undercover police agent to whom a defendant speaks without knowledge that he is in the employ of the police, Hoffa v. United States, 385 U.S. 293, 87 S.Ct. 408, 17 L.Ed.2d 374 (1966); (2) by a recording device hidden on the person of such an informant, Lopez v. United States, 373 U.S. 427, 83 S.Ct. 1381, 10 L.Ed.2d 462 (1963); Osborn v. United States, 385 U.S. 323, 87 S.Ct. 429, 17 L.Ed.2d 394 (1966); (3) by a policeman listening to the secret micro-wave transmissions of an agent conversing with the defendant in another location, On Lee v. United States, 343 U.S. 747, 72 S.Ct. 967, 96 L.Ed. 1270 (1952).

When one man speaks to another he takes all the risks ordinarily inherent in so doing, including the risk that the man to whom he speaks will make public what he has heard. The Fourth Amendment does not protect against unreliable (or law-abiding) associates. Hoffa v. United States, supra. It is but a logical and reasonable extension of this principle that a man assumes the risk that his hearer, free to memorize what he hears for later verbatim repetitions, is instead recording it or transmitting it to another.

In Socialist Workers Party v. Attorney General of the United States, 95 S. Ct. 425 (12/27/74), U.S. Supreme Court Justice Marshall was asked for a stay order on the opinion of the Second Circuit Court of Appeals.

The District Court had granted a preliminary injunction against the Director of the Federal Bureau of Investigation and others, barring government agents and informants from attending or otherwise monitoring the national convention of the Young Socialist Alliance (YSA), to be held in St. Louis, Missouri, between December 28, 1974, and January 1, 1975.

The Court of Appeals held that on the facts of this case, the chilling effect on attendance and participation at the convention was not sufficient to outweigh the serious prejudice to the Government of permanently compromising some or all of its informants. Justice Marshall said:

> "The 11th-hour grant or denial of injunctive relief would not be likely to have a significant effect on attendance at the convention, the Court stated, and since the convention is open to the public and the press, the use of informants to gather information would not appear to increase appreciably the 'chill' on free debate at the convention. * * *
>
> 'This case presents a difficult threshold question--whether the applicants have raised a justiciable controversy under this Court's decision in Laird v. Tatum, 408 U.S. 1, 11 CrL 3184 (1972). * * *
>
> 'The specificity of the injury claimed by the applicants is sufficient, under Laird, to

satisfy the requirements of Art. III.

'Although the applicants have established jurisdiction, they have not, in my view, made out a compelling case on the merits. I cannot agree that the Government's proposed conduct in this case calls for a stay, which, given the short life remaining to this controversy, would amount to an outright reversal of the Court of Appeals.

'It is true that governmental surveillance and infiltration cannot in any context be taken lightly. * * * But our abhorrence for abuses of governmental investigative authority cannot be permitted to lead to an indiscriminate willingness to enjoin undercover investigation of any nature, whenever a countervailing First Amendment claim is raised. (Emphasis supplied)

'In this case, the Court of Appeals has analyzed the competing interest at some length, and its analysis seems to me to compel denial of relief. As the Court pointed out, the nature of the proposed monitoring is limited, the conduct is entirely legal, and if relief were granted, the potential injury to the FBI's continuing investigative efforts would be apparent. Moreover, as to the threat of disclosure of names of the Civil Service Commission, the Court of Appeals has already granted interim relief. On these facts, I am reluctant to upset the judgment of the Court of Appeals. * * *

'As noted above, the Government has stated that it has not authorized any disruptive activity at the convention. In addition, the Government has represented that it has no intention of transmitting any information obtained at the convention to nongovernmental entities such as schools or employers. I shall hold the Government to both representations as a condition of this order. Accordingly, the application to stay the order of the Court of Appeals and to reinstate the injunction entered by the District is [d]enied.' (Emphasis supplied)

Intelligence gathering techniques are necessary to protect the Constitutional Rights of all of our citizens.

In Anderson v. Sills, supra, the Court noted that the First Amendment would be meaningless if there were no constituted authority to protect the individual from the suppression, by others, of First Amendment rights. This statement can be extended to cover all of the rights guaranteed to all individuals by the Constitution and the Bill of Rights. One of the highest functions of the police power of the State is to secure these rights for every citizen against attempts to suppress them on the part of individuals and groups who do not recognize the rights of others. The government, through its police power, is the defender of the rights of all and any interference with the lawful exercise of this power will jeopardize the defense of these rights.

It should be pointed out here that in the case of Mayor and City Council of Baltimore, et al. v. John E. Silver, et ux., 263 Md. 439, 283 A.2d 788 (1971) (a case arising out of the 1968 civil disorders in Baltimore City as a result of, inter alia, the death of Dr. Martin Luther King, Jr.), Judge Finan speaking for the Court stated:

> "That in light of powers available to mayor of city including power of a conservator of the peace or forming a 'posse comitatus,' the Riot Act rendering municipality under certain circumstances liable for damages sustained to private citizens resulting from failure of city to prevent

or contain riotous acts did not deny city or its citizens due process or equal protection though Police Omnibus Act separated city from any control over police department, and city might only be held liable if it, through its proper officials, failed to exercise with reasonable diligence the legitimate powers available to it."

Black's Law Dictionary, Revised Fourth Edition (1968) contains the following definition:

> "RIOT. In criminal law. A tumultuous disturbance of the peace by three persons or more, assembling together of their own authority, with an intent mutually to assist each other against any who shall oppose them, in the execution of some enterprise of a private nature, and afterwards actually executing the same in a violent and turbulent manner, to the terror of the people, whether the act intended were of itself lawful or unlawful. Hawk. P. C. c. 65, § 1. State v. Stalcup, 23 N.C. 30, 35 Am.Dec. 732. Symonds v. State, 66 Okl.Cr. 49, 89 P.2d 970, 973.
>
> "When three or more persons together, and in a violent or tumultuous manner, assemble together to do an unlawful act, or together do a lawful act in an unlawful, violent, or tumultuous manner, to the disturbance of others, they are guilty of a riot. Any use of force or violence, disturbing the public peace, or any threat to use such force or violence, if accompanied by immediate power of execution, by two or more persons acting together, and without authority of law, is a riot."

Under Maryland law and the common law it only takes three people to constitute a riot. How can the Mayor as a conservator of the peace discharge his statutory duty to prevent riots without intelligence? The bald recommendation

of the majority of the committee to transfer the appointing authority from the Governor to the Mayor emanates from stupidity, lack of knowledge and experience, with particular reference to counsel for the committee. This indicates the extent of this superficial and farcical yearlong charade. Would it not be better to repeal the anachronistic Article 82 of the Annotated Code of Maryland former Chapter 137 of the Acts of 1835 ("The Riot Act")?

The recommendation for the transfer is simply another racist tactic emanating from one of the many symbiotic relationships the Police Union has formed to appeal to the unthinking black racists who believe that there exists some rational relationship between black skin and the ability to function. Racism is not the exclusive property of white people and this committee has attempted with aid from the media, elements of which have joined in a symbiotic relationship to use black people as a wedge and cannon fodder to achieve their unworthy aim of removing the Police Commissioner because the Court punished them for breaking the law by striking.

Incredible.

V

OTHER INQUIRIES

The Baltimore City Police Department has inquiries/ investigations from other oversight agencies. Unlike the S.R.-1 and S.R.-151 State Senate Committee, these inquiries/ investigations were made in a professional manner by competent people.

A - SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS WITH RESPECT TO INTELLIGENCE ACTIVITIES (AKA THE "CHURCH COMMITTEE")- U. S. SENATE.

On July 30, 1975, the Commissioner received correspondence from Frederick A. O. Schwartz, Jr., Chief Counsel, requesting *inter alia* to review all aspects of the intelligence activities of the Baltimore City Police Department. Counsel for the "Church Committee" fully disclosed, as a professional would, what they expected but most of all they were interested in facts not publicity.

On August 20, 1975, representatives of the Church Committee visited Baltimore and *all* information requested by the committee's representative that *he* deemed necessary to carry out his function was supplied. The entire Police Department was opened and inspection was made of everything in ISD and Vice, including wiretapping equipment. Openness and candor on the part of the committee and the Baltimore City

Police Department were the theme and it was noted that the cooperation of the Baltimore City Police Department was stated to be unparalled anywhere in the nation.

Of course, this committee had proper oversight jurisdiction in intelligence matters because of the cross-pollination of federal, state and local law enforcement cooperation pursuant to 18 USC 2510-2520, aka Title III of the Omnibus Crime and Control and Safe Streets Act of 1968.

State vs. Siegel, 266 Md. 256 and its progency held, inter alia, that official wiretapping and eavesdropping to be constitutionally permissible, must be obtained in accordance with the dictates of the aforementioned federal law.

On Friday, September 12, 1975, a representative of the Church Committee telephonically informed me that the committee is no longer focusing on the Baltimore City Police Department. I have been authorized to state that discussion among the members and counsel of the Church Committee decided that the matter regarding the Baltimore City Police Department and its relationship with federal law enforcement and/or intelligence gathering agencies at the federal level should not be developed beyond the preliminary investigation conducted by the committee. The committee does not anticipate that the Baltimore City Police Department will be the subject of any

further investigations regarding its intelligence gathering activity.

It should be noted that there is pending in the U.S. Senate S-1 which codifies, revises and amends Title 18 USC.

B - PERRY-JACKSON COMMITTEE OF THE UNITED STATE SENATE - GOVERNMENT ACCOUNTING OFFICE

The commissioner announced publicly that not one penny of federal funds was spent by the Baltimore City Police Department for ISD, Vice or Internal Investigation Division. The representatives of GAO spent three days in Baltimore auditing the Police Department records and found that none of the federal revenue sharing or LEAA funds was spent in IID, ISD or Vice. The investigation was conducted August 29-September 3, 1975.

C - THE UNITED STATES DEPARTMENT OF JUSTICE

Sometime during the year of 1975 the Department of Justice Civil Rights Division conducted a limited investigation of the intelligence gathering activities of the Baltimore City Police Department. No further contact has been made with Police Department officials.

D - GRAND JURY

Two Grand Juries investigated the allegations made in the media of illegal conduct by the Baltimore Police Department. The Police Commissioner and all personnel requested appeared without a subpoena and testified under oath since

the Grand Jury is the proper body to investigate the allegations. The Grand Juries received total and complete cooperation of the Police Department (See U.S. et al. vs. Bisceglia, 43 LW 4242 where the Supreme Court stated:

> " . . . the Grand Jury which does not depend upon a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not.")

On May 9, 1975, the Grand Jury reported:

> "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."

The Jury Forewoman stated further:

> "That the Grand Jury found no basis for indictments and really did not find anything questionable in the activities of the ISD."

She further added:

> "That the Grand Jurors were disturbed about a lot of irresponsible reporting."

E - THE EASTLAND COMMITTEE - SUBCOMMITTEE ON INTERNAL SECURITY - U.S. SENATE

one day

On Tuesday, August 26, 1975, two representatives of the Eastland Committee of the U.S. Senate conducted an inquiry of ISD. No contact has been made by them since that date.

There were other inquiries from various government

and non-government entities, all of whom the Police Department gave total and complete cooperation.

VI

MISCELLANY

A. Mr. David L. Glenn testified against the Commissioner and the members of the Baltimore City Police Department. Mr. Glenn is bright, articulate and personally affable; however, it should be noted what a United States Federal Court stated about the work of the Community Relations Commission of Baltimore City when he was the Director. In the case of Harper, et al. vs. Mayor and City Council of Baltimore, et al., 359 Fed.Supp. 1187 (D Md. 1973) 486 F.2d 1134, 4th Circuit (1973). Judge Young at page 1206-1207 stated:

> "Plaintiffs rely on statistical data from the City's Community Relations Commission and expert testimony for support of the proposition that blacks have fared poorly in promotion, and that poor performance of blacks is inevitable on written tests in general, or these tests in particular. The Community Relations Commission work proved unusually uninformative and the expert testimony was flatly contradicted by the facts. (Emphasis supplied)
>
> "Because of the controversy generated during trial regarding evidence, including expert testimony, introduced by plaintiffs which was said to defile blacks, it would be well to note specifically those portions of the evidence which demonstrate clearly that blacks have done at least as well as whites on the Fire Department promotion exams."

Mr. Glenn's credibility must be questioned in light

of a federal court finding of fact, after a lengthy trial, of the work product of a Commission for which he was directly responsible. The record is replete with acts of Mr. Glenn which would raise one's index of suspicion as to whether he was motivated by animus. His allegation that a sensor type listening device was placed on a typewriter in his office by ISD is an absurdity, ipso facto.

B. Leslie L. Gladstone, Esquire, was appointed as a part-time attorney on May 5, 1975. He has yet to explain the affidavit obtained from Robert White in which he alleged that he had a court ordered wiretap on Mr. White's phone. See Exhibit I.

Further, he has yet to explain the use of information obtained in his position as counsel to the committee in a personal criminal case for his own personal profit. See Exhibit J.

C. Perhaps in retrospect one of the greatest weaknesses of the committee was the inexperience of counsel for the committee. This remark is not intended in any way to demean or otherwise detract from the obvious legal acumen of the committee's full-time counsel. However, it should be noted that two years experience in the State's Attorney's Office of Baltimore City and working in the Office of the State's Legislative Reference Department, drafting legislation, hardly gives rise to the requisite experience required to

See article by MBA re: me.

Also, I served as legal counsel to Howard County P Dept (same as Mr Russell is doing) For over 7 years, I handled all matters for HCPD including all administrative matters

understand the nature and scope of a police operation in a major multi-ethnic city, particularly when the attorney lives in a county.

The committee and counsel refused the opportunity, offered by me, to hear an expert well-known in this state and nation, which would have enabled them to become acculturated to the problems of the city and the problem that a major city police chief faces in combatting crime. In desperation, counsel for the committee made unannounced nocturnal visits to present and former employees of the Baltimore City Police Department. While in almost each instance, counsel was exceedingly courteous, their attitude, as perceived by the parties interrogated, was hostile especially when the one being interrogated either knew nothing about the operation--which was the subject matter of the inquiry--or gave praise to the Police Commissioner and the Baltimore City Police Department.

The committee directed counsel; counsel did not direct the committee. Counsel heroically, but in vain, attempted to retrieve the chairman from ignominious embarrassment. The full-time counsel, indeed both counsel, were simply carrying out the effort on the part of the committee to find support for its preconceived judgment that the Police Department had committed illegal acts thereby enabling the chairman to satisfy his bargain with the police strikers.

Support for this statement is found in the affidavits filed by the Honorable and Mrs. John J. Gallagher, who incidentally volunteered the information received by me to the chairman of the committee first, only to be rebuffed because it would have supported the unholy alliance. See Exhibit K. The affidavits of the Honorable and Mrs. John J. Gallagher have been confirmed by hard evidence by sources outside of the Police Department. Unfortunately, this report is not being presented to the proper forum in which this kind of evidence can be presented. Suffice it to say that full-time counsel for the committee did a magnificant job under all of the circumstances and should be given recognition and applauded for her loyalty to the chairman of the committee, who really did not deserve the degree of fidelity displayed by the attorney.

VII

CONCLUSION

It is apparent that there was never a live controversy since there was never a victim. A central paradox which permeates the committee's conclusions and recommendations in that there was no affirmative link between the alleged incidents and the recommendations. Assuming, arguendo, past exposure to someone to unlawful conduct, nothing in the Report shows a present case or controversy accompanied by any continuing adverse effects. No one has shown the requisite personal stake in the outcome to justify any legislative or judicial action. Baker vs. Carr, 369 U.S. 186, 204 (1962). There is absolutely no showing whether any of the allegations of misconduct were simply improvidently illegal under police regulations or state law or were transgressions of constitutional dimensions.

There is not one iota of factual foundation for the prophylactic recommendations set forth by the committee. The factual nature of the violation determines the scope of the remedy. Swann vs. Charlotte-Mecklenburg Board of Education, 347 U.S. 483 (1954). The Legislature must recognize the principles of equitable restraint in dealing with a co-equal branch of government, particularly when the judicial branch (the grand jury) has found no misconduct on the same subject matter.

Curiously, the committee concluded that it was quite proper for the Police Department to monitor the Black Panthers and The Young Communists without any factual basis. (See page 35 of the Report.) There is no showing at all how the committee arrived at this conclusion. The committee further states, without foundation, that the Police Department had no valid purpose to have regularly monitored other meetings. Does the committee believe that the police were monitoring these meetings lawfully but too often?

The entire report of the committee can be transposed into the hackneyed refrain and litany, "the police conducted illegal surveillance of black citizens not suspected of any criminal wrongdoing." This is the theme, which is false, has been repeated over and over without any factual foundation and the committee's report adds nothing to support the allegation.

The report is merely an echo of the death rattles of the symbiotic alliance between the committee and the police strikers who set out in a futile attempt to remove the Commissioner.

EXHIBIT A to ENCLOSURE (3) to the Report of the Police Commissioner to The Honorable Marvin Mandel, Governor, State of Maryland, February 5, 1976.

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 Committee 42 43

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

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

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

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

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

EXHIBIT A

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

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

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

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

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 investigate the following:

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 contractors or other persons initiating, authorizing, or used to further these surveillances.

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

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

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 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 121 122 123

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 125 126 127 128 129 130 131 132 133

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 135 136 137

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. 139 140 141 142

EXHIBIT B to ENCLOSURE (3) to the Report of the Police Commissioner to The Honorable Marvin Mandel, Governor, State of Maryland, February 5, 1976.

SECOND PRINTING

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.

EXHIBIT B

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.

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.

3. Types of recommendations and suggested legislation to curtail future unwarranted surveillance and unnecessary harrassment by Police Departments; and be it futher

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

RESOLVED, That the Investigating Committee shall exercise its powers from the date of this Resolution until [[December 31, 1975]] October 31, 1975, and shall make its final report by [[January 31, 1976]] December 31, 1975; and be it further

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

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

RESOLVED, That the Investigating Committee shall 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.

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 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,
Baltimore City Police Department, Baltimore, Maryland 175
21202.

EXHIBIT C to ENCLOSURE (3) to the Report of the Police Commissioner to The Honorable Marvin Mandel, Governor, State of Maryland, February 5, 1976.

Address of Senator Edward Conroy
to the Maryland State Senate
April 5, 1975
Re: Senate Resolution No. 151

Pursuant to Senate Resolution No. 1, passed on January 29, 1975, the Constitutional and Public Law Committee began investigating allegations concerning the unwarranted surveillance of citizens of this state by law enforcement agencies. After procuring the services of an attorney, the Committee began its investigation the second week in February. We have had less than two (2) months to conduct the investigation mandated to us. I have distributed to the members of the Senate an outline of statistical information basically reflecting the work we have done to date. As you will note, we have spent approximately 125 hours interviewing over 77 persons. We have issued 10 subpoenas and held 8 hearings, 4 of which were public, 4 of which were private. Actual hearing time consumed 23 1/2 hours and it could be estimated that including preparation, over 35 hours were spent in hearings on the subject matter. 37 witnesses appeared to testify at our hearings. The transcript of the proceedings is approximately 1,135 pages in length. The total cost estimate of our investigation to date is $5,992.00.

We are coming to the Senate this evening in order to ask that we be given an extension of time so that we may complete our investigation and make appropriate recommendations for needed legislation to this body.

The Committee has made every effort in the course of our investigation to obtain reliable, credible information so that we may obtain an accurate picture of the facts pertinent to our inquiry. We have attempted to proceed in as

EXHIBIT C

responsible and cautious a manner as possible. No public disclosures have been made by the Committee concerning evidence received or the identity of individuals or businesses referred to in closed hearings without the express permission of the witness, and authorization by a majority of the Committee members. Furthermore, all testimony received by the Committee was taken under oath and under the penalties of perjury.

During the past week, the Committee has held several meetings where we have discussed the evidence that has been presented to date. We have considered the question as to whether or not there is sufficient evidence in order to make responsible findings of fact upon which to predicate suggestions for legislation to the Senate. It was determined that while we could, in certain areas, make findings of fact "critical" of certain activities which have been conducted by certain law enforcement agencies in the state, a question arises as to fundamental fairness to all persons and agencies concerned with respect to any findings of fact and suggestions for legislation that this Committee may make.

The Committee's first and most important concern is to hold a high standard as to the sufficiency and credibility of evidence upon which findings of fact and legislative recommendations should be based. It is the Committee's opinion that at this juncture in our investigation, additional investigation should be undertaken so that the Committee can say, when it makes its findings of fact, that the findings are based on evidence that is substantial in amount and credible in nature. While much

evidence has been amassed, it is the Committee's belief that further investigation will yield more evidence and provide a broader, ~~better~~ well-founded basis upon which this Committee and, perhaps subsequently, the Senate can act.

Our second concern is that the members of the Administration of these law enforcement agencies should be given the opportunity, once evidence is accumulated, to respond to questions by the Committee concerning these activities. Only after having heard from "both sides" can responsible, factual determinations and legislative recommendations be made. To date, the Committee has been so involved in lawmaking and investigating activities, that invitations to respond to the matters of concern to the Committee have not been extended to specific individuals in law enforcement agencies. Fairness demands that such be done.

The Resolution mandating our inquiry was rather broad in scope. However, there are approximately four (4) areas into which our inquiry has been directed and I would like to review these with you.

First of all, evidence has come to our attention concerning surveillance by law enforcement agencies of persons and organizations unrelated to criminal or subversive activities. Testimony has been given and our investigation has disclosed that there was, for many years, surveillance of meetings, organizations and persons unrelated to criminal or subversive activities. For example, community organizations, improvement associations, school board, Baltimore Gas and Electric Company rate increase hearings and activities at educational institutions were surveilled. In fact, it was stated by a member of an intelligence group, "If there was a meeting of people, we would be there regardless of what they were meeting for". Reports were made on these meetings and the agents were directed to, among other things, get the name of everyone in attendance and some information about them such as where they lived and where they were employed. In turn, a file card and folder was made on every person who was ever mentioned in these reports. An attempt would be made to get a picture of every person for whom a file card and folder were made.

An excerpt from testimony of a person in a supervisory position of an intelligence unit reads as follows:

Q. You were basically responsible for the surveillance of certain organizations and leaders?

A. Yes.

Q. As far as some of the surveillance that you were involved with, let's take the Parren Mitchell campaign, you were involved in seeing that people went to meetings, campaign headquarters, any type of rallies that they might have.

A. Yes.

Q. You saw that people attended those meetings, reported in?

A. Right.

Q. How about other campaigns? How about the Clarence Mitchell campaign, the Russell, the mayorality campaign?

A. Yes. I would have somebody at any rally or public meeting. It was my responsibility to see that they attended and submitted a report, a 95.

Q. That is the name of the report?

A. Yes.

Q. Milton Allen, 1970, his campaign for State's Attorney? You were involved in his campaign?

A. Yes.

Q. Joe Howard, running for judge in Baltimore City? You were involved in that campaign?

A. Yes.

Q. I think you had mentioned some of the organizations to me, the [illegible] organization with the rat problem; meetings at the Law School, the University of Maryland?

A. They were in my area of responsibility also.

Q. All of those were attended, the Baltimore Gas and Electric Company hearings and meetings like that?

A. Any public hearing.

Q. Any public hearing at all if there was a large group, someone from you was there, is that correct?

A. Yes.

Q. School Board meetings? They were attended?

A. Right.

Q. I really think you had just said — you had given a quote to me — If there was a meeting of people, we would be there, regardless of what they were meeting for.

A. Right.

Q. Would it be fair to say that nothing of great value — I think that is what you said — as far as criminal activities or anything to do — with criminal activities came from any of this work by yourself or those persons who were working under you?

A. Right

Q. Let's say one of your agents went to a meeting. What information would he turn over to you?

A. I would make sure that the instructions would be along this line, that I would want to know what the meeting was about, who the main speaker was, the contents of his address, and then the names, if available, of everybody in attendance.

Q. Everybody in attendance?

A. Yes.

Q. So he would give you a report if he went to a community association meeting of any information he could get about what was said, anyone who was there, this he would turn over to you?

A. Right.

There is evidence that members of the media were surveilled in absence of any criminal or subversive activity. Testimony indicates that specific actions may have been taken by law enforcement personnel to discourage coverage of law enforcement activities and criticism of police departments and their members.

A second area in which evidence has been produced is that concerning the lack of sufficient guidelines, criteria and training for personnel engaged in the intelligence gathering process.

As reflected in the transcript above, there is concern by the Committee that there were not sufficient guidelines and criteria for persons engaged in intelligence gathering process in non-criminal areas. Testimony of two (2) officers of intelligence units indicated this. Commissioner Pomerleau testified to the Committee that only recently, after a request was made by the Governor, did his Department promulgate written regulations concerning operation of its intelligence unit. He stated that prior to that time, there were only private letters, memoranda and oral directions for the gathering of intelligence data. Upon being asked whether there was any written criteria for determining the need for surveillance of individuals outside the scope of criminal activity, the Commissioner stated that there was none. To the Committee's knowledge, none exists today.

It was, perhaps, because of the lack of guidelines and criteria that activities such as recruiting youth to join subversive organizations took place.

Reading from the transcript of a member of an intelligence unit:

Q. What were you doing as far as infiltration? Tell them basically what you did as far as these groups are concerned.

A. One of the most prevalent things I guess was recruiting. I had to go around to college campuses and make an effort to recruit students to join the groups. We would disseminate leaflets that we had put together that dealt with all of the bad aspects of capitalism.

With respect to training programs received by members of an intelligence unit, the following testimony was given by a member of that same intelligence unit:

A. I was told that at completion of the course you were given assignments to do, and that these assignments might be on anybody's property or house, or something like this, or a commercial establishment.

It was explained to me that you might be sent to the Hecht Company during closing hours and you have real police out there, but you might have to get in, go to a particular department like the men's wear or something, retrieve an envelope from a suit. the third suit on the rack in size 40 or something like that.

I was told all that. If he got caught of course, you didn't make out too well, but if you got back with whatever you were sent for, that you successfully completed your training.

Q. You told us at least on one, maybe two instances, that within your own personal knowledge there were entries upon property unbeknowns to you of any warrants being issued.

Do you know of what other people told you that the personnel did the same thing on other occasions?

A. Not really, no.

EXHIBIT D to ENCLOSURE (3) to the Report of the Police Commissioner to The Honorable Marvin Mandel, Governor, State of Maryland, February 5, 1976.

MEMORANDUM

TO: Members of the Policy Committee
SUBJECT: Subpoena power of the General Assembly
DATE: July 15, 1975

From
DEPARTMENT OF
LEGISLATIVE REFERENCE
16 Francis Street — P.O. Box 348
Annapolis, Maryland 21404

At a meeting of the Policy Committee held on June 17, 1975, the matter of approving the prior issuance of two subpoenas duces tecum by the Joint Committee on the Management of Public Funds was considered. A motion to require the chairman of a standing or statutory committee to inform the Policy Committee of its intention to issue a subpoena prior to the issuance and to furnish the reasons therefor was deferred pending receipt and review of a summary, which follows herewith, of the laws relating to the subpoena power of the General Assembly.

1) Annotated Code of Maryland

Article 40, Section 30 - Legislative Council:

Has authority to issue subpoenas, compel the attendance of witnesses and the production of papers,books, accounts, documents, and testimony, and to take the deposition of witnesses (residents and nonresidents); an individual Council member may apply to a circuit court to have a witness compelled to obey a subpoena by contempt proceedings; false swearing by any witness before the Council constitutes and is punishable as perjury.

Article 40, Section 40A - AELR Committee:

Has authority to issue subpoenas, including subpoenas duces tecum, conferred by reference to the powers of the Legislative Council (" ...and the committee has the same powers as are given to the Legislative Council in Section 30 of this article.") .

Article 40, Section 79 - Legislative Investigating Committees:

(Must be established by resolution and may be (1) a standing committee of either House of the General Assembly; (2) a joint committee of both Houses; (3) a

EXHIBIT D

subcommittee of a standing or joint legislative committee; or (4) the Legislative Council or any of its committees or subcommittees, when acting at the direction of the General Assembly): Have authority to issue subpoenas, including subpoenas duces tecum.

Article 40, Section 93 - Joint Committee on the Management of Public Funds:

Has authority to issue subpoenas, including subpoenas duces tecum, conferred by reference to Section 30 of Article 40.

Article 40, Section 61C - Legislative Auditor (established as part of the Department of Fiscal Services):

May require the production of books and accounts of any office or officer which the Legislative Auditor is authorized to examine and may issue process compelling attendance of certain witnesses.

2) Constitution of Maryland

Article III, Section 24 -

(a) House of Delegates may, as the Grand Inquest of the State, inquire into all complaints, grievances, and offenses and may commit any person to jail; the House may, as the Grand Inquest, examine and pass all accounts relating to the collection or expenditure of revenue; in acting in this capacity, the House " may call for all public, or official papers and records, and send for persons whom they may judge necessary in the course of their inquiries, concerning affairs relating to the public interest ..." .

(b) General Assembly shall create at every session a joint standing

Re Subpoena power of the General Assembly

committee of the Senate and House of Delegates which has authority " to send for persons, and examine them on oath, and call for public, or official papers and records " and " to examine and report upon all contracts made for printing stationery, and purchases for the public offices, and the Library, and all expenditures therein, and upon all matters of alleged abuse in expenditures, to which their attention may be called by resolution of either House of the General Assembly. "

(Attached is an Opinion of the Attorney General, issued January 17, 1929, relating to the power conferred upon the House by Article III, Section 24 of the Constitution.)

3) Excerpt from Corpus Juris Secundum (81 C.J.S. 45) dealing with a legislature's right to compel attendance of witnesses and the production of evidence:

" On an inquiry by the legislature to ascertain facts which affect the public welfare and the affairs of government, the legislature may compel the attendance of witnesses and the production of evidence to the end that it may perform its constitutional functions by the enactment of laws to correct public dangers, and this power may be delegated to a committee ...... Accordingly, if the subject of investigation is within the range of legitimate legislative inquiry and the questions are pertinent thereto and do not call for privileged matter, either House, if so authorized, or a committee thereof, although sitting in recess, may summons witnesses and compel obedience thereto, it being held that the inherent and auxiliary powers reposed in legislative bodies to conduct investigations carries with it such power. " .

MICHAEL I. VOLK

Policy Committee Reporter

MIV/b

(4) To supervise the work of interim committees or commissions appointed at the direction of the General Assembly or of either house;

(5) To prepare a legislative program in the form of recommendations or bills or otherwise as in the opinion of the Council, the welfare of the State may require, to be presented at the next session of the General Assembly. (An. Code, 1951, § 28; 1939, § 27; 1939, ch. 62, § 27.)

§ 29. Suggestions and recommendations; committees; reports; hearings; preparation of bills.

In order to carry out its functions the Council

(1) Shall receive recommendations and suggestions for legislation or investigation from the members of the Council, and of the legislature; from any board, commission, department or officer of the State government or any local government; from bar associations, chambers of commerce, labor unions or other organized groups; and from individual citizens;

(2) Shall refer to the director of research for a study and report by the research division such of the suggestions and recommendations received as it deems worthy of consideration;

(3) May appoint committees composed of such persons as the Council may select, to assist the Council on any subject or matter by study, investigation or advice;

(4) Shall consider the reports of the director of research and of such committees and shall make such recommendations thereon as in its opinion the welfare of the State may require;

(5) May hold hearings on any subject or matter whenever it shall consider such hearings necessary or desirable in the performance of its duties;

(6) Shall cause the preparation of such bills as may be necessary to carry out any recommendations of the Council. (An. Code, 1951, § 29; 1939, § 28; 1939, ch. 62, § 28; 1956, ch. 37.)

§ 30. Powers.

In the discharge of any of its functions or powers, the Council shall have the authority to administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents and testimony, and to cause the deposition of witnesses, residing either within or without the State, to be taken in the manner prescribed by law for taking depositions in civil actions in the circuit courts. In case of disobedience on the part of any person to comply with a subpoena issued in behalf of the Council, or on the refusal of any witness to testify to any matters regarding which he may be lawfully interrogated, it shall be the duty of the circuit court of any county, or of any judge of the Supreme Bench of Baltimore City, on application of a member of the Council, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court

ART. 40- MELR Committee

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l elect one of its members

and Speaker of House.—
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of Delegates each shall be
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its committees shall be ap-
Speaker. (An. Code, 1951,
887; 1943, ch. 957; 1945,
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3; 1939, § 31; 1939, ch. 62,

or "research division of the

§ 38. Expenditure of appropriation.

The appropriation for the Legislative Council, which for budget purposes shall be treated as a legislative expense, may be expended, in accordance with the budget:

(1) Repealed.

(2) To pay for necessary stationery and supplies and printing for the Council and research division.

(3) To reimburse witnesses required to appear before the Council by its order, and members of unpaid committees appointed by the Council, for actual traveling and hotel expenses incurred in attending any session of the Council or of any such committee. (An. Code, 1951, § 38; 1939, § 36; 1939, ch. 62, § 36; 1945, ch. 887, § 36; 1947, ch. 46; 1963, ch. 570; 1971, ch. 44.)

Cross reference. — See "Resolution of the General Assembly Compensation Commission Determining the Compensation and Allowances of Members of the General Assembly" set out immediately following the analysis to this article.

Effect of amendment. — The 1971 amendment, effective July 1, 1971, substituted a colon for a period at the end of the first paragraph, eliminated former paragraphs (2) and (5) and redesignated former paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

§ 39A. Merit system status of employees.

The secretarial, clerical and stenographic employees of the Legislative Council are transferred to the employment of the State Department of Legislative Reference and are members of the classified service under Article 64A of this Code, subject to all the rights, privileges, and duties of that article. All other employees of the Legislative Council also are transferred to the employment of the State Department of Legislative Reference and are not included in the classified service under Article 64A. (1965, ch. 454, § 1; 1971, ch. 44.)

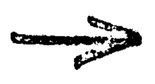
Effect of amendment. — The 1971 amendment, effective July 1, 1971, added "transferred to the employment of the State Department of Legislative Reference and are" in the first sentence and added "also are transferred to the employment of the State Department of Legislative Reference and" in the second sentence.

COMMITTEE ON ADMINISTRATIVE, EXECUTIVE AND LEGISLATIVE REVIEW

§ 40A. Generally.

(a) *Created; name.*—A joint standing committee of the Senate and House of Delegates of Maryland is created, to be known as the Committee on Administrative, Executive and Legislative Review and to have the powers and duties here provided.

(b) *Composition; appointment and terms of members; chairman.*—At the conclusion of each regular session of the General Assembly the President of the Senate and the Speaker of the House of Delegates, each with



the approval of the respective house of the General Assembly, shall appoint respectively five Senators and five Delegates to comprise the committee until the following year. The number of Senators and the number of Delegates of each political party shall be approximately in the same proportion as their membership in each house. In alternate years the President and the Speaker shall name the chairman of the committee, alternating between members from the two houses.

(c) *Inquiries and reviews.*—The committee may inquire into any failure, actual or alleged, of an officer or employee of either the legislative, executive, or judicial branches of the State government to comply with the statutory or constitutional law of the State. It may review the rules and regulations which are adopted and promulgated by any of the several departments, boards, commissions, or other agencies of the executive branch. It may review the operations and controls of any such department, board, commission, or other agency, making recommendations in the discretion of the committee for improvements in these operations and controls.

(d) *Staff assistance and procedural aid; reimbursement for expenses; powers.*—The committee shall be supplied with staff assistance and procedural aid from the Department of Legislative Reference, and the committee members shall be reimbursed for their expenses incurred on committee business from the General Legislative Expenses Fund as administered by the Legislative Accounting Office; and the committee has also the same powers as are given the Legislative Council in § 30 of this article.

(e) *Annual report.*—At least once each year the committee shall report to the members of the Legislative Council and of the General Assembly of its work and studies of the year, together with any recommendations it may have for the more effective operations of the three branches of government within the framework of the statutory and constitutional law of Maryland. The report shall also include any recommendations for appropriate legislative action necessary to modify, change or reverse any rule, regulation or standard which the committee has considered.

(f) *Submission to committee of proposed rule, regulation or standard; emergency measures.*—At least 60 days prior to the adoption of any rule, regulation, or standard by any of the several departments, boards, commissions, or other agencies of the executive branch, the rule, regulation, or standard shall be submitted to the committee as provided in Article 41, § 256-I. The rule, regulation or standard is not effective until so submitted. However, the submission of the proposed rule, regulation, or standard to the committee does not prevent the adoption and promulgation of the rule, regulation, or standard by the department, board, commission or other agency after the 60-day period. If the adopting agency declares the rule, regulation, or standard necessary as an emergency measure, the rule, regulation, or standard may become effective immediately after submission to the committee if approved by the committee or its chairman or

vice-chairman. (196
1974, ch. 600, § 3.)

Effect of amendment
Acts 1972, effective Jul
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Legislative Review" to "
ministrative, Executive
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ministrative, Executive
Review" for "Committ
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"five Senators" for "t
"five Delegates" for "t
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The changes made b
effective July 1, 1972
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§ 41. Operation

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Code, 1951, § 41;

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MANAGEMENT OF PUBLIC FUNDS

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second sentence and made such minor
nges therein as adding "in the State"
l eliminating "several."
As the other subsections were not
ected by the amendments, they are not
forth above.

CODE A ID MANUAL

members of General Assembly.

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1971, ch. 37; 1972, ch. 388.)

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§ 90. Committee's function.

It is the function of the committee:

(1) To promulgate rules of legislative ethics with respect to conflict of interest governing members of the General Assembly. The rules sha be presented by a joint resolution and become effective after adoption b a constitutional majority of each house voting separately; and the rule shall be effective on a year-round basis.

(2) To issue guidelines and establish procedures for the implement tion of rules adopted.

(3) To issue advisory opinions upon request of members of the Gener Assembly regarding legislative ethics concerning an action taken or co templated by any member.

(4) To maintain public records as the rules require. (1972, ch. 5; 197 ch. 433.)

Effect of amendment. — The 1973 amendment, effective July 1, 1973, added the language following the semicolon at the end of paragraph (1).

§ 91. Committee meetings; compensation and expenses of membe

The committee shall meet at times it deems appropriate. Its memb shall serve without compensation for services rendered to the commit but shall be paid their necessary expenses in carrying out their obligati under this subtitle. (1972, ch. 5.)

JOINT COMMITTEE ON THE MANAGEMENT OF PUBLIC FUNDS

§ 92. Establishment; composition and appointment of memb chairman and vice-chairman; termination of committee

The Joint Committee of Public Funds is established. There shall be members of the Committee, three to be members of the Senate of M land and three to be members of the House of Delegates of Mary The respective appointments shall be made by the President of the S and the Speaker of the House of Delegates, who jointly shall desig the chairman and vice-chairman of the Committee. The respective pointees shall serve at the pleasure of the President of the Senate the Speaker of the House of Delegates. The Committee shall be in exis until July 1, 1975, at which time it shall terminate, unless extende the General Assembly. (1973, ch. 635.)

§ 93. Meetings; expenses; powers of Legislative Council.

The Committee shall meet at times it deems appropriate. The bers shall be reimbursed for expenses incurred in the performai their duties. The Committee shall possess the powers of the Legi Council as provided in § 30 of this article. (1973, ch. 635.)

(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

and audit, acting through the Legislative Auditor, may direct any such office or other agency to adopt and follow a proper method of keeping books and accounts as the committee deems proper and advisable. If it appears at any time that any officer or employee whose accounts have been examined by the Division of Audits is in default to the State for any sum or sums of money, the joint committee on budget and audit shall direct the State's Attorney of the county or of Baltimore City to bring action in the name of the State against the officer or employee and his bond, if any, to recover the money due to the State. In the discretion of the joint committee on budget and audit, the Attorney General may be directed to bring this suit.

(f) *Accounting directives by Comptroller.*—From time to time the Comptroller, on the basis of audit reports submitted to him, is hereby authorized to require the several offices and agencies of the State to comply with accounting directives issued by his office and recommendations made by the Legislative Auditor and the Joint Budget and Audit Committee.

(g) *Uniform fiscal year for State offices, etc.*—All State offices, officers, departments, boards, bureaus, commissions, institutions and other agencies shall have as a uniform fiscal year the period defined as such in § 2 (20a) and § 29A of Article 31 of this Code as amended from time to time. They shall keep their books, accounts, statements, and reports in accordance with this fiscal year. (1968, ch. 456, § 5; 1969, ch. 442, § 3.)

Cross reference.—See Editor's note to § 54 of this article.

Effect of amendment.—The 1969 amendment substituted "is hereby authorized to" for "shall" in subsection (f) and added "and recommendations made by the Legislative Auditor and the Joint Budget and Audit Committee" at the end of that subsection.

LEGISLATIVE AUDITOR

§ 61C. Examination of books and accounts; witnesses.

(a) *Production of books and accounts before Legislative Auditor; examination of witnesses.*—The Legislative Auditor may require the production before him of the books and accounts of any office or officer which he is authorized to examine. He may examine any such officer under oath touching the affairs of his office, or he may examine under oath any other person as a witness if he is advised that the person has important information concerning the conduct of the office. The Legislative Auditor may issue process compelling the witness to attend before him, which shall be directed to the sheriff of the county or Baltimore City where the witness may be found. The sheriff shall serve this process promptly. The cost of the process shall be paid by the State.

(b) *Refusal to appear or to allow examination.*—Any officer who refuses to allow an examination of the books and accounts of his office or agency and any witness served with process who refuses or neglects to appear before the Legislative Auditor or refuses to answer upon oath concerning the conduct of the office, or as to the books and accounts of

CONSTITUTION OF MARYLAND

peared that there was never any action on it by the Senate after it was amended by a conference committee and passed by the House.

Stated in Richards Furniture Corp. v. Board of County Comm'rs, 233 Md. 249, 196 A.2d 621 (1964).

Cited in Redwood v. Lane, 194 Md. 91, 69 A.2d 907 (1949).

Section 23. Each House may punish disrespectful, etc., behaviour, obstruction of proceedings or officers.

Each House may punish by imprisonment, during the session of the General Assembly, any person, not a member, for disrespectful, or disorderly behaviour in its presence, or for obstructing any of its proceedings, or any of its officers in the execution of their duties; provided, such imprisonment shall not, at any one time, exceed ten days.

Section 24. Powers of House of Delegates as grand inquest of State; joint standing committee of Senate and House.

The House of Delegates may enquire, on the oath of witnesses, into all complaints, grievances and offenses, as the Grand Inquest of the State, and may commit any person, for any crime, to the public jail, there to remain, until discharged by due course of Law. They may examine and pass all accounts of the State, relating either to the collection or expenditure of the revenue, and appoint auditors to state and adjust the same. They may call for all public, or official papers and records, and send for persons, whom they may judge necessary in the course of their inquiries, concerning affairs relating to the public interest, and may direct all office bonds which shall be made payable to the State, to be sued for any breach thereof; and with a view to the more certain prevention, or correction of the abuses in the expenditures of the money of the State, the General Assembly shall create, at every session thereof, a joint Standing Committee of the Senate and House of Delegates, who shall have power to send for persons, and examine them on oath, and call for Public, or Official Papers and Records, and whose duty it shall be to examine and report upon all contracts made for printing stationery, and purchases for the Public offices, and the Library, and all expenditures therein, and upon all matters of alleged abuse in expenditures, to which their attention may be called by resolution of either House of the General Assembly.

Cited in Cochran v. State, 119 Md. 539, 87 A. 400 (1913).

Section 25. Consent required to adjournment.

Neither House shall, without the consent of the other, adjourn for more than three days, at any one time, nor adjourn to any other place, than that in which the House shall be sitting, without the concurrent vote of two-thirds of the members present.

IAL LAW.

F DELEGATES HAS INQUISI-
PLOY COUNSEL IF AUTHOR-

January 17th, 1929.

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large, and has full power to investigate not only financial matters, but all affairs relating to the public interest, and the appointment of a joint standing committee of the Senate and House of Delegates, to examine into the conduct of the different State offices, is made a part of the constitutional duties of the General Assembly.

It is my opinion that the House of Delegates, as a whole, can proceed with any investigation as in their judgment is proper, but that if the matter is referred to the Joint Committee of the House and Senate, appointed under the provisions of the above section, they should act as a Joint Committee, in joint session, in conducting any proceedings in connection with the investigation. This committee has no power other than the inquisitorial powers conferred, except to report back to the General Assembly, which may take such action on the report as it may deem proper.

I do not think there is any power in a committee of either House or of the joint committee to delegate any part of its powers of investigation to any one. If the House as the Grand Inquest, or the Joint Committee of the House and Senate, desires to employ counsel to assist in the investigation, I think such action should be authorized by the General Assembly.

Trusting the above will answer your questions, and with kind regards and always at your service, I am

Yours very truly,

THOMAS H. ROBINSON, *Attorney General.*

CONSTITUTIONAL LAW—LEGISLATURE HAS NO POWER TO DECREASE SALARIES OF JUDGES DURING THEIR TERM OF OFFICE.

February 2, 1929.

Hon. James J. Lindsay,
Chairman, Ways and Means Committee,
House of Delegates,
Annapolis, Md.

DEAR MR. LINDSAY: I have your letter of the 30th ultimo,

CONSTITUTIONAL LAW.

CONSTITUTIONAL LAW—HOUSE OF DELEGATES HAS INQUISITORIAL POWERS AND MAY EMPLOY COUNSEL IF AUTHORIZED BY GENERAL ASSEMBLY.

January 17th, 1929.

Honorable Francis P. Curtis,
House of Delegates,
Annapolis, Md.

DEAR MR. CURTIS: I am just in receipt of your favor of the 16th inst., in reference to the questions that have arisen as to the jurisdiction of the Committee of the House and Senate, relative to the investigation of the affairs of the Maryland State Roads Commission, under the provisions of Section 24 of Article III of the Constitution.

Under the provisions of that section, the House of Delegates is the Grand Inquest of the State of Maryland, to examine and pass all accounts of the State relating either to the collection or expenditures of the revenue, with power to appoint auditors to state and adjust the same, and they may call for all public or official papers and records, and send for persons whom they judge necessary in the course of their inquiries, concerning affairs relating to the public interest, etc., and the same section further provides that the General Assembly shall create, at each session thereof, a joint standing committee of the Senate and House of Delegates, who shall have power to send for persons and examine them on oath, and call for public or official papers and records, and whose duty it shall be to examine and report upon all contracts made for printing, stationery and purchases for the public offices and of the Library, and all expenditures therein, and upon all matters of alleged abuse in expenditures, to which their attention may be called by resolution of either House of the General Assembly.

It will be seen that the House of Delegates is empowered by this provision to act as a Grand Jury for the State at

81 C. J. S. 45

tions imposed by the statutory provisions[82] or the resolutions of the legislature[83] under which he committee is appointed.

b. Scope of Investigation

The powers of an investigating committee, subject to limitations on the investigating power of the legislature, are in general as broad as the resolution constituting it; but the inquiry must be confined to facts relevant to the subject of the investigation.

The powers of an investigating committee, subject to limitations on the investigating power of the legislature, discussed supra subdivision a of this section, are in general as broad as the resolution constituting it.[84] While the powers allowed to a legislative committee are necessarily exceedingly broad and include a search into the subject matter of the investigation far beyond the scope of a judicial trial, not being confined to evidence such as would be required on a trial at law, its powers are not unlimited and its inquiry must be confined to facts relevant to the subject of the investigation,[85] and the answer of a witness cannot be compelled either by the legislature or one of its committees on an inquiry or investigation, except for legislative purposes or in acquiring information on which to predicate remedial legislation.[86] So a witness cannot be compelled under the guise of a legislative study of conditions bearing on proposed legislation to reveal his private and personal affairs, except to the extent to which such disclosure is reasonably required for the general purpose of the inquiry.[87] A legislative committee investigating subversive activities in a period of unlimited national emergency is required to adhere to American principles of fair play as far as consistent with the necessities of public safety.[88] It has been held that a subcommittee cannot take evidence in camera.[89]

§ 44. —— Exercise of Judicial Powers

While in some aspects legislative investigations may partake of judicial attributes and require the exercise of quasi-judicial faculties, it is not a judicial function belonging exclusively to the courts.

While in some aspects legislative investigations may partake of judicial attributes and require the exercise of quasi-judicial faculties, it is not a judicial function belonging exclusively to the courts.[90] Thus, it would seem that, where a charge involving the swindling of the state out of its property is brought to the attention of the legislature, it has constitutional power as the guardian of the state's property to investigate the truth of the charge for the purpose of recovering property of which it has been fraudulently deprived, and, in such a case, a judicial function is exercised by the legislative body.[91] Where, however, an inquiry involves the investigation of criminal charges, the general rule is to the effect that it would be an invasion of the province of the judiciary for the legislature to undertake it.[92]

§ 45. —— Compelling Attendance of Witnesses and Production of Evidence in General

On an inquiry by the legislature to ascertain facts which affect the public welfare and the affairs of government, the legislature may compel the attendance of witnesses and the production of evidence to the end that it may perform its constitutional functions by the enactment of laws to correct public dangers, and this power may be delegated to a committee.

Generally on an inquiry by the legislature to ascertain facts which affect the public welfare and the affairs of government, the legislature may compel the attendance of witnesses and the production of evidence to the end that it may perform its constitutional functions by the enactment of laws to correct public dangers, either real or apprehended, and this power may be delegated to a commitee.[93] Accordingly, if the subject of investigation is within the range of legitimate legislative inquiry and the questions are pertinent thereto and do not call for privileged matter, either house, if so authorized, or a committee thereof, although sitting in recess, may

82. N.Y.—In re Leach, 190 N.Y.S. 135, 115 Misc. 660, affirmed 189 N.Y.S. 352, 197 App.Div. 702, affirmed 134 N.E. 588, 232 N.Y. 600.

83. N.Y.—In re Leach, supra.

84. Tex.—Ex parte Wolters, 144 S.W. 531, 64 Tex.Cr. 238, Ann.Cas. 1916B 1071.
59 C.J. p 98 note 81.

85. Kan.—Yoe v. Hoffman, 59 P. 351, 61 Kan. 265.
59 C.J. p 98 note 82.
Inquiry held relevant
Tenney v. Brandhove, Cal., 71 S.Ct. 783, 341 U.S. 367, 95 L.Ed. 1019, rehearing denied 72 S.Ct. 20, 342 U.S. 843, 96 L.Ed. 637.

86. Tex.—Ex parte Wolters, 144 S.W. 531, 64 Tex.Cr. 238, Ann.Cas. 1916B 1071.
59 C.J. p 98 note 83.
Circumstances attending bribe
If witness before legislative committee admits bribe, committee may inquire into all circumstances attending it.—Doyle v. Hofstader, 177 N.E. 489, 257 N.Y. 244, 87 A.L.R. 418.

87. Pa.—Annenberg v. Roberts, 2 A.2d 612, 333 Pa. 203.

88. N.Y.—Application of Withrow, 28 N.Y.S.2d 223, 176 Misc. 597.

89. N.Y.—In re Leach, 189 N.Y.S. 352, 197 App.Div. 702, affirmed 134 N.E. 588, 232 N.Y. 600.

90. Cal.—Ex parte Battelle, 277 P. 725, 206 Cal. 227.
59 C.J. p 98 note 85.

91. N.J.—Ex parte Hague, 150 A. 322, 9 N.J.Misc. 89.

92. Ill.—Greenfield v. Russel, 127 N.E. 102, 292 Ill. 392.

93. N.Y.—In re Joint Legislative Committee to Investigate Educational System of New York, 33 N.E.2d 769, 285 N.Y. 1.
Wash.—State ex rel. Hamblen v. Yelle, 185 P.2d 723, 29 Wash.2d 68.

summon witnesses and compel obedience thereto,[94] it being held that the inherent and auxiliary power reposed in legislative bodies to conduct investigations carries with it such power.[95] The appearance of certain witnesses at a private hearing in connection with an investigation by a legislative committee does not preclude the subsequent public appearance of the witnesses for the same testimony or for additional or more detailed testimony.[96]

Issuance of subpœna or summons. Where a committee is authorized to subpœna witnesses, the chairman of the committee, in conjunction with its counsel, may select the names and number of witnesses for attendance at each session, and the chairman may sign the summons for each witness when presented to him by counsel for the committee.[97] It has further been held that, except where otherwise provided by statute, a subpoena is valid where issued and signed by the vice-chairman,[98] or an authorized member,[99] of the committee. A summons for a witness before a joint committee of the two houses of the legislature ordered by unanimous action of the committee may be signed by the chairman from either house.[1] A subpoena for attendance is not vitiated as to the necessity of the attendance of the witness by inclusion of illegal requirements for the production of documents.[2] A subpoena to testify before a subcommittee of one member of a joint legislative committee investigating certain matters is valid.[3]

Vacation of subpoena. While a court of proper jurisdiction has power to pass on a motion to vacate personal subpoenas issued by a legislative committee,[4] it will not interfere except for proper cause,[5] and subpoenas will not be vacated because of objections involving only the procedure and methods of inquiry adopted by the committee, since the committee's procedure is a matter solely within its discretion.[6] Ordinarily, a court is without equity jurisdiction, in a summary proceeding, to set aside the service of subpoena issued by a legislative committee.[7]

Remedies. Under some statutes, a person disobeying the subpoena of a legislative committee may be apprehended and brought before the committee by the sheriff under a warrant issued to him, as discussed infra § 47, or be prosecuted for a misdemeanor;[8] and some provisions make it an offense for a person to refuse to be sworn or to answer questions before the legislature or a committee thereof,[9] apart from liability of any such per-

94. N.Y.—Application of Withrow, 28 N.Y.S.2d 223, 176 Misc. 597.
Pa.—Annenberg v. Roberts, 2 A.2d 612, 333 Pa. 203.
59 C.J. p 99 note 89.

Issuance after final adjournment
Subpœna requiring person's attendance before legislative committee was not invalid although issued after final adjournment of legislature.—People ex rel. Hastings v. Hofstadter, 180 N.E. 106, 258 N.Y. 425.

95. Mass.—Attorney General v. Brissenden, 171 N.E. 82, 271 Mass. 172.
Mo.—Lowe v. Summers, 69 Mo.App. 637.

96. N.Y.—Application of Withrow, 28 N.Y.S.2d 223, 176 Misc. 597.

97. N.J.—State v. Scott, 99 A. 342, 89 N.J.Law 726—State v. Brewster, 99 A. 338, 89 N.J.Law 658.

98. N.Y.—People ex rel. Hastings v. Hofstadter, 255 N.Y.S. 13, 234 App. Div. 388, affirmed 180 N.E. 106, 258 N.Y. 425.

99. N.Y.—People ex rel. Hastings v. Hofstadter, supra.

Prior to taking and filing of oath
Subpœna was properly signed by member of legislative investigating committee ad interim expiration of one term of office and taking and filing of required oath for successive term.—People ex rel. Hastings v. Hofstadter, 256 N.Y.S. 603, 142 Misc. 886, affirmed 255 N.Y.S. 13, 234 App. Div. 388, affirmed 180 N.E. 106, 258 N.Y. 425.

1. W.Va.—Sullivan v. Hill, 79 S.E. 670, 73 W.Va. 49, Ann.Cas.1916B 1115.

2. N.J.—Ex parte Hague, 145 A. 618, 104 N.J.Eq. 369.

3. N.Y.—In re Gordon, 252 N.Y.S. 858, 141 Misc. 635.

4. N.Y.—Application of Withrow, 28 N.Y.S.2d 223, 176 Misc. 597.

5. N.Y.—Application of Withrow, supra.

Denial of right of cross-examination
Persons served with subpœnas issued by joint legislative committee investigating subversive activities in city educational system were not entitled to have subpœnas vacated because right of cross-examination had been denied, since a witness testifying in a legislative inquiry has no such right.—Application of Withrow, supra.

6. N.Y.—Application of Withrow, supra.

7. N.Y.—People ex rel. Hastings v. Hofstadter, 255 N.Y.S. 13, 234 App. Div. 388, affirmed 180 N.E. 106, 258 N.Y. 425.

8. N.Y.—People ex rel. Hastings v. Hofstadter, 180 N.E. 106, 258 N.Y. 425.
59 C.J. p 102 note 18 [b].

9. Cal.—Ex parte Coon, 113 P.2d 767, 44 Cal.App.2d 531.

Complaint held sufficient
Complaint for violation of statute penalizing persons refusing to be sworn or to answer questions before legislature or committee thereof, which set out questions asked including question relating to membership in Communist Party, was not insufficient because of failure to recite that legislative committee was empowered to ask such questions.—Ex parte Coon, supra.

"Willful" refusal
Where defendant was called before legislative committee on un-American activities and was asked whether he was or had ever been a member of the Communist Party, and defendant replied that he did not care to answer and that he stood on his constitutional rights, he acted "willfully" within meaning of statute providing that every person duly summoned to attend as a witness before either house of the legislature or any committee thereof authorized to summon witnesses, who shall refuse or neglect, without lawful excuse, to attend or who shall "willfully" refuse to be sworn or to affirm or to answer any material or proper questions or produce documents in his possession or under his control, shall be guilty of a gross misdemeanor.—State v. James, 221 P.2d 482, 36 Wash.2d 882, certiorari denied James v. State of Wash., 71 S.Ct. 616, 341 U.S. 911, 95 L.Ed. 1348, rehearing de-

EXHIBIT E to ENCLOSURE (3) to the Report of the Police Commissioner to The Honorable Marvin Mandel, Governor, State of Maryland, February 5, 1976.

61r0160

HOUSE OF DELEGATES

No. 85
(PRE-FILED)

By: Delegate Docter
Requested: May 16, 1975
Introduced and read first time: January 14, 1976
Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning 35

General Assembly - Subpoenas 38

FOR the purpose of authorizing the standing committees of 42
the General Assembly to issue subpoenas to witnesses 43
and subpoenas duces tecum; providing for the
issuance, service and return of the subpoenas; 44
providing for compensation of witnesses responding
to subpoenas; providing reasonable costs to be paid 45
to persons responding to subpoenas duces tecum; 46
providing for witnesses to give testimony under
oath; providing penalties for failure to comply with 47
a subpoena, refusal to testify or falsely 48
testifying; imposing certain duties on the Clerk of
the House of Delegates, the Secretary of the Senate, 49
and the Secretary of the Legislative Council; and 50
making the provision of this Act applicable to 51
subpoenas issued by the Legislative Council,
investigating committees of the General Assembly, 52
and certain statutory committees.

BY adding to 54

Article 40 - General Assembly 57
Section 105 through 111 to be under the new subtitle 59
"Subpoenas"
Annotated Code of Maryland 61
(1971 Replacement Volume and 1975 Supplement) 62

BY repealing and reenacting, with amendments, 64

Article 40 - General Assembly 67
Section 30, 40A(d), 79, 80 and 93 69
Annotated Code of Maryland 71
(1971 Replacement Volume and 1975 Supplement) 72

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.

EXHIBIT E

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That new Sections 105 through 111 to be under the new subtitle "Subpoenas" be and they are hereby added to Article 40 – General Assembly, of the Annotated Code of Maryland (1971 Replacement Volume and 1975 Supplement) to read as follows: 75 76 77 79 80 81

Article 40 – General Assembly 84

SUBPOENAS 86

105. 89

(A) ALL STANDING COMMITTEES OF THE GENERAL ASSEMBLY MAY ISSUE SUBPOENAS FOR WITNESSES, INCLUDING SUBPOENAS DUCES TECUM, AT ANY TIME DURING A REGULAR OR SPECIAL SESSION OF THE GENERAL ASSEMBLY OR DURING AN INTERIM PERIOD BETWEEN SESSIONS OF THE GENERAL ASSEMBLY. 92 93 94 95

(B) THE COMMITTEE SHALL HAVE THE SUBPOENA PREPARED IN ACCORDANCE WITH THIS SUBTITLE AND HAVE IT ISSUED IN THE NAME OF THE COMMITTEE. 97 98

106. 100

(A) THE SUBPOENA FOR A WITNESS TO TESTIFY BEFORE A COMMITTEE SHALL: 102

(1) BE DIRECTED TO THE WITNESS; 104

(2) STATE THE NAME OF THE COMMITTEE; 106

(3) STATE THE PLACE, DAY AND HOUR WHEN ATTENDANCE OF THE WITNESS IS REQUIRED; 108

(4) STATE THE NATURE OF THE SUBJECT MATTER UNDER CONSIDERATION BY THE COMMITTEE THAT PROMPTED THE COMMITTEE TO COMPEL THE WITNESS' ATTENDANCE; AND 110 111 112

(5) BE SIGNED BY THE CHAIRMAN OF THE COMMITTEE. 114

(B) THE SUBPOENA TO A WITNESS MAY ALSO COMMAND THE PERSON TO WHOM IT IS DIRECTED TO PRODUCE BOOKS, PAPERS, DOCUMENTS OR OTHER TANGIBLE THINGS DESIGNATED IN THE SUBPOENA. 116 117 118

107. 120

(A) IF THE SUBPOENA IS TO BE ISSUED ON BEHALF OF A COMMITTEE OF THE HOUSE OF DELEGATES, IT SHALL FIRST BE DELIVERED TO THE CLERK OF THE HOUSE. IF THE SUBPOENA IS TO BE ISSUED ON BEHALF OF A COMMITTEE OF THE SENATE, IT SHALL FIRST BE DELIVERED TO THE SECRETARY OF THE SENATE. 122 123 124 125

(B) THE CLERK OF THE HOUSE OR THE SECRETARY OF THE SENATE, AS THE CASE MAY BE, UPON RECEIPT OF THE SUBPOENA SHALL DELIVER IT TO THE APPROPRIATE SHERIFF FOR SERVICE OR OTHERWISE HAVE THE SUBPOENA SERVED IN ACCORDANCE WITH THIS SECTION AND THE MARYLAND RULES OF PROCEDURE. 127 128 129 130

(C) THE CLERK OF THE HOUSE AND THE SECRETARY OF THE SENATE SHALL KEEP A WELL BOUND VOLUME AND RECORD IN THAT VOLUME THE RECEIPT, SERVICE AND RETURN OF ALL SUBPOENAS. 132 133 134

108. 136

(A) HE MANNER AND PROCEDURES FOR SERVING THE SUBPOENA SHALL BE THE SAME AS PROVIDED FOR THE SUMMONS OF WITNESSES UNDER THE MARYLAND RULES OF PROCEDURE. 138 139

(B) WHERE THE SHERIFF IS INTERESTED IN THE MATTER UNDER CONSIDERATION BY THE COMMITTEE SO AS TO BE DISQUALIFIED FROM SERVING THE SUBPOENA, THE COMMITTEE ON ITS OWN INITIATIVE OR AN APPLICATION OF ANY INTERESTED PERSON, MAY APPOINT AN ELISOR TO SERVE THE SUBPOENA. THE APPOINTMENT SHALL BE IN WRITING, SIGNED BY THE CHAIRMAN OF THE COMMITTEE, AND FILED WITH THE CLERK OF THE HOUSE OR THE SECRETARY OF THE SENATE, AS THE CASE MAY BE. 141 142 143 144 145 146

(C) THE RETURN SHALL BE MADE TO THE CLERK OF THE HOUSE OR THE SECRETARY OF THE SENATE, AS THE CASE MAY BE. 148 149

109. 151

(A) ANY PERSON APPEARING BEFORE A COMMITTEE IN RESPONSE TO A SUBPOENA SHALL RECEIVE THE SAME FEES AND ALLOWANCES IN ACCORDANCE WITH THE STANDARD TRAVEL REGULATIONS ISSUED BY THE BOARD OF PUBLIC WORKS FOR EXPENSES INCURRED IN RESPONDING TO THE SUBPOENA. 153 154 155 156

(B) ANY PERSON COMMANDED BY A SUBPOENA TO PRODUCE BOOKS, PAPERS, DOCUMENTS, OR OTHER TANGIBLE THINGS DESIGNATED IN THE SUBPOENA SHALL BE COMPENSATED FOR THE REASONABLE COST OF PRODUCING THE BOOKS, PAPERS, DOCUMENTS, OR OTHER TANGIBLE THINGS. 158 159 160 161

110. 163

(A) THE COMMITTEE MAY REQUIRE THAT ANY WITNESS APPEARING BEFORE THE COMMITTEE IN RESPONSE TO A SUBPOENA GIVE TESTIMONY UNDER OATH. 165 166

(B) A WITNESS WHO KNOWINGLY GIVES FALSE TESTIMONY UNDER OATH IS GUILTY OF PERJURY. 168

111. 170

IT IS THE DUTY OF THE CIRCUIT COURT OF ANY COUNTY, 172

OR ANY JUDGE OF THE SUPREME BENCH OF BALTIMORE CITY, ON 173
APPLICATION OF THE COMMITTEE, TO COMPEL OBEDIENCE BY 174
PROCEEDINGS FOR CONTEMPT, IN THE SAME MANNER AS
DISOBEDIENCE OF THE REQUIREMENTS OF A SUMMONS ISSUED FROM 175
SUCH COURT OR A REFUSAL TO TESTIFY THEREIN, AS THE CASE 176
MAY BE:

(1) IN CASE OF DISOBEDIENCE ON THE PART OF 178
ANY PERSON, WITHOUT SUFFICIENT EXCUSE, TO COMPLY WITH A 179
SUBPOENA ISSUED IN BEHALF OF A COMMITTEE OR;

(2) ON THE REFUSAL OF ANY WITNESS WHO HAS 181
BEEN SUBPOENAED TO TESTIFY TO ANY MATTERS REGARDING WHICH 182
HE MAY BE LAWFULLY INTERROGATED BY THE COMMITTEE.

SECTION 2. AND BE IT FURTHER ENACTED, That Sections 185
30, 40A(d), 79, 80 and 93 of Article 40 - General 188
Assembly, of the Annotated Code of Maryland (1971 190
Replacement Volume and 1975 Supplement) be and they are 191
hereby repealed and reenacted, with amendments, to read
as follows:

Article 40 - General Assembly 194

30. 197

(A) In the discharge of any of its functions or 200
powers, the Council shall have the authority to 201
administer oaths, issue subpoenas, compel the attendance 202
of witnesses and the production of any papers, books,
accounts, documents and testimony, and to cause the 203
deposition of witnesses, residing either within or 204
without the State, to be taken in the manner prescribed
by law for taking depositions in civil actions in the 205
circuit courts. In case of disobedience on the part of 206
any person to comply with subpoena issued in behalf of 207
the Council, or on the refusal of any witness to testify
to any matters regarding which he may be lawfully 208
interrogated, it shall be the duty of the circuit court 209
of any county, or of any judge of the Supreme Bench of 210
Baltimore City, on application of a member of the
Council, to compel obedience by proceedings for contempt, 211
as in the case of disobedience of the requirements of a 212
subpoena issued from such court or a refusal to testify 213
therein. False swearing by any witness before the
Council shall constitute and be punishable as perjury. 214

(B) ALL PROVISIONS OF THE SUBTITLE ON SUBPOENAS OF 216
THIS ARTICLE ARE APPLICABLE TO SUBPOENAS ISSUED BY THE 217
LEGISLATIVE COUNCIL. HOWEVER, THE PROVISIONS OF THIS 218
SECTION RELATING TO THE PUNISHMENT OF DISOBEDIENCE OF A
PERSON TO COMPLY WITH A SUBPOENAS, REFUSAL TO TESTIFY, 219
AND FALSE SWEARING BY A WITNESS SUPERSEDE THE PROVISIONS 220
OF THE SUBTITLE ON SUBPOENAS.

(C) IN IMPLEMENTING THE SUBTITLE ON SUBPOENAS, THE LEGISLATIVE COUNCIL SHALL PERFORM THE DUTIES IMPOSED BY THAT SUBTITLE ON COMMITTEES; THE SECRETARY OF THE COUNCIL SHALL PEPFORM THE DUTIES IMPOSED BY THAT SUBTITLE ON THE CLERK OF THE HOUSE OF THE SECRETARY OF THE SENATE; AND THE CHAIRMAN OF THE LEGISLATIVE COUNCIL SHALL PERFORM THOSE DUTIES IMPOSED BY THAT SUBTITLE ON THE CHAIRMAN OF THE COMMITTEE. 222 223 224 225 226 227

40A. 229

(d) The committee shall be supplied with staff assistance and procedural aid from the Department of Legislative Peference, and the committee members shall be reimbursed for their expenses incurred on committee business from the General Legislative Expenses Fund as administered by the Legislative Accounting Office; and the committee has also the same powers [as are] given the Legislative Council in § 30 (A) AND (B) of this article. SUBPOENAS SHALL BE ISSUED ON BEHALF OF THE COMMITTEE EITHER THROUGH THE CLERK OF THE HOUSE OR THE SECRETARY OF THE SENATE. 232 233 234 235 236 237 238 239 240

79. 242

(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. 245 246 247 248

(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] AUTHORIZED BY THE SUBTITLE OF THIS ARTICLE ON SUBPOENAS. 250 251 252 253

80. 255

(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] THE PROVISIONS OF THE SUBTITLE ON SUBPOENAS OF THIS ARTICLE ARE APPLICABLE TO SUBPOENAS ISSUED BY ANY LEGISLATIVE INVESTIGATING COMMITTEE. IF THE COMMITTEE IS A JOINT COMMITTEE OR THE HOUSE OF DELEGATES AND THE SENATE, THE SUBPOENAS SHALL BE ISSUED ON BEHALF OF THE COMMITTEE EITHER THROUGH THE CLERK OF THE HOUSE OF THE SECRETARY OF THE SENATE. 257 258 259 260 261 262 263 264

(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 266 267 268

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. 269 270 271

93. 273

The Committee shall meet at times it deems appropriate. The members shall be reimbursed for expenses incurred in the performance of their duties. The Committee shall possess the powers of the Legislative Council as provided in § 30 (A) AND (B) of this article. SUBPOENAS SHALL BE ISSUED ON BEHALF OF THE COMMITTEE EITHER THROUGH THE CLERK OF THE HOUSE OR THE SECRETARY OF THE SENATE. 276 277 278 279 280 281

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1976. 285 286

EXHIBIT F to ENCLOSURE (3) to the Report of the Police Commissioner to The Honorable Marvin Mandel, Governor, State of Maryland, February 5, 1976.

SPREAD OF POLICE SNOOPING

Why the Spying Into the Lives of Bankers, Politicians, Preachers, Protesters, "Libbers" and School-Board Leaders

IN CITY AFTER CITY, police are under fire for snooping into the private lives of citizens.

The kind of spying stirring this widespread criticism is not directed at suspected criminals. The subjects may be bank presidents, civic leaders, politicians or clergymen. Anyone who attends a protest rally, a women's liberation meeting, gets involved in some kind of civic action, or just opposes local political leadership is likely to have a dossier at police headquarters.

The information in those files may have been obtained by illegal wiretaps, or even by breaking into homes and offices.

In some cases, the files contain intimate details of personal habits and sexual activities.

And this information is made available routinely to other law-enforcement agencies. In some cities, it is charged, the files also go to agencies not involved in law enforcement and even to private businesses and friendly newsmen.

Rooted in the '60s. Police snooping on a large scale goes back to the 1960s, when campuses and cities were troubled by protest marches, demonstrations and riots. But what began as an effort to head off trouble seems to have grown out of control, in many cases. Says John H. F. Shattuck, staff counsel, American Civil Liberties Union:

"We have seen in the past four years a tremendous growth of the surveillance apparatus of the police not connected with law enforcement in any specific way but really just a way of keeping track of people's political activities and beliefs."

The current uproar in cities and some colleges, he says, grew out of the revelations of political snooping and dirty tricks from Watergate.

"People were made aware of what was going on at the national level and began to ask questions in their home town," says Mr. Shattuck.

The result has been lawsuits, charges and denials, and bitter controversy in many cities, large and small.

Eyes of Texas. In Houston, Tex., when Fred Hofheinz became mayor, he found extensive police files on himself and hundreds of his friends and workers in his 1973 campaign for mayor. Some of the files concerned sexual activities. He announced last January that there were about 1,000 noncriminal files, including one on Democratic Representative Barbara Jordan, Texas's first black member of Congress.

The snooping probably began as an effort to anticipate disorders and violence, the mayor said, and "gradually evolved into political spying."

A lot of it was just a waste of time, according to the new police chief, Carrol Lynn. In one case, he says, six plainclothes officers were assigned to cover a women's liberation meeting.

Chief Lynn told a congressional subcommittee on May 22 that, before he took over, Houston police had engaged in illegal wiretapping for years, with the co-operation of the Federal Bureau of Investigation and the Southwestern Bell Telephone Company.

Nine Houston policemen have been indicted on charges of having used illegal wiretaps.

Mayor Hofheinz has named a three-member panel to decide what to do with the files. Any decision, however, will be delayed until settlement of a 55-million-dollar lawsuit against the city, former Mayor Louie Welch and two former city police officials.

In Chicago, a lawsuit filed last November charged city police with spying, infiltrating groups, harassment, illegal wiretaps and break-ins and physical assaults—all against individuals and groups not guilty of criminal activity.

Newspaper accounts of those spied on mentioned many critics of Mayor Richard Daley. Some of these were a black State senator who ran against the mayor, a newspaper columnist who wrote a book about him, the Republican State's attorney for Cook County, and the Rev. Jesse Jackson, a black civil-rights leader. Groups allegedly spied on included Mr. Jackson's Operation PUSH and the Afro-American Patrolmen's League.

In defense of spying. Mayor Daley has not commented on this, but Police Superintendent James M. Rochford admitted the spying has been going on for

Priest-Educator	Bank Official	Congresswoman	Houston Mayor	Protest Leader
Theodore Hesburgh	Gaylord Freeman	Rep. Barbara Jordan	Fred Hofheinz	Rev. Jesse Jackson

The persons pictured above are among many who found themselves subjects of police snooping even though not accused of any crime.

some time. Defending the practice, Mr. Rochford said Chicago "is one of the few major urban areas that has not been victimized by terrorist activities such as bombings, arson and riots." However, Mr. Rochford added that he now has pared the list of those being watched to about 50 groups or individuals.

But the furor continues unabated. Howard Eglit, ACLU legal director for Chicago, explains:

"People don't get upset when spying is upon the fringe groups—the radical groups. But the disclosures are showing that many so-called normal community groups have had spying happen to them. It's become a topic of conversation. After all, people like Gaylord Freeman, board chairman of the First National Bank in Chicago, and Father Hesburgh, president of Notre Dame, are not exactly fringe elements of society."

In Baltimore, newspaper reports of police snooping triggered a State senate investigation that is still unfinished.

City Police Commissioner Donald D. Pomerleau conceded that surveillance had gone on for nearly a decade and that files were kept on many public figures and other individuals not suspected of any crime. He said these files were sent routinely to the State attorney general, the mayor and the Federal Bureau of Investigation.

Watching "revolutionaries." Keeping tabs on alleged radicals and subversives was responsible for Baltimore being relatively free from violence, and it still is needed because "we still have revolutionary activity in the city," Mr. Pomerleau insisted.

State Senator Edward T. Conroy, who heads the senate investigation, says there is evidence Baltimore police regularly spy on meetings of community organizations, school boards, political groups, utility-rate-increase hearings and meetings at schools and colleges, taking the name of everyone in attendance and as much information about them as possible.

In some cases, he says, there is evidence that reporters were followed, their telephones tapped. In fact, the Maryland State senator adds, there is evidence that a great deal of illegal telephone wiretapping went on. His committee referred this evidence to a Baltimore grand jury which reported May 9 that it had found nothing to support charges of criminal activity by city police.

"It is easy to see how the atmosphere developed for this kind of activity with the riots and demonstrations," says Senator Conroy. "But it didn't stop when the threat ended."

In Washington, D.C., police are drafting new guidelines after revelations that files were kept on the personal lives of antiwar activists and protest leaders. Among them were the District of Columbia's congressional Delegate, Walter Fauntroy, and five city councilmen, including the chairman, Sterling Tucker.

Many of the files were destroyed last year, police say, because they felt the main threat of disturbance was past.

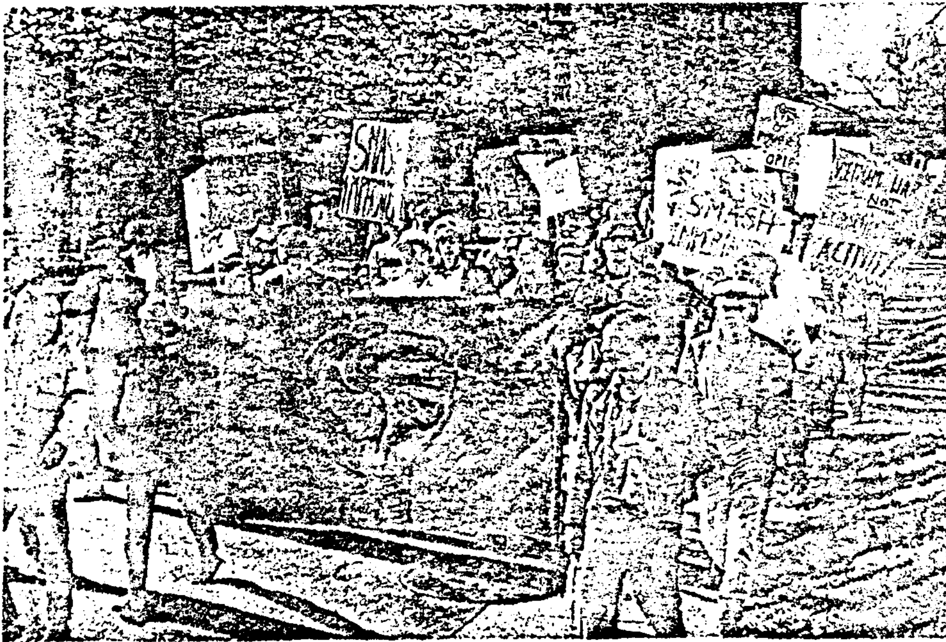
In addition to keeping such files, D.C. police also have worked with the Army and the Central Intelligence Agency in past efforts to control riots and keep protest demonstrations peaceful.

In Philadelphia, the furor began with a national telecast in 1970, when Frank Rizzo, then the police commissioner and now the mayor, said the department kept files on 18,000 persons as part of its effort to prevent disturbances.

Several lawsuits resulted. One, involving persons and groups named in the telecast, is now before the U.S. Court of Appeals for the Third Circuit. It charges violations of the rights of those allegedly spied on.

Inspector George Fencl, who heads the intelligence squad, refused to comment on the charges in the lawsuit.

Pictures of the party. In Columbus, Ga., the Socialist Workers Party threatens a lawsuit because the Muscogee County sheriff's department took pictures of persons attending a 1972 rally for the party's candidate for President. After the rally, Capt. F. R. Guthrey told reporters: "We just wanted to know locally who followers of this yo-yo are. If you have Communists around here,



USN&WR

During campus protests, court suits allege, police undercover agents sat in college classrooms and some college officials planted spies inside groups of student radicals.

In New York City, police department's public-security files have been weeded down from 1.2 million entries to about 20,000 as result of tough new restrictions on snooping.

SPREAD OF SNOOPING

[continued from preceding page]

wouldn't you want to know who they are?"

Later, he said the same procedure would have been followed for any party.

Taking pictures "keeps trouble from developing many times," he said. "If trouble does break out, we're able to identify the perpetrators."

A county grand jury has been investigating charges of illegal wiretapping by Indianapolis police.

It isn't only city and county police who are under fire. State police have their troubles, too.

A suit in Michigan charges the State police worked with those in Detroit in a politically motivated probe of a suburban Detroit consumer group that has been critical of some State lawmakers.

The former State police superintendent says it resulted from a "legitimate request from a State legislator" and "was not politically motivated on my part."

The suit contends the investigation was far from routine, involving tapped telephones and electronic listening devices, agents infiltrating the group and harassment of the members.

A key issue is a 1950 State law which directs the "subversive activities investigation division" of the State police to probe activities which may be criminal and may overthrow the government. The division has accumulated some 50,000 microfilmed files. Many State officials feel this McCarthy-era law is outdated and should be changed.

Political espionage. Florida State police are embroiled in a hassle over a secret memo written in 1973 which said police intelligence files should include "adverse information concerning public officials." The memo was leaked to State lawmakers in April and the furor began. State police deny any political espionage was involved, but admit there are files where this kind of material is kept.

After a look at some of the files, lawmakers were unconvinced and planned further investigation.

Even on college campuses, there is a fuss over spying by police.

Last March, the California Supreme Court ruled that the exercise of free speech by professors and students is inhibited by the presence of police undercover agents, taking notes in college classrooms to be preserved in dossiers.

Los Angeles officials say the decision rules out intelligence activities on campus without a specific criminal activity in mind, but doesn't necessarily preclude criminal investigations on a campus by undercover agents.

Agent provocateur. Another lawsuit involves snooping by Kent State University campus police in the spring of 1972.

In 1972, the suit says, an undercover campus policeman joined a group of Kent State students who were Vietnam veterans working against the war. When the students became suspicious of the man's provocative acts and turned him over to city police, it was revealed he was a campus police officer.

After this incident, the veterans had to disband and now are suing the university. ACLU Counsel Shattuck says that pretrial information released "has demonstrated that there was a very broad use of people similar to this particular undercover agent for several years on the campus at Kent State."

"Other colleges were doing it a lot during that period—the early '70s," explains Mr. Shattuck. "The attitude was to get as much police surveillance on campus as you can to keep the students from demonstrating."

Benson A. Wolman, executive director of the Ohio ACLU, says "at least a half dozen other public universities in Ohio" were accused of such snooping. But no other suits have been filed so far.

Revising guidelines. Changes are being made in some cities as a result of the controversies. Leading the way are Los Angeles and New York.

In February, 1973, New York City police announced new guidelines limiting the types of investigations and specifying that political beliefs should not be a controlling factor. The guidelines also require approval by top police officials to initiate an investigation as well as for any covert activities. Files must be re-evaluated twice a year with outdated information purged.

Under these guidelines, police say, public-security files were trimmed from 1.2 million entries to about 20,000.

Chief John L. Keenan, who heads the inspectional services section, says:

"The guidelines limit us to the investigation of people where there's a potential for violence."

In Los Angeles, almost 2 million intelligence files gathered by the police in the past 50 years, were destroyed under guidelines announced in April. The files dealt with public disorders. Only about 2,500 were retained.

The new guidelines shift the emphasis from organizations or individuals with "subversive ideologies" to those who are actually committing or threatening to commit acts "disruptive of the public order in Los Angeles."

The intelligence division is directed to refrain from opening or keeping any file on an organization or person "based on political belief, race, creed, nationality, ethnic background, sex or sexual orientation or a person's position as a public official or as a candidate."

Also, the guidelines say, police intelligence shall not "concern itself with the drinking habits, sex lives, ecological preferences or any other dimension of an individual's private style of life."

Help for police. These kinds of guidelines are a step toward ending the controversy and helping police to do the necessary job of preventing public disorder, says Norman Darwick, director of the police management and operations division, International Association of Chiefs of Police.

In the past, he says, "there have been few guidelines, either from State or local governments. The police have had to handle it as they saw fit."

But even under these new guidelines, Mr. Darwick maintains, this type of activity is essential. He explains:

"Police must be concerned with potential trouble sources. If information is made available to them that trouble is brewing, they must find out where it is, how dangerous it is—so they can protect all citizens."

EXHIBIT G to ENCLOSURE (3) to the Report of the Police Commissioner to The Honorable Marvin Mandel, Governor, State of Maryland, February 5, 1976.

ADDRESS REPLY TO
UNITED STATES ATTORNEY
AND REFER TO
INITIALS AND NUMBER

JSF:LGS

United States Department of Justice

UNITED STATES ATTORNEY

DISTRICT OF MARYLAND
405 UNITED STATES COURT HOUSE
FAYETTE AND CALVERT STREETS
BALTIMORE, MARYLAND 21202

TELEPHONE
XXXXXX
(AREA CODE 301)
539-2940

July 10, 1975

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

Dear Commissioner Pomerleau:

Thank you very much for your letter of June 27, enclosing two articles by Mr. Michael Olesker in the News American, one dated June 25 and the other June 26, 1975.

You have requested that this office initiate an investigation to resolve the validity or invalidity of the allegations, including the assembling of a federal grand jury. After my own personal review of the matter and considerable consultation in this office, I regret to report that we have concluded it would be inadvisable for this office to conduct such an investigation at this time. Nevertheless this office shares your concern over the effect of far-reaching yet wholly unsubstantiated charges in the public media upon the sound law enforcement process; indeed I have been attempting for several months without success to bring some reasonable resolution of a similar attack upon a federal agency.

Our feeling in this matter appears compelled by several considerations. First, whatever evidentiary value may be found in reports by the public media in other situations no such evidentiary value appears in the June 25 and 26 articles to which you referred. This office is, and should be, most reticent to proceed without a firm basis for belief in the factual validity of the allegations at any particular time.

Second, it is weighty, in our view, that a duly convened grand jury of Baltimore City recently considered matters at least within the general purview of those set forth in these published reports, presumably concluding that the requisite probable cause for criminal action did not exist.

Third, our decision is influenced greatly by the thrust of the opinion by the Honorable R. Dorsey Watkins, United States District Judge in the recent case on the same such matter in his court, in which he approved, even if he did reach, the conclusion that federal resources should be quite restrained in pursuing matters currently under state legislative or judicial inquiry. Of course we respect the view of the court as we should.

Once again, we respect your view concerning the likelihood of "irreparable harm" to the law enforcement process, from our own separate experience as well as from your persuasive analysis. Thus we have genuine regret that we cannot be of service by initiating an investigation.

You have the best wishes of this office.

Very truly yours,

Jervis S. Finney
United States Attorney

THE POLICE COMMISSIONER

CITY OF BALTIMORE

June 27, 1975

Dear Mr. Finney:

I am forwarding herewith two articles from the News American, one dated Wednesday, June 25, 1975 captioned "City Police Put Illegal Taps on Citizens, Politicos"; the other is from Thursday, June 26, 1975 and captioned "Bogus Warrants Called Police's Dirty Secrets". This latter item reiterates in part that which is contained in the Wednesday article (paragraphs one and two of the third column).

I continue to be dismayed by the lack of qualitative standards in reporting on this matter. It is long past the time when our system of government should establish sufficient checks and balances to promptly resolve these issues. No one, in my opinion, should have a license to allege these very serious violations without being held accountable.

I am writing, therefore, to request that you as the United States Attorney for the District of Maryland take official cognizance of these allegations thereby assisting in resolving an issue which if continued will do irreparable harm.

In asking for your assistance I am in no way suggesting as to how the investigation should be conducted. But, it seems to me that the newspaper reporter involved, Mr. Michael Olesker and others included in the article, should be given an opportunity at a very early date to: 1) discuss this matter with federal investigators and, 2) testify before a Federal Grand Jury. Should there be a declination to discuss the issue or testify, I respectfully recommend the United States Government persist in developing a resolution. Wiretapping is not only a federal offense, but a serious one. Allegations such as contained in these news articles should be investigated promptly and I so recommend.

I would be most grateful if you could proceed -- I and all members of this department will be fully responsive to any requests from you or federal investigators.

Sincerely,

D. D. Pomerleau
Commissioner

The Honorable Jervis Finney
United States Attorney for the
District of Maryland
405 U. S. Courthouse Building
111 North Calvert Street
Baltimore, Maryland 21202

City Police Put Illegal Taps On Citizens, Politicos

THE NEWS AMERICAN Wednesday, June 25,

By MICHAEL OLESKER
Staff Reporter
Copyright 1975
The News American

Baltimore police have illegally wiretapped telephone conversations of private citizens, politicians and suspected gambling figures, according to several authoritative sources.

Some police from the Inspectional Service Division (ISD) and the Vice Squad reportedly ran taps through their own devices or with help from employes of C&P Telephone Co.

Among the illegally wiretapped were suspected numbers operators, but also some politicians, including City Comptroller Hyman Pressman, who had no suspected criminal ties, sources said.

"People were illegally tapped every month," said one authoritative source still in the police department, citing some police who shuttled between ISD and the Vice Squad and conducted such taps.

Other police sources charged that electronic bugs were planted in strategic locations to eavesdrop on conversations not made by telephone.

"It wasn't like the movies, where you just drop a bug and then go off somewhere and get perfect reception," one source said.

"There was a lot of testing. You had to check your range. You had to know where you'd get your best reception."

Though newspaper stories have detailed police spy techniques — including surveillance of politicians, clergy, reporters and various civic groups — these were the first disclosures of illegal electronic eavesdropping by police.

Sources described a system of cooperation with C&P Telephone Co. employes in which police requested information and a phone company operative would either conduct an illegal intercept or help set up a tap.

Phone company assistance reportedly included the use of substations and eavesdropping equipment and the furnishing of unlisted phone numbers and addresses.

In public testimony before the state Senate committee investigating police spy tactics, former policeman George Guest said police worked with the late Joseph Byrne or C&P on illegal taps in the 1960s.

Two sources with Internal Revenue Service backgrounds — one present and one past — reinforced Guest's remarks with their own charges of cooperation between IRS and Byrne on illegal taps.

Since then, authoritative police sources have reiterated charges that phone company employes have taken part in illegal taps, and have named individuals who took over Byrne's role in those taps in the 1970s.

Several men and women have been named in connection with C&P efforts to cooperate with police.

Police and C&P officials have repeatedly denied the use of any illegal wiretaps.

However, sources have described specific means of running taps — including the use of "alligator clips," basement phone boxes, and other devices — and named individuals who were targets.

Hyman Pressman reportedly was wiretapped four years ago, early in his reelection campaign for city comptroller.

Sources would not say whether any other politicians were illegally tapped during that political campaign, but other political figures have been named as having been targets of taps at other times.

Pressman, upon learning of the reported wiretaps today, said it was the first time he was alerted to the possibility his phones were tapped during the last campaign.

However, he said he became suspicious of a possible tap on his office phone seven years ago during the administration of mayor Thomas D'Alesandro III, but was satisfied by telephone experts that there were no tas.

"I have always considered the possibility that this might happen," Pressman said, "and I'm very dismayed at this news.

"This will prompt me to look at all this again. We're in the temporary City Hall now, and I plan to have the phones checked here as well as getting together with the architects in charge of renovation of the old building to prevent this from happening again."

Pressman added that he's not concerned that anything he may have said during the time his phone was reportedly tapped could embarrass him.

Bogus Warrants Called Police's 'Dirty Secrets'

By MICHAEL OLESKER
Staff Reporter
Copyright 1973
The News American

Baltimore police have routinely falsified — and sometimes totally fictionalized — search and seizure warrants and then passed them through unwitting judges, according to nearly a dozen authoritative sources.

Their disclosures focus primarily on vice cases and indicate that improper police intelligence operations were not limited to the departments Inspectional Services Divison (ISD).

"It's the department's dirty little secret," one police source said of the bogus warrants.

Another police source added, "We called them Superman warrants, because you'd have things in them that you could only have known if you could look through walls."

In separate interviews, sources who have worked vice cases either in the police Central Intelligence Division or in a district described as unofficial system in which:

- Veteran officers would explain the intricacies of — and sometimes dictate — trumped up, or totally facititous search and seizure warrants to incoming patrolmen, as a fast, but illegal means of entering suspected gambling stations.
- Various criminal court judges were ranked by police according to which ones would scrutinize warrants and which ones would simply sign them without reading them.

One source remarked, "Sometimes you'd get to the house and there'd be some action, but sometimes you were totally out of the ballpark.

"And we were playing hell with people's civil liberties, ain't no question about it.'

Though some sources said the practice still exists within the department and is not confined to vice details, other sources said the practice is largely confined to vice.

"I got my instructions from my sergeant the first time I had to write a warrant," said one former vice officer.

"All I had was a name of a guy I thought was in numbers, and the address of a barber shop. My sergeant — who hadn't worked on the case at all — sat me down and dictated the entire warrant.

"It said I had witnessed certain traffic, and that I had gotten certain information from an informant, and there wasn't a line of truth in it."

"I know of cases," said another former vice officer, "where one of our guys got a warrant to raid a certain address and when they got there the address no longer existed."

Several sources named certain "policemen's judges," to whom they would take warrants because they "never even read the warrants before they signed them."

"There are some judges," one policeman said, "who will take your word. Those are the ones you go to again and again."

Disclosure of the illegal vice warrants follows disclosure here Wednesday of illegal wiretaps conducted by some ISD and Vice Squad policemen — many of those taps handled with the help of employes of the C&P Telephone Co.

Both C&P and police officials have denied taking part in any illegal wiretaps, and police spokesman George Russell has stopped talking to reporters altogether.

But police sources in separate interviews over the past several weeks — repeated nearly identical charges about warrants.

"Half your warrants," said one veteran of vice operations, "were jazzed up to make them look impressive. The other half were pure bull—."

"A sergeant would tell you, go to a certain corner and find some action," said one source. "You'd go out there and see the man you were looking for, but there wouldn't be any open action.

"You'd come back and tell your sergent, and he'd say, don't worry, we'll write it up this way.

"And the warrant would describe totally off-the-wall stuff. How can you know what a man's exchanging on a street corner when you're standing a block and a half away?

"And how do you overhear conversations from that far away? You fake it, that's how."

EXHIBIT H to ENCLOSURE (3) to the Report of the Police Commissioner to The Honorable Marvin Mandel, Governor, State of Maryland, February 5, 1976.

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 member 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 admissability 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 questionin 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 shallnot 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, shal[l] be furnished a certified transcript of his testimony. (Art 40, Sec. 83f)

20. Testimony and other evidence given or adduced at a hearing clos[ed] to the public shall not be made public unless authorized by six members of the Committee, which authorization shall also specif[y] the form and manner in which testimony or other evidence may be released. Nothing herein shall be construed to prevent a witne[ss] 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 Committe 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.

EXHIBIT I to ENCLOSURE (3) to the Report of the Police Commissioner to The Honorable Marvin Mandel, Governor, State of Maryland, February 5, 1976.

Baltimore, Maryland
May 21, 1975

I, Robert White, have read the attached sworn statement and have signed this statement. I have initialed each page. There are a total of two (2) pages to this statement. I have initialed all changes.

I reside at 2407 Albion Avenue, Baltimore, Maryland - 21214.

The facts including the events and recollections are, to the best of my knowledge, true and correct.

I make this statement voluntarily, and I understand that it would be introduced later to a legislative or governmental administrative committee.

I further want it understood that I voluntarily made the initial approach in this matter, and that approach was completely unsolicited.

Signed: Robert a White

Robert White

pll

NOTARY

John I. Wade
May 21, 1975

EXHIBIT "G"

EXHIBIT I

Baltimore, Maryland
May 21, 1975

It was approximately one week to one and a half weeks after the information was released in the News American that I, Robert White, was contacted by a news reporter by the name of Michael Olesker and I was asked questions about my involvement and questions about I.S.D. I told Mr. Olesker that I didn't have anything to say to him and I was then contacted one or two more times. I told him again that I had nothing to say to him. Mr. Olesker told me that I would probably be subpoenaed to the Grand Jury. He said that my name was mentioned by individuals who knew of me, very close friends and that, if anything, I would probably be called into the Grand Jury about my activities in I.S.D. At that time, there were allegations of spying on black political figures and ministers and unauthorized surveillances. That went on for a while and I did not hear anything from him.

I met Mr. Leslie Gladstone, who is an Attorney At Law, and I assisted Mr. Gladstone as an investigator. It was brought to Mr. Gladstone's knowledge that 'Bob White' was a member or associated with I.S.D. and Mr. Gladstone set up an appointment to speak with me about it with Diane Schulte and him. However, Diane Schulte was not present in the room when we talked. Most of the information would be the same as found on the tape.

Mr. Gladstone also mentioned that there was a five-year statute of limitations in the event he felt there were criminal acts involved; and he knew that I wanted to attend Law School. He made mention that if I was found guilty of any of these offenses, I would have problems getting through the Bar Examination and the Bar Review Board and may be turned down. We concluded our conversation.

R.O.W

The conversation before the recorder was put on was pretty much the same as the information I recorded. The last half-hour, which was not recorded, was a summary of what was talked about while the tape was on. I assured Mr. Gladstone that I would come out 'smelling like a rose.' He said that if this were so, it would not hamper my relationship as an investigator for him. However, if I was found guilty of any criminal acts, the chips would fall where they may.

During the course of the interview, Mr. Gladstone appeared to be very inquisitive as to my functions and actions in L.S.D. Because of the conversation we had about my actions and involvement in L.S.D., Mr. Gladstone seemed to be unsatisfied with the information that he obtained from me.

RW:pll

Robert O. W.
R.O.W.

GLADSTONE: If my tape doesn't come out, can we use your tape?

WHITE: It depends on if the price is right.

GLADSTONE: This way you'll pick me up and I'll pick you up. What kind of special training did you have in the electronics field?

WHITE: Well, I was a lineman. The first school I was at was Infantry Communications, installing infantry communications. The second school I was a lineman. The third school I went into teletype and sophisticated printed circuit equipment.

GLADSTONE: What are the functions of a lineman?

WHITE: Climb telephone poles and repair damaged lines and work on telephone exchanges and a variety of things.

GLADSTONE: How far did you go in school before you went in the service?

WHITE: I went to the eleventh grade.

GLADSTONE: Did you get your GED in the service?

WHITE: Right.

GLADSTONE: How were you first approached about going into the Police Department?

WHITE: Ever since I was a child, ever since I've been a child....

GLADSTONE: You wanted to be a Policeman?

WHITE: Um-hmm. Everything that I was always afraid of, I wanted to be. I was afraid of Policemen.

GLADSTONE: You were never in any trouble as a kid, were you?

WHITE: No.

GLADSTONE: Do you have any family in the Police Department?

WHITE: No.

GLADSTONE: Who were some of the people who talked to you about coming up here with (committee members?)?

WHITE: Leslie Gladstone.

GLADSTONE: That's it? Who are some of the people you discussed or talked with about it?

WHITE: Basically, other folks who are associated, I get phone calls...

GLADSTONE: Did you get any phone calls from the Police Department?

WHITE: No.

GLADSTONE: Did you get any phone calls from Mr. Mitchell's office?

WHITE: Not in the beginning. (inaudible)

GLADSTONE: The calls that you did receive--did they either tell you to say something or not to say something?

WHITE: No.

GLADSTONE: In any way were you restricted in what you should say?

WHITE: (negative grunt)

GLADSTONE: Did they tell you how you, how they learned you were going to be talkened to?

WHITE: No, they weren't related to the Police Department. I think mainly it was hearsay. People going into other people's offices. They pick up all kind of information.

GLADSTONE: But, so when you got out of the service, which was in '69, did you come right to the Baltimore City Police Department or did you try some other agency?

WHITE: No, I just went from job to job... (inaudible)

GLADSTONE: What kind of jobs did you have when you ah....

WHITE: I did a little bit of everything.

GLADSTONE: Can you name the companies you worked for... (inaudible)

WHITE: Oh, I worked for General Motors, tire companies, I did a little bit of everything. I was supposed to go to IBM as an electronics technician, but they were supposed to call me, but they never called. Electronical (sic) places, ah Bendix, but they never called.

GLADSTONE: So when was it you first applied for the City Police Department?

WHITE: I believe it was sometime in September of '71, I think it was.

GLADSTONE: So, actually, there was a period of from '69 to '71 that you were working in unrelated fields.

WHITE: Right.

GLADSTONE: Had you had occasion to use whatever electronic training you had in the service in these other jobs?

WHITE: Ummmm.

GLADSTONE: And you say you went to the Police Department, they did not recruit you in any way?

WHITE: What do you mean recruit, from the military?

GLADSTONE: Well, the way they come into the military and...

WHITE: Yeah, I had an occasion in Georgia, I had about three months left of school. They were giving out "early out permits," Washington, D. C, Police Department... (inaudible)

GLADSTONE: So, the Police Department didn't approach you because of any special training that you had?

WHITE: No.

GLADSTONE: You just applied, where did you apply?

WHITE: I applied once in D. C. with the Metropolitan and then here.

GLADSTONE: Did the Metropolitan turn you down or did you... (inaudible)

WHITE: No, I didn't really know what I wanted to do.

GLADSTONE: Is that cause your family was here in Baltimore?

WHITE: No.

GLADSTONE: Where was your family at that time?

WHITE: Still down there

GLADSTONE: Was it a twin marriage?

WHITE: It was when I first met her.

GLADSTONE: So you applied in September of '71, Baltimore City Police Department, where were you when, first at the Academy?

WHITE: (negative grunt)

GLADSTONE: What happened?

WHITE: Well, we didn't have to go to the Academy til a year afterwards.

GLADSTONE: A year afterwards?

WHITE: Yeah. (inaudible)

GLADSTONE: So, where did you start? You applied and how long did it take them to accept you?

WHITE: Well, you'd be gone cause you'd be placed, you'd be working with subversive groups.

GLADSTONE: So, upon your application, were you asked if you wanted to work in subversive groups?

WHITE: No.

GLADSTONE: You applied and you were told you were accepted?

WHITE: Yeah.

GLADSTONE: And, what was the next thing that happened? Who approached you and asked if you wanted to work in a special unit?

WHITE: No, I asked, I inquired, I asked and I found out, you know, where the Intelligence Unit was and I thought that was what I wanted to do. But I wasn't sure, so I said I was going to play around with it. I really wasn't too serious at that time about anything. I just wanted to be there.

GLADSTONE: So, when you first got into the unit, how was it set up?

WHITE: Well, I can't, I really don't know because, you know, you had something to do, say for instance if something happened with subversive groups, like they were out there raising Hell in the streets, well, we'd go out and see what was going on.

GLADSTONE: Now, in '71, was the Unit called IID or ISD or what was it called?

WHITE: Inspectional Services Division.

GLADSTONE: Are you sure that's what it was called at that time when you went into it?

WHITE: Yeah.

GLADSTONE: Who was, who were the people you were working with at that time? Your Commanding Officer and the people in charge?

WHITE: Well, I mainly worked for Vince, Detective Paul Vince.

GLADSTONE: Have you spoken, you know that Vince gave some testimony before the Committee? Have you spoken to Paul about the testimony he gave to the Committee?

WHITE: No.

GLADSTONE: Was he, he was your immediate supervisor?

WHITE: Yeah.

GLADSTONE: How was ISD divided in terms of subversives? Was it black men following the black organizations and the white policemen undercover following the white organizations or how was it set up?

WHITE: I don't understand what you mean by organizations?

GLADSTONE: Well, you tell me how it was set up and... ah Vince is black, isn't he?

WHITE: Yeah.

GLADSTONE: What kind of assignments did you have at that time?

WHITE:	(inaudible-microphone squeal)...we had to check them out.
GLADSTONE:	Any particular groups you can recall?
WHITE:	Well, for instance, something came off with the Panthers being involved, we'd run right up there and check it out and see what's happening...... "We're going to do this, we're going to do that," so we gotta check it out.
GLADSTONE:	What other groups besides the Panthers were involved?
WHITE:	Black October... (inaudible)
GLADSTONE:	Any other groups?
WHITE:	(inaudible)
GLADSTONE:	Was ISD divided into any kind of segments at that time?
WHITE:	Uh, I don't know.
GLADSTONE:	Such as some people working in subversive and some in organized crime.
WHITE:	I don't know.
GLADSTONE:	Did you get into any organized crime? Was Paul Vince your supervisor when you first got on in September of '71?
WHITE:	(affirmative grunt)
GLADSTONE:	Did you have any supervisors other than Paul Vince?
WHITE:	(grunt)

GLADSTONE: He was your supervisor til when?

WHITE: Til '73, around there.

GLADSTONE: What month did you leave in '73?

WHITE: I don't remember which month. I think it was around October.

GLADSTONE: October '73?

WHITE: (affirmative grunt)

GLADSTONE: What's the reason you left?

WHITE: I wanted to go into a different endeavor, that's all.

GLADSTONE: Did any particular thing sour you about it?

WHITE: No, I just wanted to go into a different endeavor. Still, I didn't know what I wanted to do.

GLADSTONE: Who was the supervisor over Vince?

WHITE: It was a Sergeant. I forgot his name. I don't remember his name.

GLADSTONE: Sergeant Burritt?

WHITE: No, I don't recall his name.

GLADSTONE: I'm trying to think of some of the Sergeants. Was it a Sergeant Gonce, he wasn't there, was he?

WHITE: (grunt)

GLADSTONE: Do you know any of the Sergeants that were supervisors then?

WHITE: There was one I used to see...heavy, I forgot his name. I didn't really go in the building that much.

GLADSTONE: Where were you basically operating out of?

WHITE: Call in, he'd meet me... (inaudible)

GLADSTONE: Who's this? Vince would meet you?

WHITE: Yeah.

GLADSTONE: So all of your dealings were mostly with Vince?

WHITE: Right.

GLADSTONE: Now this would be on an every day basis? He'd call you and meet you some place?

WHITE: Yeah, you know.

GLADSTONE: You were working undercover or were you working out in the open?

WHITE: Well, it was out in the open.

GLADSTONE: So you didn't have a false I.D. and...

WHITE: No.

GLADSTONE: and working undercover with an organization?

WHITE: (two negative grunts)

GLADSTONE: Where was the ISD headquartered?

WHITE: It was in the old Central building on the fifth floor. It was on the top floor.

GLADSTONE: How often, say on a weekly basis, would you get up there?

WHITE: I wouldn't.

GLADSTONE: All of your action was on the street and you didn't check in at the Headquarters building?

WHITE: I checked in by telephone, not by physical appearance. Every now and then I might go in, very, very seldom.

GLADSTONE: What kind of equipment would you use in your role as...

WHITE: The regular.

GLADSTONE: Such as what?

WHITE: (one word - inaudible - possibly "the walkie")

GLADSTONE: You actually carried that with you in your role as undercover?

WHITE: (inaudible)

GLADSTONE: To give you an idea, let's say you were...

WHITE: ...jot down notes when we heard a rumor.... (inaudible)

GLADSTONE: One of the things you asked me was what I hoped, expect to get out of the investigation.

WHITE: I've been thinking about it.

GLADSTONE: I'm not anxious to see people who are guilty of crimes go free. But there is information, quite a bit of information, that people's rights are indiscriminately gone over.

WHITE: Ummmmm.

GLADSTONE: This tape that I have is strictly for me, for my notes and no one else. No one else will see it but me.

WHITE: Ummmmm.

GLADSTONE: So that, I guess a lot of people have the feeling that what I did was in the name of fighting crime and that the end justifies the means. But, if we're going to be governed by a system of laws, it means that everybody is going to have to obey them and it can't be a special privileged group of people who evade those laws.

WHITE: (affirmative grunt)

GLADSTONE: In the name of doing something good. Nixon's people felt that way.

WHITE: Right.

GLADSTONE: All right!? They felt that it was all right to break the law because they were only spying on the Democratic party.

WHITE: All right.

GLADSTONE: So just take one step after the other. I know you're going to have a lot of loyalty for a lot of people.

WHITE: Uh, yeah.

GLADSTONE: Well, the people that you worked with, you're going to have some loyalties to.

WHITE: I don't know... what you mean.

GLADSTONE: And one of the reasons I'm doing it this way is so that it can be checked at this level and doesn't have to get to a level of Paul Vince and his testimony and frankly, his testimony is highly suspect because it's directly contradictory to testimony of four or five other people. It's guys like that who are really going to get themselves in hot water. By keeping it at this level...under an informal, we hopefully can pass this over you and not have to bring it up again. But what I need to know is basically what kind of equipment was in the equipment room that I know everybody in ISD knew about and had access to.

WHITE: How do you know everybody in ISD knew about it? You don't know everybody in ISD knew about it!

GLADSTONE:	What kind of equipment were you told was available to you? In your work?
WHITE:	Cameras, two-way radios.
GLADSTONE:	What kind of equipment did you see?
WHITE:	...helmets, video-tape machines, two-way radio.
GLADSTONE:	Special lenses on the camera?
WHITE:	Well, yeah, I guess so.
GLADSTONE:	Telescopic lenses, the long ones.
WHITE:	No, no telescopic, just the, two or three lenses.
GLADSTONE:	...training in the Army in electronics, you knew about electronics. You knew about what could be done with electronics, basically from your training in the service.
WHITE:	(affirmative grunt)
GLADSTONE:	And isn't it true one of the reasons you got in ISD, it was suggested because of the Department seeing your extensive training in that field.
WHITE:	Yeah, I suppose so.
GLADSTONE:	Your familiarity with electronics is what attracted them?
WHITE:	I don't think so.
GLADSTONE:	At one point in time...?
WHITE:	I really don't think so.
GLADSTONE:	Maybe after you applied?

WHITE: (inaudible)

GLADSTONE: Did you ever have an occasion to use any of your electronic __________ while in the Police Department?

WHITE: (negative grunt)

GLADSTONE: Were you aware of the Department doing a wiretap, legal or illegal?

WHITE: Nope. Never, not by...never and that's the truth.

GLADSTONE: So that the people that are saying that everybody in ISD knew what was happening, knew that when they entered in there, that there was a closet off the Sergeants' room, door opened where they had alligator clips, is that what they are?

WHITE: I don't know.

GLADSTONE: What are alligator clips used for?

WHITE: I used to use alligator clips on the leads when I was testing circuits or if I was on the telephone... if I was on the pole...

GLADSTONE: You never had occasion to use that talent in the Police Department?

WHITE: Never. Never did. The only time... (long inaudible section mentioning Customs House, Washington, D. C., and the government).

GLADSTONE: What kind of work did you do for the government?

WHITE: Well, it was the military.

GLADSTONE: Did your superiors in ISD know about your background in electronics.

WHITE: (entire answer inaudible)

GLADSTONE: Your supervisor was who again?

WHITE: Paul Vince.

GLADSTONE: Did you ever discuss your __________ with Paul?

WHITE: Well, I...personal friends with Paul.

GLADSTONE: Are you still personal friends?

WHITE: Yes, we are.

GLADSTONE: Does Neal Brockington ring a bell to you?

WHITE: I've heard the name.

GLADSTONE: Was he your Sergeant when you first got in?

WHITE: Brock...I really don't think so...

GLADSTONE: Was there a different Sergeant in charge of surveillances of different groups?

WHITE: That, I don't know.

GLADSTONE: Did you ever attend any public hearings at the request of Paul Vince?

WHITE: Nope.

GLADSTONE: In effect, for three years, exactly what did you do?

WHITE: Well, I worked for Paul, went around interviewing people, things happening, things came up........ any complaints filed, things like that...basically that's all I did.

GLADSTONE: Did you ever attend any kind of a meeting and have to report back the names of persons that were at the meeting?

WHITE: No, I attended some rallies, one or two Panther rallies.......

GLADSTONE: Did you ever have occasion to be in the Panther headquarters?

WHITE: No I never got in there

GLADSTONE: Where was the Panther headquarters?

WHITE: I don't knew...

GLADSTONE: Did anyone else ever go in, to your knowledge?

WHITE: I can't say, I never saw them

GLADSTONE: Did you ever hear of anybody going in?

WHITE: No, but I've overheard at lot.

GLADSTONE: What have you heard?

WHITE: I've heard, from people on the street, from Panthers themselves that say they were infiltrated by the Police Department....

GLADSTONE: Did you ever hear that anybody from the Police Department actually physically went into the Panther's headquarters?

WHITE: .....Panthers that they had Pigs infiltrating their organization.

GLADSTONE: How about, did you ever hear from Police that they had actually physically gone into the Panther headquarters when the Panthers were not there.

WHITE: No

GLADSTONE: In other words, if they had broken into the headquarters?

WHITE: No.

GLADSTONE: Did you ever have occasion to get a phone number that was unlisted?

WHITE: What, for I.S.D. ? Nope.

GLADSTONE: So as I understand it, you would always work as a partner, basically with Paul Vince

WHITE: Right.

GLADSTONE: And the only type thing you'rd go to would be like investigate, talk to people. The Black Panthers, what was the other group you mentioned?

WHITE: Black October.

GLADSTONE: Black October.

WHITE: ... procedures when certain crimes were committed White Collar Crime ______, forgery...... like check forgery.

GLADSTONE: You actually got involved in check forgery?

WHITE: No, when in certain crimes... we would try to find who was forging checks and who was on Welfare and had two or three husbands....

GLADSTONE: Don't they have a Check Squad for that?

WHITE: I don't know, I never heard of a Section called a Check Squad.

GLADSTONE: Did you ever hear of a man named John Mellinger?

WHITE: I've heard the name, the last name.

GLADSTONE: Who is John Mellinger?

WHITE: I don't recall.

GLADSTONE: Does he, is he a Policeman?

WHITE: I don't remember.

GLADSTONE: Have you ever met him?

WHITE: Never met him.

GLADSTONE: Do you know if worked in L.S.D. ever?

WHITE: I don't know.

GLADSTONE: Did you ever have occasion to, what kind of clothes did you wear on you assignment?

WHITE: Well, to rallies , sometimes I'd wear jeans sweatshirt.

GLADSTONE: Have you ever worn clothing similiar to that of a Telephone Company man?

WHITE: (answer inaudible)

GLADSTONE: Did you ever put on the kind of gear that a Telephone Company man would wear ________?

WHITE: Yes and No.

GLADSTONE: Well, have you ever dressed in the uniform of a Baltimore Gas and Electric man would wear?

WHITE: No.

GLADSTONE: Have you ever posed as either a Telephone Company repairman or a Telephone Company Official or as any Official except as a member of the Police Department?

WHITE: No.

GLADSTONE: Have you ever had occasion to contact anyone in the Telephone Company

WHITE: (negative grunt)

GLADSTONE: If had want something checked out .... what would you do ?

WHITE: I would not want it. I would not have the need for it. If I had something, If I didn't have the phone number on me, I'd have to go to a phone or make the inquiries .... or make a report...or go to Central Records

GLADSTONE: Did you ever work with any other credit outfit?

WHITE: Any credit outfit?

GLADSTONE: Such as United Credit Bureau of Maryland.

WHITE: Nope.

GLADSTONE: Did you ever use any of the cameras that was, that was in I. S. D.?

WHITE: I had my own camera, I had my own.

GLADSTONE: So you never had occasion to use any special equipment at all?

WHITE: No.

GLADSTONE: So, if anyone ever said they saw you with any specialized equipment, they would be wrong?

WHITE: Essentially, the only thing they seen me with might have been a radio or it might have been a camera...

GLADSTONE: Have you ever had occasion to see anyone check property out of the Captain's, ah, the Sergeant's room, that had some of that camera equipment? Do you know what the procedure was for checking equipment out?

WHITE: Nope.

GLADSTONE: Were you ever told what equipment was actually in that cabinet?

WHITE: Nope.

GLADSTONE: Did you ever ask?

WHITE: No.

GLADSTONE: When you left, was that ah, were they still working in the old building or the new building?

WHITE: New building.

GLADSTONE: Ah, what were the facilities in the new building?

WHITE: I don't know. I only went in a couple times.

GLADSTONE: (clears his throat) How many times is a couple times.

WHITE: Three times.

GLADSTONE: How long did you actually work there, in the new building?

WHITE: I don't remember, all I remember is that it was about '72.

GLADSTONE: Well, were you there at least a couple months?

WHITE: Yea.

GLADSTONE: Well, for a couple months of '73, you were only in the building maybe 3 or 4 times?

WHITE: Yea.

GLADSTONE: On an average day, then you would receive a phone call from Paul Vince?

WHITE: No, I called him.

GLADSTONE: What time did you call him?

WHITE: In the morning, in the afternoon, if I wasn't with him, normally I'd be with him.

GLADSTONE: Well, what, what shift did you work?

WHITE: It depends on what happened (inaudible)

GLADSTONE: So it was a flexible type thing, huh?

WHITE: Yea.

GLADSTONE: And he would meet with you somewhere?

WHITE: Yea.

GLADSTONE: Where would you usually meet?

WHITE: (pause) Most of the time, ah, a lot of times, I was living with my girl, and he lived in the back, so he'd stop by, or he'd, or he'd pick me up in the morning (inaudible)or I'd call him and we'd meet at my house or maybe a restaurant.

GLADSTONE: Where did you write your reports?

WHITE: Where did I write'em... wherever I was, if I was in the car, I wrote 'em there.

GLADSTONE: How did you deliver the reports?

WHITE: (inaudible) ...to Paul Vince.

GLADSTONE: Did you actually hand him the reports physically?

WHITE: Right.

GLADSTONE: Ah, so you never sent them in downtown?

WHITE: No.

GLADSTONE: What do you, ah, you know that Paul Vince was your immediate supervisor? Who was the captain in charge when you first went in?

WHITE: Lieutenant Rawlings... (inaudible)

GLADSTONE: Who else was there in I.S.D. during the time you were there?

WHITE: Sergeant Pugh, that was, I don't recall the names.

GLADSTONE: How come you can't recall the names of the guys you worked with?

WHITE: It was, you know, I'm not an inquiring person, and I forget names, especially if I don't have any contact with them, the same as, ah, if you known women months ago, you ah, you forget the names, the same as on the street... ah, you know that person.

GLADSTONE: Never.

WHITE: Well, it's ah, ah...

GLADSTONE:	Once you've been with a girl, you never forget her name.
WHITE:	Why, certainly you do. Maybe there's something...
GLADSTONE:	Well, when you run into too many in number...
WHITE:	Well, perhaps, well maybe that's why I don't remember, because you always, you know you're always seeing guys, you know you've seen guys in their uniforms...
GLADSTONE:	Well, how many guys ...

End of Side 1

WHITE:	...named Michael and ah, you know Monty, and ah...
GLADSTONE:	Are you still on Montford?
WHITE:	Well, he's not deceased, I don't think.
GLADSTONE:	Is Monty one of the persons he spoke to?
WHITE:	Spoke to him when, spoke to him when.
GLADSTONE:	Last week.
WHITE:	No. I haven't talked to him in some time.
GLADSTONE:	Do you know what he's doing now?
WHITE:	No, I don't.
GLADSTONE:	George Russell's chauffeur.
WHITE:	Oh, is he?

GLADSTONE: Oh, also body guard.

WHITE: Huh, oh that's alright. That's a nice job.

GLADSTONE: Who else?

WHITE: Oh, several other guys, ah I don't recall their names. One guy's George, you know George, George...

GLADSTONE: George who?

WHITE: Gaston.

GLADSTONE: What kind of work does George do?

WHITE: He was in I. S. D.

GLADSTONE: Well, what was his assignment?

WHITE: Sometimes we worked together and other times we didn't.

GLADSTONE: Who else?

WHITE: Ah, let me see, there were some white guys, and black guys.

GLADSTONE: Did the white guys generally work different areas than the black guys?

WHITE: Well, I really didn't know what anybody else was doing. A lot of times, I didn't get around too many guys because I was with Vince, you know the majority of the time, so you know when I had to report to him, you know, meet him or what have you. Basically, that's how I got on certain cases. The majority of the time it was almost like, ah, supervision, or assistant supervisor, taking mental notes if we were unable to write, you know, if it was dealing with a particular issue or talking to someone, if you were unable to write if you were out, if you were unable to write because of persons feelings, uneasy, mainly I

concentrated on the conversation and took mental notes.

GLADSTONE: Got back and briefed Paul?

WHITE: (inaudible) Well, you know I would try to just remember, well, I knew what to look for during the course of a conversation, what to pick out from it, what to hold on to, such as times, dates, and things of this nature. I was his listening ear, what you might say.

GLADSTONE: Who's that, Vince.

WHITE: Yea. Vince's, that's what, basically that's what I did. I was his right-hand man and his ear.

GLADSTONE: I should take this tape and throw it away, because this tape is going to get you in a lot of trouble.

WHITE: It is, why's that.

GLADSTONE: Because there's a lot of people that say a lot different.

WHITE: Well, then they might be in a lot of trouble. Don't they get time for perjury? Isn't that against the law?

GLADSTONE: Well, it's always a question as to who is perjuring and who's not perjuring.

WHITE: Oh.

GLADSTONE: I've worked with police a long time and I know that the guys talk and I know that, when guys talk, everybody knows everybody's business, basically.

WHITE: Well, see that's the thing, I don't know, you know, what their looking for, what might have been talked about, we talked about how many broads we had, you know, and we talked social things, you know, what we drink, where we were going this weekend, to this club, and who's going to have a party and are you coming 'cause so and so is going to be here, or have you knocked her off yet, you know.

GLADSTONE: Well, the, some of the, of the testimony you've given is directly contradictory to what Paul Vince...

WHITE: Is it?

GLADSTONE: Yea, I read his transcript, directly contradictory (pause) This transcript...

WHITE: Because, is mine wrong?

GLADSTONE: Because he indicated what he did.

WHITE: Huh-huh. Well, there again, I can't account for the man when he's not in this room, when I'm not in his presence.

GLADSTONE: Well, who else did you work with besides Vince?

WHITE: Oh, other guys, ah, Barnett sometimes, George, ah, Gaston, ah...

GLADSTONE: What was Barnett's last name?

WHITE: I don't know.

GLADSTONE: Well, I seen 3 weeks ago, you knew his last name.

WHITE: It comes and it goes. Well, I'm not asshole buddies with the man, I know him ah...

GLADSTONE: Barnett Brooks, how do you like that.

WHITE: Oh yea!

GLADSTONE: Did Barnett talk to you about talking to me?

WHITE: No, I haven't talked to Barnett in some time. Not in some time.

GLADSTONE: What we want to do is not to get the guy in trouble, who was following the order, what we want to do is get to get to the guy who was actually, who told the man what to do, told him to do this, told them to do that, unless we get the straight scoop from the guy who did the doing, we can't get the guy that told him to do it.

WHITE: Hmm.

GLADSTONE: Follow me?

WHITE: Hmm.

GLADSTONE: Somebody's going to get burned.

WHITE: Right.

GLADSTONE: Um, and I wanta have it be you to get burned, frankly,because I think that number one, you believed in what you're doing. I know that from the Police Department method of operation that someone with your training and someone with your experience they would not waste in following up chicks,

WHITE: But if they didn't know about it, then they would be unaware of it.

GLADSTONE: But, you put it down on the application?

WHITE: Yea, I put down that I was a (inaudible) man.

GLADSTONE: And you just didn't happen to go into I. S. D. ?

WHITE: See, I don't know who you've been talking to, you know, and when, and when you, . .

GLADSTONE: I've been reading transcripts. You're the first one I've spoken to. I've been reading, for the last 4 or 5 days the transcripts of everybody who's testified.

WHITE: You know, I think what we should do is to have a gathering of all personalities that have, uh, been in the unit, and you know, sit down and perhaps, you know, a guy may not have lied but he may have thought such and such a thing occurred or such and such an individual was aware of this, that, and the other, you know, I think that ah, perhaps we should all come together, you know, and if there, and if this individual has in his mind, you know, that this occurred, or this other individual was involved, then they can confront it and say hey, well, either it was or it wasn't, or you know, misled.

GLADSTONE: Who was doing the wiretapping?

WHITE: I never heard of any wiretaps until recently what I've read in the paper and heard on T. V.

GLADSTONE: You did not know from word of mouth that there were legal wiretaps going on and I. S. D. was doing them?

WHITE: No.

GLADSTONE: You didn't know that I. S. D. had the tapping equipment, tapping equipment right in their office?

WHITE:	I've never seen it, I've never had an occasion to see it.
GLADSTONE:	And yet, you used that equipment in the service?
WHITE:	I've never used any bugging equipment in the service.
GLADSTONE:	No bugging equipment, listening device equipment.
WHITE:	I've never used any listening device equipment.
GLADSTONE:	Well, when you went up on the poles, you used the alligator clips, did you cut in on other lines?
WHITE:	I used a telephone that had alligator clips on it.
GLADSTONE:	So you could dial it?
WHITE:	So you could dial to the exchange, and it was physically displayed because it hung on your belt, the same as I would imagine, they used out here.
GLADSTONE:	Have you ever had occasion upon someone elses direction in the Police Department, to actually go out and listen in to a conversation at a sub-station of the telephone line?
WHITE:	No.
GLADSTONE:	Have you ever listened in on any telephone calls in any way, shape of form?
WHITE:	Never.
GLADSTONE:	Are you aware of anyone in I. S. D. that ever listened in on telephone calls?
WHITE:	No.

GLADSTONE: No one ever told you about it?

WHITE: No.

GLADSTONE: Are you aware of the, any affidavits that were prepared by ah, being given to the affiant, the facts being give to him from the results of someone elses information?

WHITE: I'm afraid if it did exist, it was on a much higher level for a peon to know about it. Well, I don't know what another individual knew about what, but I didn't know, I was never confronted. I could never say that I am aware by saying the individual person or physically that he did such and such a thing, as far as, ah, listening devices and what have you. No way would I ever be able to say, and be very truthful, that anyone has point blank told me that we've got a bug on this or we've got a device on this.

GLADSTONE: Nobody ever told you?

WHITE: No. You might hear all kinds of crazy shit going on but no one has ever approached me and said, "Bob," direct, "hey, we've got a line bugged or an office bugged." I did know that one could acquire a listening device through the court system with probable cause.

GLADSTONE: Was that ever done, to your knowledge?

WHITE: No, no, not to my...

GLADSTONE: Did you ever have occasion to investigate any politicians?

WHITE: No.

GLADSTONE: Did you ever have occasion to investigate anyone that was not involved in a crime?

WHITE: When you say, not involved in a crime, (inaudible) individuals who are suspects of a crime, they may not have been involved in a crime.

GLADSTONE: What I am saying is that they were not involved in a crime.

WHITE: Such as ministers and political figures and things of this nature, to my knowledge, no.

GLADSTONE: Did you have access to files in I. S. D. ?

WHITE: No.

GLADSTONE: (inaudible)

WHITE: No, I have not.

GLADSTONE: Never had occasion to pull a file in the entire time that you were there?

WHITE: No. I wasn't a sergeant, I wasn't a lieutenant, I had no business going into that stuff,

GLADSTONE: Never was in the file room?

WHITE: No.

GLADSTONE: Did anybody ever tell you the kind of files they had in the file room?

WHITE: No. I've learned more, I've learned more through supposedly what's supposed to have been in their office through the newspapers then (inaudible)

GLADSTONE: What kind of work did Barnett Brooks do?

WHITE: Basically the same as I do, as far as I know.

GLADSTONE: What kind of special training did he have?

WHITE: He's a law student. He didn't go in the service, he's not a veteran.

GLADSTONE: Who else had special training in electronics in the I. S. D. ?

WHITE: Nobody that I knew of. There was one individual that was under I.S.D. at one time before. I didn't know him, he was supposed to have been in electronics in the service, but I didn't know him.

GLADSTONE: Who took his place?

WHITE: I don't know. You say, took place, like a certain slot, a certain slot. Each man knew what every man was doing. This is false. I don't know,the only reason why I knew of or met other individuals was because of being with Paul and meeting other guys. I never actually knew, other then that, what this guy was doing, what that guy was doing, what that guy was doing, what that guy was doing, nor did they know what I was doing.

GLADSTONE: And you didn't talk about it?

WHITE: No. I was in Military Intelligence and I was brainwashed, and for me that was the equipment that I worked with, for I had a top-secret clearance with access to NATO, SEATO, SECTO, SETEC, CRYPTO, the whole realm of... inaudible... I went through a debriefing period that took about a week and a half, on and off, in signing papers and signing papers and when I turn my badges in... inaudible... And when I left, believe it or not, two days later, some of the equipment, drivers' keys, I could not remember the circuitry, maybe it was psychological, but after going to school, working with it, when Nixon first came in office and he went to Europe three months later, I backed the hot-line from the Comm. Center from Europe to the Pentagon to the White House.. When the first astronauts went to the moon, I worked 12 hours a day. We had a control room down on the fourth floor, I think it was. We worked hand-in-hand, monitoring. I forgot, I blanked it out of my mind. When I left there, tapes were burned, even the test-tapes and things of this nature. I couldn't right now sit down and describe or draw a map of the corridors that we went to take to the elevators to destroy. I couldn't

even really point-blank describe to you where the logistics were.

GLADSTONE: When you filled out a report for the Police Department, what kind of report was it -- a regular 95?

WHITE: A 95.

GLADSTONE: Alright. Then you would make your 95 about all your surveillance work.

WHITE: What do you mean, all of it?

GLADSTONE: All surveillance work that you did. Did you have to reduce it to writing?

WHITE: Sometimes, mainly, most of it with me was oral with Paul. Inaudible....the other guys. I guess some of it was in writing, some of it would be verbal. Inaudible...

GLADSTONE: Did you ever meet a Sergeant Pugh?

WHITE: Yeah, I've met him.

GLADSTONE: What was he in charge of, do you know?

WHITE: He was a Sergeant in I.S.D., that's all I know.

GLADSTONE: And you were in I.S.D. the whole time you were there?

WHITE: Yeah.

GLADSTONE: And you never had occasion to go to any political meetings?

WHITE: No.

GLADSTONE: You never had occasion to go to any regular citizen meetings.

WHITE: Uh-Uh.

GLADSTONE: To any organizations?

WHITE: There was one meeting that I was going to go to at a church; however, it was opened to the public, and I was going to go for my own interest anyway. And I can't really recall what it was about, but it was a controversial issue. Something was happening ...inaudible...and I just wanted to go.

GLADSTONE: Were you told to go?

WHITE: No. No, and I had started up there and I said screw it and went somewhere else.

GLADSTONE: Were the Panthers active the entire three years that you were there?

WHITE: They were active on...the Panthers kind of petered out after some things happened.

GLADSTONE: And Black October, that was fairly recent.

WHITE: Inaudible.

GLADSTONE: So you were working with Black October, but you weren't working with the Panthers.

WHITE: I assisted in some investigations.

GLADSTONE: Like what?

WHITE: Criminal investigations.

GLADSTONE: Like what?

WHITE: Homicide.

GLADSTONE: ...Inaudible...why would I.S.D. get involved in a homicide?

WHITE: Threats...things of this nature.

GLADSTONE: Threats against whom?

WHITE: People called and said that there was going to be a ruckus going on, they're going to raise hell. They going to do this, they going to do that. You know, Black Liberation Army.

GLADSTONE: Any other groups that you investigated during your period of time?

WHITE: No, the Black Liberation Army.

GLADSTONE: Did you ever have occasion to use any listening or eavesdropping devices on any surveillance?

WHITE: No, never.......inaudible...

GLADSTONE: I'm not doubting you, I'm not doubting you...it goes beyond doubting you, because it even conflicts substantially with the man that you are doing it with.

WHITE: There again, I can't account for his time. You know, I wasn't in his presence, I don't know what he did... You know, he could be doing anything. You know, I can't say, I'm not aware.

GLADSTONE: Did you tell me, you never heard of Marshall Meyers?

WHITE: Who?

GLADSTONE: Marshall Meyers.

WHITE: I've heard of a Marshall.

GLADSTONE: You've heard of Marshall?

WHITE: I've heard the name Marshall.

GLADSTONE: Where have you heard that from?

WHITE: ...Inaudible...works in the State's Attorney's Office, but I didn't know him.

GLADSTONE: Who is George Andrews?

WHITE: I don't know.

GLADSTONE: Did you ever meet a George Andrews?

WHITE: I don't know George Andrews.

GLADSTONE: Do you know Bobby Eddins?

WHITE: Nope.

GLADSTONE: Jack Cook?

WHITE: Nope.

GLADSTONE: Jimmy Cooper?

WHITE: Nope.

GLADSTONE: Bob White?

WHITE: I know him.

GLADSTONE: Huh, I almost caught you, didn't I? The case is going to boil down to a number of people ...inaudible...inside.

WHITE: Numbers are going to be on the inside and numbers are going to be on the outside.

GLADSTONE: There's a distinct possibility that when this thing is over, our results are going to be turned over to the U.S. Attorney.

WHITE: Ummmm.

GLADSTONE: And they're trying to have certain parties taken care of ...inaudible...those who were less involved, we would prefer to use rather than the targets...inaudible...we would like to make sure...inaudible...the U.S. Attorney

is interested in our investigation because it is a five-year penalty for wiretap.

WHITE: Uh huh.

GLADSTONE: And the statute of limitations is five years.

WHITE: Uh huh.

GLADSTONE: Obviously, those that get on the gateway to cooperation quickly...inaudible...those that we find aren't cooperating, those will be the ones that will have to bear the blunt of number one, this investigation and, number two, a federal investigation...inaudible...

WHITE: Well, you know, I can't, you know, say as to what's on the paper. I don't know,...inaudible...

GLADSTONE: I don't know, I'm not going to lie to you about it.

WHITE: I can only state what my way.

GLADSTONE: We've got one or two people that say they saw you with clips and they've seen you up a pole, they've seen you do anything.

WHITE: (Laughs)

GLADSTONE: I'm not saying that you haven't, now, I'm not saying that you did. I'm not saying that we have something that we don't, but you are the first of many that I'll be talking to. I can tell you when your name is dropped ...inaudible...we have been out everywhere. Essentially, you've got everything across the board.

WHITE: Oh, yeah. The last time I was on patrol was in 1967 in Southeast Asia.

GLADSTONE: Now, let's assume, preferably, erase all that shit I've got on there, and have you tell me confidentially what the fuck you really know.

WHITE: I cannot tell you anymore than what's on that tape, and that's it.

	I am not, I am telling you the truth. I am! You know...
GLADSTONE:	You'd take a lie detector test?
WHITE:	Would that make you happy?
GLADSTONE:	Yeah. You'll take a lie detector test?
WHITE:	Yeah, and if I take one, can I get a few people to take one too?
GLADSTONE:	You've got to pass your test first.
WHITE:	I'll pass. I'll take it only if I can get a few other people to take it too.
GLADSTONE:	Like who?
WHITE:	So when it comes time for that...
GLADSTONE:	No, no, no. I'll set up the stipulation now...
WHITE:	When it comes time for that...
GLADSTONE:	I'm listening.
WHITE:	Whoever you have been getting your evidence from.
GLADSTONE:	I told you I've got nobody to say that Bob White was up such and such a pole, Bob White did this or that.
WHITE:	What?
GLADSTONE:	The information that I've got number one, is directly contradictory to Vince's as far as activities that you were doing ... inaudible...
WHITE:	As far as what I was doing?
GLADSTONE:	Huh?

WHITE: As far as what I was doing? Yeah, wait a minute, wait a minute, as far as what I was doing?

GLADSTONE: You spoke to Vince about this, didn't you, he told you what he testified to, didn't he?

WHITE: No, no. Wait a minute, you said something. Right, you said something. You said....inaudible...

GLADSTONE: Inaudible

WHITE: Wait a minute, you're saying as far as what Vince is saying is strictly contrary to what I have said.

GLADSTONE: Uh huh.

WHITE: So, in other words, he has said something about my activities, differently from what I have said.

GLADSTONE: Yes.

WHITE: Now, I don't believe that. I couldn't.

GLADSTONE: Because he told us exactly what he did, and you put yourself with him at least half of the time.

WHITE: Right. But there's 24 hours in a day.

GLADSTONE: Don't give me that horseshit.

WHITE: Well, there are, and I cannot account for his activities.

GLADSTONE: If you were working with this man everyday, and he tells us what kind of shit is going on, alright, without mentioning any names. You are a part of his outfit. He's working directly with you. You've got to be involved in some of the stuff he's involved in.

WHITE: Maybe, if he did something of this nature. Maybe it was after I left. You know, like I said before, there's 24 hours in a day.

GLADSTONE: When did you speak to Vince.

WHITE: Last?

GLADSTONE: Right.

WHITE: I talked to him yesterday. We are personal friends, but if you're interested in our conversation, the conversation was about, we talked about a couple fat broads, you know.

GLADSTONE: Fat broads?

WHITE: Yeah.

GLADSTONE: Who would want to waste their time on fat broads?

WHITE: Well, this is black lingo, you know, a nice chick lady, you know, description. We talked about a business endeavor that we wanted to go into, and we still intend to go into. We talked about school. We talked about ...inaudible...getting our shit together, our far as getting our education and making our move. That's what we talked about.

GLADSTONE: What else? You are fucking fantastic.

WHITE: I am telling you the truth.

GLADSTONE: The first thing that came out of your mouth...I'm talking to Gladstone tomorrow night. What did you tell these people, what should I tell these people. I had your phone bugged. I know exactly...inaudible...

WHITE: Then you're going to jail.

GLADSTONE: See that, there you go.

WHITE: You have no cause (Laughs)

GLADSTONE: Yeah, but I had a Judge, the Judge signed the order.

WHITE: The Judge has no cause, he has no power to cause to, for a listening device on my phone.

GLADSTONE: That's right. Now you'd be pretty pissed off if somebody put a listening device on your phone.

WHITE: I wouldn't be pissed off.

GLADSTONE: It's an invasion of your privacy.

WHITE: No, I wouldn't be pissed off. I would be a little disturbed, but I would say if it's in the interest of justice and if it must be done, then let it be done because we didn't have nothing to say on my phone that I've ever, you know,...

GLADSTONE: My recorder is off, is your recorder off?

WHITE: Yes.

GLADSTONE: What you are telling me in your own words is that the trust that you feel was done, was justified.

WHITE: What was done, you haven't told me?

GLADSTONE: Wait a minute, come on...inaudible...this man beats around the bush.

WHITE: You are saying things and you aren't being specific. You are generalizing. You're saying what was done, you feel as though it was justified, now what was done? Are you speaking of illegal wiretapping, is that what you are speaking about?

GLADSTONE: I'm not talking necessarily about taps, I'm talking about listening to conversations.

WHITE: Listening to conversations.

GLADSTONE: Let's put it this way, going beyond what the law permits.

WHITE: Going beyond what the law permits.

GLADSTONE: And you know damn well...

WHITE: Do you have substantial evidence that we could lay out and show that this actually happened, that you went above board, or that, you know, or anyone that I was suspected of knowing or being closely associated with went above board in this endeavor. So I can see what was, no. Mr. so and so, okay, he feels as though this was done, he was under surveillance for no probable

cause, but was he. Where is the proof that he was under surveillance, this man was, who, whom, you know, not hearsay, not what he thinks, so that he could take an oath and that it meant his life or death, in effect, yes. Do you have that? Then, what I know about it, and if I didn't know about it, why wouldn't I know. I should know about everything that... and you said that I was beating around the bush.

GLADSTONE: I know it.

WHITE: Maybe I'm not that good as an investigator.

GLADSTONE: No, I think that you see and hear what you want to see and hear.

WHITE: Maybe there were others who felt as though I wasn't that good. You know, and if these things did occur, they didn't give me these things to do. You know, these things happen.

GLADSTONE: With your training and with your background, and the fact that you went directly into I. S. D. without even going to the God Damn Academy, they wanted you and they wanted you for your special training--not because you were some poor black boy who they felt was just as good as anybody else--you happen to have had a specialty and they wanted to use that specialty and you were... inaudible... to use that specialty... and that's the truth.

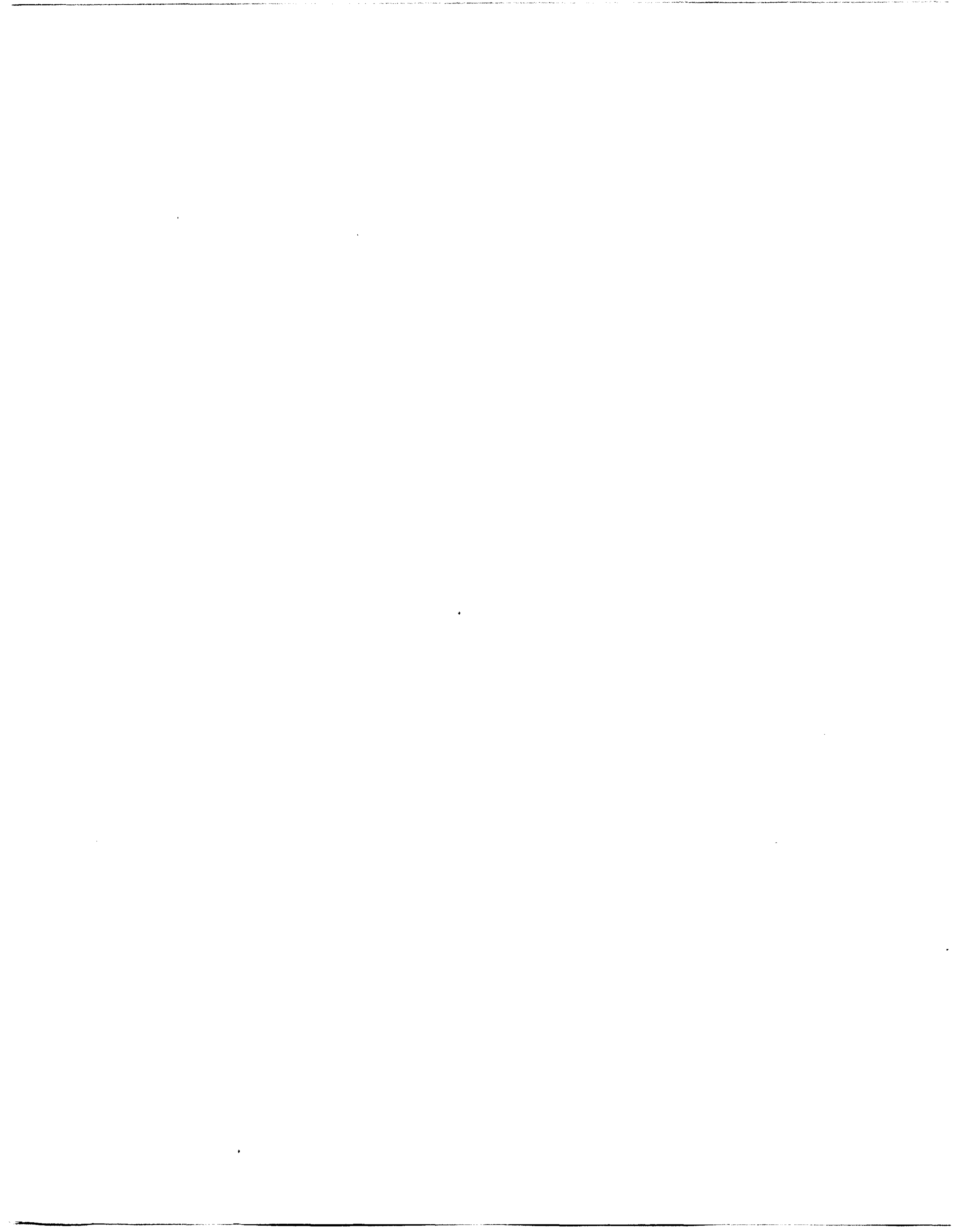
WHITE: Inaudible. I've never heard you cuss before.

GLADSTONE: That's because you piss me off. The tape, you've showed your friends that you have withstood my cross examination and now turn it off.

WHITE: Come on, this is strictly confidential.

GLADSTONE: Yeah, sure, bullshit. Now...

EXHIBIT J to ENCLOSURE (3) to the Report of the Police Commissioner to The Honorable Marvin Mandel, Governor, State of Maryland, February 5, 1976.



Because of volume--235 pages--Exhibit J, transcript of State of Maryland v. James Neal Featherstone, indictments 17501498, 99, in the Criminal Court of Baltimore City, Part IV, is not provided. These proceedings before The Honorable Albert L. Sklar are a matter of record and available for review on request.

EXHIBIT K to ENCLOSURE (3) to the Report of the Police Commissioner to The Honorable Marvin Mandel, Governor, State of Maryland, February 5, 1976.

Baltimore, Maryland
April 1, 1975

I, John J. Gallagher, have read the attached sworn statement and have signed this statement. I have initialed each page. There are a total of 20 pages to this statement. I have initialed all changes.

I reside at 2211 Lake Avenue, Baltimore, Maryland.

The facts including the events and recollections are, to the best of my knowledge, true and correct.

I make this statement voluntarily, and I understand that it could be introduced later to a legislative or governmental administrative committee.

I further want it understood that I voluntarily made the initial approach in this matter, and that approach was completely unsolicited.

Signed:

John J. Gallagher

NOTARY

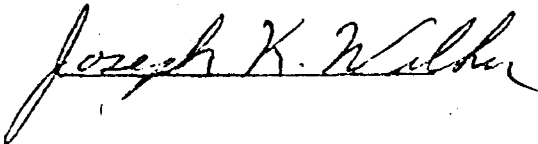


EXHIBIT "K"

Baltimore, Maryland
March 31, 1975

Within this statement, it is my intention to come forth and set the records straight about my involvement/ support of the suspended police officers during Baltimore City's recent and disastrous police strike. I also deem it necessary to bring to an end the continued efforts by media, their efforts to verbally and visually assassinate the Police Commissioner. Suspended police of Baltimore City do not have a truly functional representative at this time. I believe they've been used by their Union and by certain irresponsible elements in media.

Therefore, the above and continued declaration by me will be made in an effort to represent suspended policemen and to bring to an end the continued media assassination of the Police Commissioner because of certain irresponsible elements in media are hiding behind Article 35, Section 3, which states:

> "Employees on newspapers or radio or television stations cannot be compelled to disclose source of news or information."

This media protection in our state has turned the Senate Investigating Committee of the Commissioner into a trial by television.

My declaration will cover several time spans. The period from my public statement on July 17, 1974 to the Primary Election, September 8, 1974; then from the middle of September up until the middle of November in 1974. My recollection of the events will include personalities involved and their purpose, and the reflections on the right and wrong of my personal involvement until my present conclusion--that the Commissioner was not only the target for removal after the strike, but the most glaring point of evidence is the fact that the Union gained my confidence and used my legislation, the Policemen's Bill of Rights, not only as an organizing tool for membership but also as a weapon to complete their vendetta against the Commissioner. This was never the intent of this legislation, which became the nation's

first Policemen's Bill of Rights, and now it lies temporarily disgraced. And, in my effort to set the record straight, I do not hold the Commissioner totally blameless and I believe many of his actions were not warranted.

But, in my conclusion, and now as a private citizen holding property in Baltimore City, I consider the Commissioner's survival to be in the best interest of all the citizens of Baltimore City, in particular the black citizens who now, more than ever, need a strong Police Commissioner such as Commissioner Pomerleau to protect them against rampant crime in their areas in comparison to the Third District which I represented for four (4) years.

Another point I would like to stress is the economic survival of Baltimore City and the Commissioner. The businessmen not only in Baltimore City but also the National Chamber of Commerce in Washington, D.C., have totally supported the Commissioner. A point of evidence, this is not the first time I have played a crucial role in the Commissioner's survival. A few years ago, there was a concentrated attack led by the same principals now attacking the Commissioner, namely those surrounding Parren Mitchell. They formed a caucus and demanded, to the best of my recollection, that the Governor remove the Commissioner because of a statement he had made in a National Chamber of Commerce handbook relating to subversive activities and militant black politicians. Ironically, the same cast of characters are involved today. I personally met with the Law Enforcement Division of the National Chamber of Commerce in Washington, D.C. They not only totally endorsed the Commissioner at that time in his findings relating to subversive activities, but stated he had one of the finest Intelligence Divisions in the nation. I then returned to Baltimore, met with media, and told them the National Chamber of Commerce's respect for the Commissioner. Media followed through my findings and did an excellent job to offset those trying to remove the Commissioner. Again, it all seemed ironic because my total term of office was spent fighting legislation for so-called citizen-review board, and the elements within our state that condone subversive activities as a form of freedom of expression.

I do not hold myself totally blameless of the attack on the Commissioner, but in his continued failure of his Department to communicate with me. In my efforts for the suspended police, I too became unwillingly caught up in hysteria to get the Commissioner. I know now that the survival of the Baltimore City Police Department had to take preference over my Policemen's Bill of Rights; and it is indeed ironic that my total dedication to legislation improving lives of law enforcement officers, throughout the State of Maryland, that I would become the victim. As I expressed to what I thought was police support before the election; if you lose me, you have no one to fight for you in Annapolis. My first public involvement began soon after the police strike, while viewing the Police Commissioner on television when he said, "The striking policemen shall not be granted amnesty." At that point, I prepared a press release dated July 17, 1974, and it reads as follows:

> "In my capacity as a member of the Maryland General Assembly, I have called upon Attorney General Burch to enforce all the legal provisions guaranteed in the newly enacted Policemen's Bill of Rights. I have taken this action because Commissioner Pomerleau's statement that he will not grant amnesty to certain members of the Baltimore City Police Department is in direct defiance of this law, House Bill 354, entitled 'The Law Enforcement Officers' Bill of Rights,' which was signed by Governor Mandel on May 30, 1974, and this Act became official on July 1, 1974. The major provisions of this Bill are as follows:
>
> > At the request of any law enforcement officer under interrogation, he shall have the right to be represented by counsel or any other responsible representative of his choice. He should be present at all times during the interrogation unless waived by the law enforcement officer. The interrogation shall be suspended for a reasonable time until representation can be obtained.

The Commissioner is now in direct defiance of House Bill 354 and I am seeking legal recourse through the Attorney General's Office."

That public statement was released by me on July 17, 1974; and from that time up until the first week of September, I accelerated my demands upon the Commissioner to honor the provisions of the Policemen's Bill of Rights. The Commissioner did eventually abide by the requirements in the Bill, but not totally to my liking. But what must be understood is that during that period I was also being bombarded by the same half-truths and allegations against the Commissioner that are now appearing in the press.

My wife and I, to the best of my recollection, attended several group meetings for the Police Union and met with Rapanotti in his office at least ten (10) times. And, during all meetings, the target was the Commissioner. At one meeting in particular in Rapanotti's office, upon entering, Rapanotti stated that someone had broken into his office. I said, "Tom, it was probably some Probationary boys from the next floor up," knowing that labor had some sort of agreement to train and rehabilitate Probationaries. Tom replied in what I then considered ~~a~~ NOT A serious tone and smiled when he said, "It was probably I. S. D."

My wife and I attended several meetings in the AFSCME Regional Office of P. J. Ciampa in the Union Hall at 305 West Monument Street. At one particular meeting, during the first week of September, Ciampa phoned Fat Wally, as ~~we~~ HE referred to Walter Orlinsky, to get him to make a strong public stand in their effort against the Commissioner. The general content of the conversation was that because of the Primary Election due in a few days, Orlinsky would not take a firm stand until after the election, after the Primary Election. In their efforts to get the Commissioner, throughout my meetings with the Union and Ciampa, Orlinsky appeared to be their ace-in-the-hole and this was understandable. Because in my four-year term as a legislator, I have on numerous occasions publicly chastised Orlinsky for his numerous stands against the Baltimore Police Department.

In particular, his defense of the Black Panther Attorney Arthur Turco. Orlinsky, while serving as a State Delegate, defended Turco. My exhibit, here, would be an article that appeared in The Morning Sun during Turco's trial. The headline of the article reads as follows:

"Orlinsky Assails Conduct of Police in Turco Case"

And, now, quoting from the article:

"Delegate Walter Orlinsky, one of the four (4) announced candidates for Mayor, said at a political meeting last night that the City Police Department handling the Turco case was a disgrace to the City of Baltimore and must be corrected. Referring to the Turco trial, named after Arthur Turco, a white lawyer who represented the Baltimore Black Panthers and is charged with being an assessory to the murder of Eugene Leroy Anderson in 1969. Mr. Orlinsky further stated, 'I have become increasingly dismayed at the conduct of the Baltimore Police Department, especially their attitude towards young people and radical groups.'"

While serving as a member of the House of Delegates along with Orlinsky, to my knowledge he was still a member of the Second District New Democratic Coalition; and during that period, the Second District New Democratic Coalition Newsletter was mailed to the Baltimore City Delegation, myself included. The Newsletter, at that time, was mailed under the direction of its President, Former City Councilman Fitzpatrick. And in the letter they solicited funds for the defense of Turco. I'm stressing this past event to show a pattern of Orlinsky being a long time adversary of the Commissioner and the Baltimore City Police Department. So it was on y logical that the Union and AFSCME would join together in their efforts to get the Commissioner.

In closing out the time period up until the primary election on September 8, 1974, the political implications must be brought into focus. The Union used the wives of suspended Policemen to harass the Governor throughout the closing days of his Primary campaign in order to force the Governor to supercede the directive laid down by the Commissioner. And during this period, their loytalty to me, as the only Legislator in the state standing up for what I believed at that time to be their husbands' rights, was completely destroyed because over eleven (11) Police Wives who were committed to cover my Precincts on Election Day without forewarning decided instead to picket the Central Police Station. And in the aftermath of my efforts, I stood defeated by only 180 votes on Primary Election evening of September 8, 1974. A small total of votes that could easily have been obtained by me if the Police Wives had chosen to fulfill their obligation to me instead of their picketing of the Central Police Station. To understand the dilemma that the Police Union and the wives left me in, one must comprehend that my political organization, the Coggins-Gallagher Organization, did not even file a complete ticket for the Primary Election. There was no State Senator candidate at the time of the ticket and my two running mates running with me for the House of Delegates were two unknown Precinct workers. So, I knew well in advance that my organization was just going through the motions and, for some reason, that answer until today I do not know, took what is technically known in political circles as a "walk."

My emphasis on the political involvement is emphasized in order to produce the lack of loyalty for the Police Union, not only to me, but to the men they represented. The fact that I stress to many of the suspended Policemen time and time again that the place they should be picketing is the Union Hall. That's who failed you, the suspended Policemen, in a long run, not the Commissioner.

During the latter part of September, I phoned Michael Olesker at his News American office. He was out of office when I called and the day that my efforts failed to reach Olesker by phone, my wife and I had gone into town and had filed a complaint

with the Internal Revenue Division that monitors non-profit, non-taxable organizations. Upon leaving Internal Revenue, while walking along Baltimore Street in the area of Lucas Brothers, we saw the two (2) News American Reporters, Investigative Reporters Olesker and Nawrozki, approaching. We stopped and I briefed Olesker on the evidence of the complaint I had just filed with the Internal Revenue. Olesker and Nawrozki made an appointment to come to my house. And, now, here, to the best of my recollection, is a description of that meeting.

Olesker and Nawrozki met in my office at my residence, at which time I showed them my files on the Harbel Community Organization, an umbrella community organization that functions in the Third Legislative District of Baltimore City. I explained to them that the records they were reviewing plus my findings had been taken to Internal Revenue in order to initiate a full investigation of the possibility of political activity in relationship to their Charter as a tax exempt corporation under Section 501C3 of the Internal Revenue Code of 1974; and that they may have violated their Charter through political intervention, thus becoming what is known as an "active organization." And so would fail to continue to qualify under Section 501C3 of the Internal Revenue Code for a continued tax exempt status. What initiated my investigation of Harbel was the fact that the entire opposition's slate that ran against me in the past Primary Democratic Election was comprised of directors and associates of the Harbel Community Organization. I am versed in this type activity because for three (3) years I sought legislation that would give the Attorney General's Office the power to monitor the assets and organizational structure of the so-called umbrella community organizations.

To my knowledge, it is still an ongoing investigation by Internal Revenue for possible violations of their Charter. And, for that reason, I will not expand any further in relationship to Harbel because I do not wish to jeopardize the Government's investigation.

When I completed my thorough presentation to the Reporters Olesker and Nawrozki, they did not seem interested and the answer to me today is obvious, because their next question was if I had heard or knew if the Commissioner had a dossier on the Governor. I said I did not know, but that the nucleus of suspended police had been meeting at my house in order to get the Commissioner to recognize the provisions contained in the Policemen's Bill of Rights.

Shortly thereafter, I arranged another meeting at my home, where Olesker and Nawrozki met with an active nucleus of suspended police. As I reflect back at that first meeting, I realize I had served my purpose to Olesker and Nawrozki because they clustered the individual suspended policemen into corners and mostly in the basement office of my residence and out-of-earshot of my listening presence. To this day, I have a sick feeling of their motive of operation, their paranoia style of interrogating suspended police, the cold, selfish expression in their eyes that I had been used and stood on the sidelines like a damn fool, caught up in their conspiracy to get the Commissioner. And more than ever, I believe the possibility that if these two reporters, Olesker and Nawrozki, had to destroy the Governor to get the Commissioner they would not have hesitated to do so.

The reporters' meetings with the suspended policemen moved into high gear when one suspended policeman arranged at his home a mass meeting of suspended policemen for Reporters Olesker and Nawrozki. I attended this meeting and, as I entered the home, Olesker and Nawrozki were interviewing their cluster of about four policemen in the living room. Below in the basement were about twenty-five suspended policemen waiting to be interviewed. I will stress one point in particular about this meeting, The Morning Sun had sent the female reporter to cover the meeting. I was questioned by her and I had told her my involvement was that of trying to insure the full process of the law that all the provisions contained within the Policemen's Bill of Rights would be afforded to those present. As the female reporter left, Olesker told me to catch her because what I may have told her could have affected their efforts. Just outside of the residence, I stopped the Sun Reporter and told her whatever I had told her was "off the record," and she said she would honor my request.

Then, for a period of time, I kept in contact with the Union and, also, their communications with members of the working press in Baltimore. Then, as the newspaper reports started to flow in in respect to Milton Allen becoming a write-in candidate, I considered the same. I considered making the same move, because in 1966 I set up and handled the most successful running-campaign that had ever previously been undertaken in Baltimore City. But that experience behind me, and the forecast knowledge that the media would go to every extreme to pre-sell the Baltimore Electorate on how to vote and write in for Milton Allen, I considered my chances in one isolated District, such as the new 44th Legislative District, as excellent. And so it came to be that television and radio and the newspapers rar an exclusive multi-thousand dollar media campaign on behalf of Milton Allen; and I'm quite certain today that I could have filed a formal complaint with the Federal Communications Commission, based on a fairness doctrine, that would have insured that I and other candidates equal free television time to promote ourselves as candidates for the forthcoming general election.

Again, the question has been raised--Why had Milton Allen been one of the first and most vocal witnesses to appear before the first public hearings of the Sneate Committee investigating the Police Commissioner. Perhaps I can shed some light on this matter. Because, to my knowledge and what I viewed, the American Federation of State, County and Municipal Employees AFL-CIO, of which the Police Union is a member, printed and produced hundreds of thousands of those yellow and black fliers that described how to write in for Milton Allen. Fliers that completely dominated the, every area of Baltimore City via mail and hand delivered; and thus the conspiracy and those who are indebted to conspire to destroy the Commissioner becomes more and more obvious as I dissect the calculating minds of those who have worked in concert to pre-plan the media's assassination of the Commissioner.

In relationship to Milton Allen's write-in campaign, though once burned by the Police Union and labor, I went to them and expressed my intent to run as a write-in candidate. The

reception was lukewarm, because I along with the unfortunate suspended policemen already served our purpose. They were no more of any use to them. But while I was foolishly begging for some support, right across the hall, the offices of the American Federation of State, County and Municiapl Employees, were grinding out reams of campaign literature for Milton Allen. The new champion would be used in their efforts to destroy the Commissioner. Through my insistence, I did receive minimal support from them to run as a write-in candidate. But several days before the General Election, the police wives, who I was totally dependent to cover my precincts, for some trumped-up reason, refused to work on my behalf. I have repeated the political emphasis again in order to show the complete disarray, inability of the police union to function as a representative of their men and their total lack of loyalty to those who have supported them. And I believe this will hurt legislative efforts for police support for years to come, because when they seek support, I'm certain many will say, "Hands off, look what happended to Gallagher."

This next phase will be the climactic stage of my direct contact with Olesker and Nawrozki. A contact that had sustained itself for a period of over one month, during which time the reporters were investigating activities of the Commissioner pertaining to dossiers on certain elected officials. On Tuesday, the 29th of October, my wife and I were informed by Olesker that the story would break on November 3rd, and that in the article, it would show the Governor to be the victim. Then, on November 2nd, Olesker contacted my wife and I by phone, stating the story would not run. After that, my description of Olesker and Nawrozki's activities will have to be related in the form of information that I received from suspended police.

I was informed that one of the two reporters, finding that their story would not be published, was seeking employment elsewhere. That as the information of their activities flowed in, I was informed the plan was to have the story copyrighted under their name, out of town, and that would force it back into Baltimore.

During this period, Roger Twigg, Reporter for the Baltimore Sun, was mentioned by the nucleus of suspended police that he may have the out-of-town contact to bring the story back into Baltimore. Sun Reporter Roger Twigg's name was mentioned frequently during many meetings at the Police Union office.

As Olesker and Nawrozki's efforts to get the Commissioner and his Intelligence Division were stymied, the Sunpapers moved in with an out of town reporter that they had under contract by the name of Ed Roeder. Before getting to Roeder's involvement, I would like to trace back to information I had received after the police strike. That either right after the strike or just before the strike, Rapanotti had been released from his duties by the International Union. I know AFSCME was not pleased with their unionization efforts of police in Baltimore. I heard expressions, like "Police were a different breed," and then I wondered if they belonged in their movement, a movement that had achieved success with its militant practices. Certainly to my thinking, it is not conducive to a disciplined police force. The fact remains that the police are one of the last large bodies waiting in the wings to be organized--over 400,000 strong across the nation. So it appears that Baltimore was a test-case, and that a victory for AFSCME during the strike and further concessions by the Commissioner could have made their efforts worthwhile for the International. It could have also produced in the future, massive police strikes that would have crippled our nation.

And, now, to proceed with Baltimore Sun Reporter Ed Roeder's involvement. I was contacted by Roeder and arrangements were made to meet at my home. During the meeting, Roeder explained that he was under contract for the Sunpapers and that he was assigned to cover the Commissioner's activities exclusively. He mentioned he had a desk and a phone at the Sunpapers, but most of the publication and writing of his research was done in his home in Washington, D.C. Roeder's style of investigating seemed different from Olesker and Nawrozki. He appeared exhausted and said, to the best of my recollection, he was working sixteen hours a day in order to catch up on the investigation. And, once again, the same routine that Olesker and Nawrozki had gone through--that of meeting with a nucleus of suspended police and

pumping them for information. But to digress and to explain why Roeder had disturbed me, since April of 1973 I had been involved in a project of investigating investigative reporters and their action and, in particular, the vested interests that they were protecting. In particular, the Washington Post, who had created an environment for the Watergate hearings. Because they were faced with the possibilities of losing two multi-million dollar television properties in the State of Florida, which the Federal Communications Commission, at the time of my involvement, had refused to renew their licenses. In particular, WJXT-TV in Jacksonville, Florida, which I found out later was where Ed Roeder had been employed in 1969.

And here in my living room was the very individual that for almost two years I had tried to track down. I will explain. In a conversation with Roeder, I explained that I had been trying for years to pass legislation to monitor the assets of non-profit organizations. At that point, he handed me a magazine called "New Times," in which he had offered an article titled:

"The Consulting Con Game"

After Roeder left my house that evening, I reviewed the magazine and in the beginning of the magazine was a profile of Ed Roeder, and it reads as follows:

> "Ed Roeder is one of the new breed of investigative reporters that is revitalizing journalism in this country. During his brief career, he began reporting in 1969 and has been responsible for the report that G. Harold Carswell had made a "white supremacist" speech and that story played an important role in the scuttling of Carswell's Supreme Court nomination. Of late, Roeder had been laboring for The Baltimore Sun."

The profile of Roeder closes out with his giving thanks to two foundation grants--one The Fund for Investigative Journalism, Inc., of Washington, D.C. And, also, The Southern Investigative Research Project of the Southern Regional Council, which is based in Atlanta, Georgia.

As I mentioned before, I had been trying to track down this individual for two years because of my search of the public reference files for the Federal Communications Commission had produced an article from The New York Times, dated January 4, 1973, and the article is titled:

"Friends of Nixon Seek License of Washington Post Station"

Inside the article it states:

> "WJXT-TV and one of its newsmen found, in 1970, a 1948 newsclipping that Carswell, Supreme Court nominee, had made a so-called 'white supremacist' speech."

Then, I continued my review of "New Times" magazine and, looking under the correspondence that was listed for "New Times," I found that its Maryland correspondent was none other than Joseph Nawrozki, the Reporter for the Baltimore News American who teamed with Michael Olesker in their investigation of the Commissioner. Now, what I'm trying to establish is the motive and style of investigative reporting that those who are investigating the Commissioner specialize in, not only their style, but the makeup of the publishers that accept their work.

Continuing my search of the "New Times" magazine, I found it listed in the "Writer's Market for 1973," that's a book that publishes all the listing of where you can sell your writings. They were listed under "Alternate and Radical Newspapers," whose publication offers writers a form for expressing anti-establishment for minority views that wouldn't be necessarily published in commercial or established press. "New Times" is for college students, politically liberal.

In 1973, "New Times" was listed as an underground newspaper, but the magazine Roeder gave me had a publishing address in New York City. I then called the offices of the "Writer's Digest" in Cincinatti, Ohio, to inquire about "New Times" in New York. They said the "New Times" underground newspaper had a Post Office Box address in Tempe, Arizona; and because of all the adverse mail they had received about "New Times," they had dropped it from their listings. I then took a chance and phoned Arizona for Arizona correspondent, who was also listed as living in Tempe, Arizona, and it turned out be one and the same. The New York end of "New Times" had come to a corporate agreement to continue the use of the name, "New Times." So, of my own personal findings and views established, I phoned several members of the suspended police and, without revealing my source of information, I recommended they possibly back-off in cooperating with Ed Roeder.

Then, at a later date, I asked them if they felt the press was continuing to help their cause or were they being used and possibly backing themselves into a corner. Then, as it had almost been from the beginning, the nucleus of suspended police began acting on their own.

The union membership meetings had dwindled to as few as thirteen in attendance. They seemed to function as forgotten men by the union, a union whose leaders seemed were interested in their own survival more than that of its rank-and-file membership. I stress this point in order to emphasize the union's lack of loyalty and concern to its men and those who have supported them. The fact of the matter is that the nucleus of suspended police have been meeting at my home could at any time have doubled the attendance of those that have been attending union meetings. They stated they were thoroughly disgusted by the inept performance of the union and its leadership and discussed plans of representing themselves in the future. During this period, media's efforts to get the Commissioner became highly competitive, particulaly between

News American Reporters Olesker and Nawrozki of the News American and Ed Roeder of the Baltimore Sun. This I openly witnessed one evening when the suspended police picketed the Central Police Station. Roeder, of the Sun, his note taking procedure, would pump information from clusters of suspended police who had stepped from the picket line to be questioned. At the other end of the picket line, Olesker and Nawrozk i were continuing their long term efforts of pumping information from suspended policemen. It was at this time, while viewing the small group of suspended police and their wives, that I became thoroughly disgusted with the performance of these reporters, and that this handful of many fine policemen were fastly losing their dignity and honor and became more and more victims of this media roadshow to destroy the Commissioner.

Then, at a later date, the News American started a repetitious series about the Commissioner and S. I. D. (sic). But, one must look back to the beginning of the series and note that the first series listed a by-line that they were jointly copyrighted by Olesker and Nawrozki and the News American, thus giving their story protection from Ed Roeder of the Baltimore Sun.

At this point, the communication between myself and the suspended police began to fade. But before the tie was broken, I proposed they picket the Union Hall because that was where the problem originated. In fact this proposal was not originally mine, but that of the suspended policemen. I had ceased to be involved in this issue until I read that Senator Conroy was chairing a Senate Committee that would investigate activities of the Baltimore City Police Department. I contacted Senator Conroy and expressed my reservations about the investigation. He made an appointment for me to meet him, just before the beginning of the first day of the public hearing. During the meeting, Senator Conroy expressed his lack of knowledge of the problems within Baltimore City and the Police Force, and expressed his present knowledge was obtained from what he had read in the newspapers. I told him it was a media oriented project, that no one but I, in this State, had better knowledge of what had led up to the investigation. That if the in-

vestigation had gotten out of hand, it could end up doing a great disservice to the citizens of Baltimore. Senator Conroy said the Commissioner would be the only one who would be speaking on his behalf and asked if I had a desire to testify on his behalf. I said I didn't intend to at this time, but to keep the option open. My wife was a witness to my meeting with Senator Conroy.

My wife and I then left Senator Conroy's office and entered the committee room to witness the first public hearing. Parren Mitchell and Milton Allen came forth as witnesses spouting the same dialogue that I had opposed in my four-year term of office. Then the police union paraded witnesses before the committee, spouting a same repetitious dialogue that I and other legislators had been exposed to from their informants for the past two years. Then the Police Commissioner, Pomerleau, offered the defense for his intelligence system, its history and mode of operation. His presentation was a document that every taxpayer in Baltimore City should have had the opportunity to read, as he explained how his Intelligence Division contained disruptive and subversive elements within Baltimore City. Not only did media report only a fraction, but glorified the elements attacking the Commissioner. Not only was the Commissioner confronting a hostile press during his presentation, but members of the police union within earshot of my wife and I were spouting vulgar words at the Commissioner.

Then, at a later date, I contacted Senator Conroy again and made another appointment. I asked Senator about his staffing procedure. He stated they were in the process of staffing. I still voiced my concern. He recommended I contact George Russell, Attorney for Police Commissioner Pomerleau. Senator Conroy's recommendation of contacting George Russell was not the factor that encouraged me to do so, but a statement that appeared in the press, and said in effect, the investigation is being run by the Police Union and that the Police Union was using black legislators to complete their vendetta against the Commissioner. Upon reading that statement by Russell, I then came forward and made the statement you are now reading.

To set the record straight about the inception of the Policemen's Bill of Rights, the Policemen's Union did play a major role in its passage, but they were not involved in the beginning. The very individual who did recently appear before the Senate Investigating Committee, Terry Josephson, was my first contact. He, along with Detective Simmons, this was in 1972, one year before the Union became involved, Josephson and I, while in Annapolis, went to the Department of Legislative Research. Together we found the basic concept of what we were looking for; and then Delegate Foley (phonetic), Prince George's County, and I drafted the original Bill. So this statement is made in order to get the record straight as to the inception of the Policemen's Bill of Rights and to clarify my mistake in having let the Police Union use this major piece of legislation to organize and to obtain membership. The following, as a point of information, must be considered by the Senate Committee investigating the Police Commissioner.

My observations, from my past year of doing research in Washington, D.C., which I have entitled "Investigating the Investigators," have led me to the conclusion that American mediaism is the unseen political party that controls our nation today and that it may now be so powerful that they are beyond the check of anyone. And the most shocking aspect is today the underground press is above ground and have now infiltrated and are under contract to many of the nation's leading publications, newspapers, and television networks across the nation. It's apparent to me that American mediaism, not only initiated, but are controlling the investigation of the CIA and the related investigations of the major city departments, police departments, across the nation--New York, Washington, D.C., Chicago, and now Baltimore City--where media is attempting, with a little help from the Police Union, to create a conspiratorial fantasy in order to force the Commissioner out of office. Maybe, instead, the Committee might consider my advice that was carried on the wire services on February 26, 1974, when I stated, "It's time we investigated the investigators."

Now, the point that I would like to establish in the closing of my statement is as follows. The whole issue that must be decided by the media, in particular, the publishers of The News American---Are they serving the best interest of the citizens of Baltimore City in their efforts to remove the Commissioner? Baltimore City has a past history of driving some of its most qualified leaders from its arena of government and leaving in its wake a city bent on destroying itself. The members of the Investigating Committee, in particular those who do not represent Baltimore City, must take this proposition into consideration during their deliberations because we, the citizens of Baltimore City, are fighting to retain the protective environment now afforded us by Commissioner Pomerleau. Our destiny is in your hands. The choice is a simple one--Either you continue to participate in the present media assassination of our Police Commissioner or you react in a rational manner and set aside whatever minute reservations you may have pertaining to the Commissioner's past actions and bring to a close these Committee hearings because it is my belief that if you do not, and extend these hearings, the Commissioner will, in my projection into the future, be destroyed in the aftermath of national media's investigation of the CIA. And that, in my opinion, is the master plan to destroy the heads of the nation's major city law enforcement agencies and ultimately destroy the individual Policeman himself--our last, our nation's last line of defense.

My declaration completed, I say to those that would attempt to rebut my statements, I openly admit my involvement; and I openly admit my misfortune of being involved; and I sincerely hope that my declared statement in support of the Commissioner will ratify my past mistakes.

I cannot stress too much the role that the Reporters played in furthering the effort to remove the Police Commissioner. They met with the striking Police Officers and asked them for proof of dossiers on appointed or elected officials and of I.S.D. operations. They asked questions such as: "Is the Commissioner controlling the Governor?...Does the Commissioner have a file in his office on the Governor?" It was obvious they were trying to get the Police Commissioner.

Some of the strikers who met at my house were:

Phillip Smeak
Gary Shull
Howard Glasshoff
Michael Ryan
Lawrence Gross
James Birch

I recall rather vividly Former Sergeant Smeak giving information concerning the possible underground railroad operation that the American Friends Service Committee was allegedly operating between the United States and Canada for deserters and Selective Service violators.

At one time I went to see an individual whose name I cannot recall, but who was described as the Editor supervising Michael Olesker and Joseph Nawrozki's articles concerning I.S.D., and asked Olesker what the theme of the articles was going to be. I was told by him, "The Governor is the victim of the Commissioner." I took this to mean that the editorial staff of the News American was implying that the Commissioner controlled the Governor.

There is no doubt in my mind that both Olesker and Nawrozki were well aware of the vendetta that the fired strikers of the Police Department took up against the Commissioner. I believe they took advantage of the strikers' misfortune and never cared to check the accuracy of these former police officers' statements about the Department and the Commissioner.

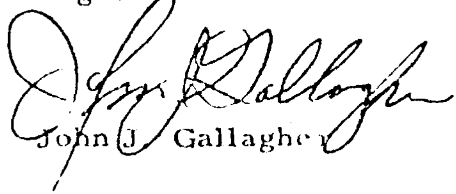
Such statements as "We will all get back in when we get rid of the Police Commissioner...and Box Harris or Wade Poole made Commissioner." Also, "When the Commissioner is removed, we all go back." The Reporters, Nawrozki and Olesker, heard these statements.

After my first meeting with Senator Conroy, a second meeting was arranged because I read in the papers that Conroy would be staffing. This was prior to their public selection of an attorney for the Committee, Diane Schulte. I met with Conroy and I told him that I was the only person in the State that knew exactly how the investigative reporting of the Commissioner by Reporters Olesker and Nawrozki and The Sunpapers had brought the attack on the Commissioner to the point that it is now. At that time, Conroy told me that he was not that greatly influenced by the media. He also told me he had reservations pertaining to the initial presentation by the Police Union, in particular one retired policeman who he considered to have a long running personal vendetta against the Commissioner. Then, I said: Ed, "If you are staffing and with my knowledge of the events leading up to the investigation, I would like to be a member of the Committee Staff in order to present a check and balance." Pertaining to the statements made by the Union and the newspaper articles, I could sit down with your Committee and at least give a balanced point of view in order to filter out the material that is presented to your Committee.

I also said to Conroy that there might be a sensitivity to the point that the Governor may not desire to have me on the Committee Staff, but I thought that point should be overlooked. He told me they would be staffing within a week and he said that he would get back to me. At this time, he asked me if I had seen George Russell. Senator Conroy never called me back. There has never been any contact since that meeting.

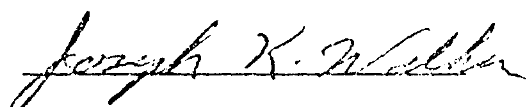
The articles I have since read in the papers and Conroy's statements are in direct conflict with what he told me... stating that the Union was not involved... that no other elements were involved in the investigation. Yet, I told him about the material and findings I had; and with some encouragement on his part, I would have turned everything over to him and his Committee. My wife can verify both meetings with Senator Conroy.

Senator Conroy's failure to at least contact me since that last meeting, I consider this action to tarnish the credibility of his performance during this investigation.



John J. Gallagher

NOTARY



Baltimore, Maryland
March 31, 1975

I have read the Affidavit sworn to by my husband, John J. Gallagher. I certify that the information contained in this Affidavit, I can testify to. I helped prepare the notes from which the Affidavit was constructed, with my husband. The two (2) of us worked together through our recollection, our attendance at meetings, and contacts with the discharged strikers and their Union and Reporters Michael Olesker and Joseph Nawrozki of the News American and Morning Sun Reporter Edward Roeder.

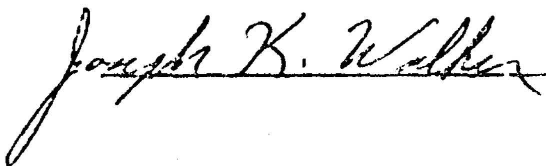
On the morning of the first hearing, the day which Commissioner Pomerleau testified, and approximately a week after, I was with my husband speaking to Edward T. Conroy, Chairman of State Senate Committee on Constitutional and Public Law, when my husband told him of the Union's involvement with the newspaper reporters in their efforts to remove the Police Commissioner.

I am able and willing to testify, to the best of my knowledge, to the validity of the information contained in this Affidavit.

Signed:

Frances Emily Gallagher

NOTARY



Police Commissioner's Comments Regarding the

Recommendations of the Senate Committee

ENCLOSURE (4) to the Report of the Police Commissioner to The Honorable Marvin Mandel, Governor, State of Maryland, February 5, 1976.

Committee's Recommendation One

"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 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."

Police Commissioner's Response

In the acquisition and utilization of credit bureau information, the Department has proceeded consistent with Section 1681 of Title 15 of the United States Code. While we believe Section 1681 of Title 15 of the United States Code, in conjunction with the Federal Privacy Act, adequately regulates the conduct of consumer reporting agencies as well as delineating the circumstances under which credit reporting agencies may furnish or disseminate information, we certainly have no objection to the enactment of state statutes regarding these matters. We do believe, however, such state statutes should be equal to, but no more restrictive than, the federal statutes.

Committee's Recommendations Two Through Five

"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.

"Specific recommendations concerning the proposed comprehensive act are as follows:

(Committee's Recommendation Two)

"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]"

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[1] 18 USC §§2510-2520

[1] See 18 USC §2520

Police Commissioner's Response

The Department's policy regarding the control and use of wiretapping and electronic surveillance equipment has been consistent with the dictates of Title III of the federal Omnibus Crime Control and Safe Streets Act of 1968. This is reflected in my memorandum of February 2, 1973, subject "Electronic Devices, Wire Interceptions and Interception of Oral Communications, Wiretapping and Eavesdropping," which appears in Appendix D, Departmental Orders and Miscellaneous, to the Committee's report.

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.)

The above, concomitant with appropriate procedural controls, has been codified and promulgated as a General Order to all members of the force. We have no objection to the enactment of state statutes regarding this subject matter. We do believe, however, such state statutes should be equal to, but no more restrictive than, Title III of the Omnibus Crime Control and Safe Streets Act of 1968.

Committee's Recommendation Three

"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 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 statute[2] 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, <u>and</u>, 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."

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[2]Article 27, §125D, Annotated Code of Maryland

[1]See 18 USC §2512

[2]18 USC §2512 (2)

[3]See recommendation immediately following

Police Commissioner's Response

The Department agrees there is 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. We also agree that in order for police personnel in the state to be exempt from such prohibitions, 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

The ease of acquisition and even homemade manufacture of electronic eavesdropping devices has been recognized. As stated in my referent General Order, copy issued to all members of the force:

> "Except as provided for herein, it shall be a violation of this order for any member of the Baltimore Police Department, sworn or civilian employee, to have in his or her possession whether purchased, borrowed, self-manufactured or received in any other manner, equipment commonly referred to as; eavesdropping, wiretapping, body mikes, transmitters, wall spikes, or any similar equipment whose principal design is for the clandestine interception, transmission or recording of conversations. This includes conversations between individuals and/or groups, telephone communications and conversations of an individual or a group of individuals conversing within a room."

In the absence of specific state statutes, I was and am quite willing to test in appropriate court action my authority to prohibit members of this agency from possessing or having electronic surveillance equipment under their control without my authorization.

Consistent with the above, the Department concurs with this recommendation.

Committee's Recommendation Four

"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."

Police Commissioner's Response

The Department concurs with Recommendation Four, but feels that the devices owned or possessed should be registered with the Maryland State Police.

The registration authority should be a pure police agency, therefore, the recommendation that it be the Maryland State Police rather than the Director of Public Safety. It is quite possible that future Directors of Public Safety may not possess the professional police expertise to handle the required responsibility.

Additionally, those who sell such devices should, within ten days of such sale, notify the Maryland State Police, such notification to include quantities and descriptions and name and address of purchaser.

Committee's Recommendation Five

"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."

Police Commissioner's Response

The Department concurs with this recommendation.

Committee's Recommendation Six

"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."

Police Commissioner's Response

The Department does not take any position in this matter.

Committee's Recommendation Seven

"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."

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

Police Commissioner's Response

We believe existing federal law and the guidelines of the Attorney General of the United States have established appropriate privacy safeguards. There is currently proposed an administration bill concerning the state criminal justice information system that will incorporate federal law and the United States Attorney General's guidelines excepting data contained in intelligence or investigatory files or police-work product records used solely for police investigation purposes.

We support both. We believe that state statutes in this regard should be consistent with and no more restrictive than those adopted at the federal level.

Committee's Recommendation Eight

"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."

Police Commissioner's Response

The Department has been and continues to be sensitive to the potential for harm inherent in the collection of data of a personal nature. This sensitivity is reflected in our procedures of longstanding, governing systematic review of our records for purposes of purging irrelevant information. Additionally, in January, 1974, this agency purged its entire domestic intelligence file.

The Department concurs with Recommendation Eight.

Committee's Recommendation Nine

"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."

Police Commissioner's Response

The Department takes no exception to Recommendation Nine.

Committee's Recommendation Ten

"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."

Police Commissioner's Response

The Department has codified, within one directive, written guidelines concerning the conduct of our Intelligence Unit.

The Department concurs with Committee's Recommendation Ten, that all law enforcement agencies having intelligence units or divisions promulgate written guidelines concerning the conduct of their respective intelligence units; and 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.

"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.

Police Commissioner's Response

Committee's Recommendation Eleven concerns procedural matters of the Legislative Branch of the Maryland State Government. The Department does not take any position in this matter.

Committee's Recommendation Twelve

"... 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, 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."

Police Commissioner's Response

The Department concurs with Recommendation Twelve.

Committee's Recommendation Thirteen

"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."

Police Commissioner's Response

The Department concurs with Recommendation Thirteen.

Committee's Recommendation Fourteen

"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."

Police Commissioner's Response

Committee's Recommendation Fourteen concerns procedural matters of the Legislative Branch of the Maryland State Government. The Department does not take any position in this matter.

Committee's 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 represenation 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."

Police Commissioner's Response

Committee's Recommendation Fifteen involves an administrative matter between the Maryland State Legislature and the Office of the Attorney General, State of Maryland. Therefore, the Department does not take any position in this regard.

Interrelationships/Cross-Pollination

Involving Dissenting Groups

ENCLOSURE (5) to the Report of the Police Commissioner to The Honorable Marvin Mandel, Governor, State of Maryland, February 5, 1976

BLACK PANTHERS

BLACK VOICE

BLACK UNITED FRONT

BLACK BOOK STORE
North & Pennsylvania Aves.

UJAMA NEWS
North & Pennsylvania Aves.

BLACK CONCEPTS

SNCC
432 W. North Avenue

FREE ANGELA DAVIS COMMITTEE
St. Peter Claver's

COMM. TO FREE POL. PRISONERS
1036 W. Baltimore St.

BLACK STUDENTS UNION

REPUBLIC OF NEW AFRICA

MALCOM X SOCIETY

GEORGE JACKSON COMMITTEE

BLACK ARTS FESTIVALS

BLACK LIBERATION DAY COMMITTEE

ACTIVIST, INC.

ENCLOSURE (5) to the Report of the Police Commissioner to
The Honorable Marvin Mandel, Governor, State of Maryland,
February 5, 1976

Editorial Cartoon, The News American

December 9, 1970

ENCLOSURE (6) to the Report of the Police Commissioner to The Honorable Marvin Mandel, Governor, State of Maryland, February 5, 1976

THE NEWS AMERICAN
9 December 1970

ENCLOSURE (6) to the Report of the Police Commissioner to The Honorable Marvin Mandel, Governor, State of Maryland, February 5, 1976.

Statistical Breakdown of Active Surveillances Involving the Addendum to My Report to You Dated January 6, 1975

ENCLOSURE (7) to the Report of the Police Commissioner to The Honorable Marvin Mandel, Governor, State of Maryland, February 5, 1976

Police Department

Baltimore, Maryland

STATISTICAL BREAKDOWN OF ACTIVE SURVEILLANCES

ADDENDUM TO POLICE COMMISSIONER'S

REPORT TO THE GOVERNOR, JANUARY 6, 1975

(SURVEILLANCES CONDUCTED LATE 1960'S AND EARLY 1970'S)

TOTAL ORGANIZATIONS

60

TOTAL INDIVIDUALS

120*

* 52 - individuals had been arrested

288 - criminal charges were placed against the 52 arrestees

30 - individuals belonged to more than one organization

SEX/RACE BREAKDOWN

	WHITE	NONWHITE	TOTAL
MALE	68	31	99**
FEMALE	16	5	21***
TOTAL	84	36	120

**24 of the 99 males belonged to more than one organization.

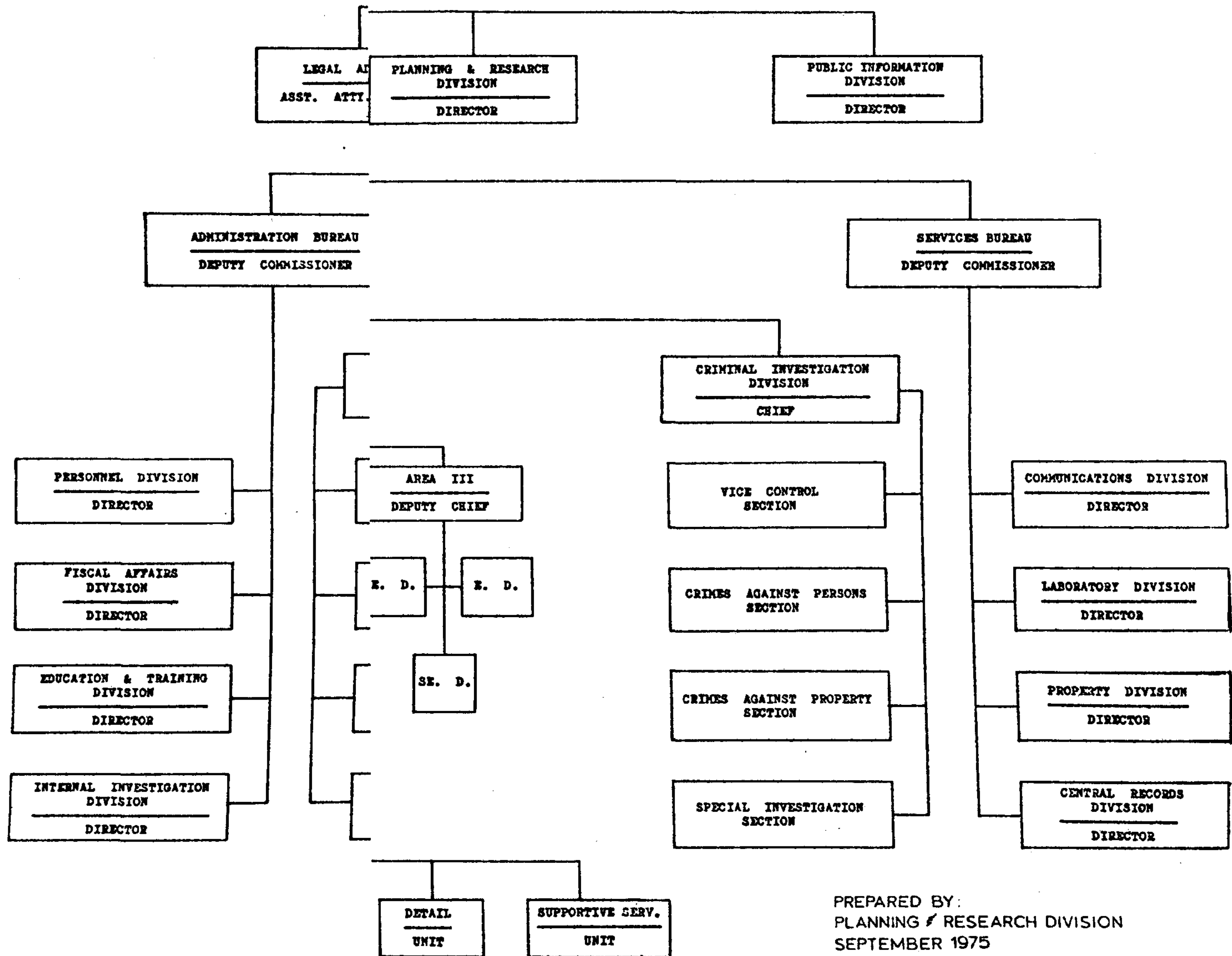
*** 6 of the 21 females belonged to more than one organization.

ENCLOSURE (7) to the Report of the Police Commissioner to The Honorable Marvin Mandel, Governor, State of Maryland, February 5, 1976.

Organizational Structure

Police Department, Baltimore, Maryland

ENCLOSURE (8) to the Report of the Police Commissioner to The Honorable Marvin Mandel, Governor, State of Maryland, February 5, 1976



ENCLOSURE (8) to the Report of the Police Commissioner to The Honorable Marvin Mandel, Governor, State of Maryland, February 5, 1976

Americans for Effective Law Enforcement, Inc.

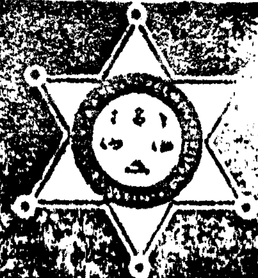
Brief No. 74-6, Dated December 1974, Titled;

Legal Aspects of Police Intelligence Gathering Activities

ENCLOSURE (9) to the Report of the Police Commissioner to The Honorable Marvin Mandel, Governor, State of Maryland, February 5, 1976

AELE LAW ENFORCEMENT LEGAL DEFENSE MANUAL

BI-MONTHLY



74-6

LEGAL ASPECTS OF POLICE

INTELLIGENCE GATHERING ACTIVITIES

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LAW ENFORCEMENT LEGAL DEFENSE CENTER

AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC.

AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC.

960 State National Bank Plaza — Evanston, Illinois 60201 (312) 866-8400

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Dryden, Harrington & Swartz
One Wilshire Blvd. No. 703
Los Angeles, California

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We ask our readers to advise us when these briefs have been helpful, and urge all counsel to notify us of new or omitted cases that pertain to the points of law. Attorneys are asked to transmit their briefs for our files, and are invited to submit articles or portions of articles for publication. An honorarium will be given for original work; the amount will be determined by the length, amount of research, quality of writing and probable interest of the subject matter to our subscribers.

Later reported cases are discussed in the *AELE Law Enforcement Legal Liability Reporter* as they appear. Check *Reporter* issues published after the date of this brief for supplemental decisions.

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LEGAL ASPECTS OF

POLICE INTELLIGENCE GATHERING ACTIVITIES

PART ONE: ACQUISITION METHODS

A - INTRODUCTION

This is the first of a two-part brief on the methods used to acquire intelligence data. At the outset, it should be noted that intelligence gathering activities can be arbitrarily divided into two purposes: strategic and tactical. Tactical intelligence is that which has as its purpose the *enforcement* of various penal code provisions at the terminal period of an investigation, directed against specified persons, and within a specific time frame.

Strategic intelligence refers to the collection of data on individuals, groups and places to determine whether penal code violations will take place. In the event violations later occur the persons responsible for the criminal acts can be brought to justice. By their nature, strategic intelligence investigations may last for many years.

Police intelligence gathering activities have been historically directed against two major groups: the crime syndicate and subversive activities. The former target consists of professional criminals who conspire or act in concert to violate laws proscribing gambling, prostitution, narcotics and drug use, and similar offenses. Hijacking, the infiltration of legitimate businesses, extortion and bribery are related crimes perpetrated by organized crime figures.

Subversive activities refers to those persons or groups who commit sabotage, acts of terror, kidnapping, bombings, arson and lesser offenses for primarily, political purposes. Oftentimes the principals in politically motivated crimes involve themselves in or assume leadership of political action groups that ostensibly seek reform through peaceful methods such as picketing, protest assemblies and rallies.

Other common but less traditional police intelligence activities involve the investigation of labor racketeering, burglary rings, juvenile "gang" activities of a criminal nature, and corrupt practices by public employees.

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For the purpose of this brief, no distinction will be made in discussing case law respecting the activity sought to be investigated. Distinction will be made, however, when the gathering methods employed or the data accumulated bears no realistic possibility of eventual criminal prosecutions. Readers should assume, with this caveat, that the activity questioned applies equally to organized crime, subversive and other targeted investigations.

Part One of this brief deals with the law relating to visual surveillances, the use of informants, infiltration and similar activities. Part Two of this brief (to be published in 1975) will discuss the compilation of dossiers and the dissemination or other use of the data revealed in intelligence investigations. This brief focuses, therefore, on the First and Fourth Amendment rights of individuals, along with their rights of privacy. Both civil and criminal cases are cited as supportive authority. Wiretapping and other forms of aural surveillance are not included in either Part One or Two, and are reserved for a later date.

B - OVERT SURVEILLANCE

Surveillances may be either covert or overt; they are of three types: fixed, intermittent or moving. Black's Law Dictionary simply defines the subject as "oversight, superintendence, supervision." 4th Edit., *Peo v. Howard*, 8 P.2d 176, 179 (Cal. App.). In police usage, the term refers to the visual observation of persons or places by use of the naked eye, camera, or vision assisted by artificial illumination or magnifying lens.

The cases that follow in this section deal with overt surveillance, that is, the persons observed know, or with reasonable awareness ought to know that they are being watched. Section C discusses covert surveillances.

Oftentimes police officers appear at and photograph demonstrations, picketing activities, rallies, weddings or funerals of notorious hoodlums and similar public or semi-private events. While the officers present may not have been individually invited to the event, their presence is known or assumed, and the newsworthy nature of the event may also draw members of the working press and photographers.

PRESENCE AT EVENTS

In *Local 309 U.F.W. v. Gates*, 75 F. Supp. 620 (N.D. Ind. 1948) a union filed an action seeking injunctive relief against the Governor of Indiana. The union was striking against manage-

ment and had been holding meetings in the county courthouse, as had other organizations. Members of the Indiana State Police attended these meetings and sometimes took notes. The State Police defended this action as necessary to prevent later violence; the union maintained the officers were hostile to the union and friendly to the management.

The court held that the union lacked standing to prosecute the action, but that the rights of its members had been violated by the surveillance activity. The State Police were enjoined from attending further meetings. In reaching its decision the court said that the freedom and liberty to express oneself privately and to hold private assemblies for lawful purposes without governmental interference was protected by the First Amendment. The court resounded the "clear and present danger" test and stated that only the threat of danger, "actual or impending," could justify the restraint of orderly discussion. At 624-25.

The opposite conclusion was reached in a more recent case where a religious prophet sought to host a public meeting. The case was *Mohammed v. Sommers*, 238 F. Supp. 806 (E.D. Mich. 1964). The plaintiff rented a local hall for a lecture and agreed to comply with local regulations, one of them being that police officers could enter and leave freely. At the meeting the plaintiff demanded the officers give up their weapons, and when they refused to do so the meeting was broken up. The plaintiff sought damages from the police and city attorney. The court, in ruling for the defendants, affirmed the right of the police to attend meetings in the auditorium in the interest of public order.

PHOTOGRAPHY

In Toledo, Ohio on February 21, 1970, members of the Police Department monitored a protest march involving some 100 participants. The group was rallying against the "Chicago Seven" trial.

Across the street from the rally at the Federal Building, police officers, just prior to the start of the rally, set up a movie camera complete with vehicles and technicians, in order to photograph the demonstrators. When the marchers arrived at the Federal Building, the officers began to photograph the rally in its entirety. Later, a named plaintiff brought a class action and alleged that the photographing was conducted to demean the participants as well as to discourage other similar rallies. The complaint further alleged that the "incessant and blatant photographing of the participants of the rally served no valid investigative or other law enforcement purpose," and it was intended to "discourage participation in or association with the rally and the opinions expressed by the protest."

The complaint stated that "this photographic project of the Toledo Police Department deterred various participants from remaining for the full demonstration and intimidated members of the public and observers from observing or being associated with the demonstration or the participants."

It was claimed that "the conduct of the named defendants, their agents, and employees in photographing persons attending said march and rally [was] in violation of the First Amendment to the United States' Constitution," in that it abridged, deterred and harassed the plaintiffs and persons similarly situated in the exercise of the First Amendment rights.

For relief, the plaintiff sought the following:

> *2. A preliminary and permanent injunction restraining the said defendants, their agents, and employees from photographing and investigating persons participating in or attending such public meetings or demonstrations in the future.*
>
> *3. An injunction requiring the defendants to produce and destroy all photographs taken by them, or by their agents and employees, of the plaintiffs or other persons attending the rally described above.*

On December 13, 1972, U.S. District Judge Young, reflecting on the §1983 suit, found that the complaint was not a class action and found that "no evidence" was or could be produced which would establish any right of the plaintiff, or of anyone else, to the relief sought. The action was, accordingly, dismissed. *Baldwin v. Quinn*, Civ. No. C 70-59 (N.D. Ohio, 1972). (Copies of the complaint and Order are on file at AELE, Ref. No. 650.)

In *Aronson v. Giarusso*, 436 F.2d 955 (5th Cir. 1971) four citizens brought a purported class action against the former Superintendent and the then Director of Intelligence of the New Orleans Police Department. Proceeding under 42 U.S.C. §1983, they sought injunctive relief against the photographing of persons who might attend meetings, rallies, demonstrations and vigils at which unpopular or dissenting opinions or views are expressed or represented.

The U.S. District Court for the Eastern District of Louisiana dismissed the action, finding that "...the police photographers were polite, in fact cordial, and did not in any way abuse, insult or harass any demonstrator in the exercise of their expression." Noting that the only basis for the suit was the displeasure of the plaintiffs at being photographed, the court found the complaint failed to state a cause of action.

The department showed that the pictorial evidence gathered in the series of investigations conducted was secured with the least amount of interference by plainclothesmen who were stationed, when possible, some distance from the demonstration. The holding of the lower court was affirmed on appeal.

In *Donohoe v. Duling*, 330 F. Supp. 308 (E.D. Va. 1971), an action was brought to enjoin police surveillance and photography of meetings and demonstrations in Richmond, Virginia. In the class action, the plaintiffs alleged the activities chilled and infringed upon their First Amendment rights and invaded their constitutionally protected right of privacy.

In justification of its activities, the department maintained that they (1) can determine the identity of outsiders who may have caused violence in other cities, and (2) the effect of making a record on film has a deterrent effect on violence and vandalism.

Unlike *Aronson*, the plaintiffs in *Donohoe* did not object to the photographing of themselves, but contended that some persons had been frightened from participating in demonstrations due to police presence. The trial judge noted that the named plaintiffs would not suffer a chilled effect on their rights if they were locked in a deep freeze. They frankly admitted that none of the activities complained of deterred them in performing leadership roles in demonstrations, and then suffered no specific injury. Lacking a showing of irreparable harm, therefore, the District Court dismissed the action.

On appeal, the Fourth U.S. Circuit Court of Appeals held on the basis of *Laird v. Tatum, infra*, that the case represents no more than a claim of an alleged "chill" by the mere existence of a governmental data gathering activity "broader in scope than is reasonably necessary for the accomplishment of a valid governmental purpose." *Donohoe v. Duling*, 465 F.2d 196 at 202 (quoting 408 U.S. at 10). The lower court action, accordingly, was affirmed in a 2 to 1 opinion.

In *Sanchez v. Los Angeles Police Department*, No. 69-2302 (C.D. Cal. filed 1969) the plaintiffs alleged LAPD photography at a demonstration which protested a police shooting chilled their rights of free speech, association, assembly and petition. They asserted that retention of the photographs implied a threat of arrest and harassment. By the terms of a settlement reached, the police destroyed all 65 of the photographs taken, and the action was dismissed. *Sub nom Gandera v. Los Angeles, (1971)*.

In *Holmes v. Church*, 70 Civ. 5691 (S.D.N.Y. 1971) four named plaintiffs sued the New Rochelle, N.Y., Police Department seeking an injunction against alleged political surveillance and destruction of dossiers of those connected with the local Draft Counseling Service. The U. S. District Court granted relief to the named plaintiffs but refused to extend the relief to members of the purported class.

For reasons best known to himself, the counsel for the police commissioner conceded in court that the department was "not authorized by law to engage in surveillance of any person [who was] neither suspected of criminal activity nor engaged in criminal activity nor with a criminal record." Accordingly, Judge Constance Baker Motley enjoined the police department from engaging in such surveillance, making dissemination of the results, and ordered the expungement of all files and index cards relating to the named plaintiffs. (AELE Ref. No. 676).

Two years later, a similar case was adjudicated in the same court district. In *Ball v. Del Bello*, 72 Civ. 2112 (1-15-73) twenty named plaintiffs alleged that members of the Yonkers, N.Y. Police Dept. engaged in "systematic surveillance," photography and the compilation of dossiers in violation of the First and related Amendment rights of participants at marches, rallies, meetings and similar events.

Without a written opinion, Judge Charles Brieant denied the plaintiffs' motion for a preliminary injunction and the determination of a class, and entered a summary judgment in favor of the defendant police and municipal officials sued. (AELE Ref. No. 675).

In *Vietnam Veterans Against the War v. Nassau County Police Department*, 10 Crim. L. Rptr. 2152 (E.D.N.Y. 1971) a suit was filed to enjoin the attendance at meetings and photography of the group and its leaders. The decision, rendered before the Supreme Court came down with *Laird v. Tatum*, applied a balancing test to the rights chilled under the philosophy of *N.A.A.C.P. v. Button*, 371 U.S. 415 (1963) and *N.A.A.C.P. v. Alabama*, 357 U.S. 449, 460 (1958) and presumed legitimate law enforcement purposes. The court required the plaintiffs to demonstrate the chill alleged, rather than require the police to demonstrate that the information gathered was related to a legitimate governmental purpose.

JUSTICIABLE CONTROVERSY

In *Laird v. Tatum*, 408 U.S. 1, 92 S. Ct. 2318, 33 L. Ed. 2d 154 (1972) the Supreme Court reviewed a class action brought against the Secretary of the Army challenging civilian surveillance activities and the maintenance of dossiers. The justification raised by the Army was that pursuant to 10 U.S.C. §331 the Army may be (and has been) called to quell local disorders when the President directs that action pursuant to statute. This is in aid of local police duties and fulfills police objectives, rather than military ones. 144 U.S. App. D.C. at 77, 444 F.2d at 952.

Writing for the majority in the 5 to 4 decision, Chief Justice Burger ruled that the plaintiffs had failed to present a "justiciable controversy" since they could not show either specific action directed against them (as named plaintiffs) and the activities complained of disclosed no unlawful character. Even if the challenged activity is a "justiciable controversy," the named plaintiffs must additionally show a past, present or specific future injury.

Burger said that "speculative apprehensiveness that the Army may at some future date misuse the information in some way" was insufficient. 408 U.S. at 14. Condemning the suit, Burger said the plaintiffs sought a "broad scale investigation, conducted by themselves as private parties armed with the subpoena power of a federal district court and the power of cross-examination to probe into the Army's intelligence gathering activities." Id. at 13, 92 S. Ct. at 2326.

In a prior case, a federal district court in Chicago dismissed another challenge to Army surveillance saying it was "Much Ado About Nothing." In *American Civil Liberties Union v. Westmoreland*, 323 F. Supp. 1153 (N.D. Ill. 1971) Judge Austin found that the activities complained of were a waste of taxpayer money. "Military intelligence is the Army's WPA, its leaf-rakers, its shovel-leaners, and paper shufflers." Continuing, he said that "...while there is no violation [of constitutionally protected rights] proved by a preponderance of the evidence... [the defendants have created a] papyrus [of] paper clippers to preserve for posterity and their grandchildren their importance while they occupied the federal scene." He found "foot surveillance" activities to be "ridiculous" but glamorous to those who have been looking at too many statutes of Nathan Hale. At 1154.

On appeal the Seventh Circuit said, for the purposes of deciding the case at that time (before the opinion in *Laird v. Tatum* was announced) the court would *assume* without deciding that (1) a massive surveillance operation can have a sufficient deterrent effect on the free expression of ideas and (2) if the activities complained of were illegitimate, they could be excised by judicial decree. Even so assuming the court held that, the Army's intelligence activities were not massive or overly broad. The court affirmed Judge Austin's order denying the injunction and dismissing the complaint. *Sub nom A.C.L.U. v. Laird*, 463 F.2d 499, 500 (7th Cir. 1972), cert. den. 409 U.S. 116, 93 S. Ct. 902.

In *Handschu v. Special Services Division*, 349 F. Supp. 766 (S.D.N.Y. 1972) Judge Weinfeld held in an action brought by sixteen named litigants that "overt surveillance" and "intelligence gathering" conducted by the New York Police Department was not *per se* unlawful. These were two of seven complained of activities sought to be enjoined in the §1983 class action. The case is discussed in detail later.

In *Vietnam Veterans Against the War v. Benecke*, 63 F.R.D. 675 (W.D. Mo. 1974) an action was brought by a purported class seeking injunctive and declaratory relief against the Kansas City, Missouri Police Department. The VVAW had obtained a parade permit for July 4, 1971 and proceeded to march, led by a member of their color guard who carried the American flag in an inverted position. The act violated a city ordinance and the man was arrested. Stating that they had no adequate remedy at law, the plaintiffs sought the following, and other named relief:

f) A permanent injunction restraining the defendants, their agents and employees from gathering information from and about plaintiffs and the class they represent through compiling intelligence files and photographs of plaintiffs and members of plaintiffs' class on the basis of the latter's participation in or attendance at the First and Fourteenth Amendment protected meetings, demonstrations, and public assemblies held by citizens' groups whose political and social views are considered dissident or 'unorthodox' by... the... police.

j) An Order requiring the defendants to destroy the intelligence files... now in their possession and any other similar dossiers of political and personal information which violate the Constitutional rights of the plaintiffs and the class they represent.

l) An Order appointing a special master to supervise defendants' compliance with the injunctions described...

After discovery proceedings were completed the court dismissed the class nature of the injunction, for a failure to show, as required by Fed. R. Civ. P. 23 (a) (2) that there existed questions of law or fact common to purported members of the class. The action was not permitted to stand as a class suit since effective relief could be granted individually.

In addition, citing *Laird v. Tatum, supra*, the court ruled the plaintiffs failed to establish sufficient standing and cognizable justiciable controversy. Specifically, they failed to allege any objective harm with respect to the surveillance activities complained of. As noted in the opinion:

First ...neither the complaint nor any of the pleadings submitted...contain a single allegation that any prosecution has occurred...[or] at the evidentiary hearing... Nor is there any indication of any systematic violations of...rights or any objective threat of prosecution. At 683.

The city attorney had dismissed the charges against the color guard member, and thus the litigation was ended. An appeal was not taken.

PRIVATE SECTOR

Finally, there are two arbitration decisions and one court case relating to overt surveillance of employees. In *Caproco, Inc. and Upholsterers' International Union of North America, Local 25*, 71-1 ARB ¶8127(Missouri, 1971) the employees' union filed a grievance against the use of closed-circuit television monitoring (CCTV).

The company argued that the employees were fully informed as to when their work was being observed through the use of TV, and it was no more an infringement upon an individual employee's privacy than the presence of the time study personnel who traditionally have observed the individual at work to establish proper rates for incentive operations.

The company also contended that not only was an employee fully informed but also, if the employee being observed was one whose performance was sub-standard, he was permitted to later watch the videotape so as to learn how to improve.

The union asserted that the action of the company in introducing closed-circuit TV was an infringement upon the civil rights of the employees.

The arbitrator held that when there is no specific contract provision to the contrary, a company has the right to install closed-circuit TV cameras to study employee performance. The arbitrator did not accept the union's contention that the TV's induced presence caused physical and mental discomfort to the employees. Rather, it accepted the claim that videotaping was an effective aid in motivating employees who had previously been unable to produce at normal levels.

A prior decision by an arbitrator in New York came to the opposite conclusion. In *Eico, Inc.* 44 L.A. 563 (1965) the firm was ordered to dismantle two CCTVs that had been installed to watch employees on the production floor.

When the purpose of the photographing of employees is related to the employer's efforts to promote efficiency and safety of workers, it is not an invasion of privacy and does not warrant injunctive relief. *Thomas v. General Electric Co.*, 207 F. Supp. 792 (D.Ky. 1962).

The action had been removed from state court, and sought damages and injunctive relief from photographing employees of the firm. The court noted that if the company had to resort to normal supervisory methods in lieu of motion pictures, the additional expense would amount to $90,000 per year. The court held that an employer's right to photograph employees for the purpose of increasing efficiency and promoting safety was legitimate and did not violate the rights of privacy of the employees. At 799.

HARASSMENT

In an unusual case, a reputed leader of the Chicago crime syndicate, Sam "Momo" Giancana, brought an action to enjoin the SAC of the local FBI office from conducting harassing overt surveillances. Judge Austin, in his findings of fact, found that the plaintiff was the object of a 24-hour moving surveillance, that between two to five cars stayed at his residence, and that they followed him into restaurants, stores and his golf course. The court found that these actions,

without any stated justification by the defendants, constituted an "arbitrary intrusion into his privacy" and a "deprivation of his liberty and freedom."

Noting that it was not the intention of the court to "interfere" with proper investigations of the FBI, the court nevertheless limited surveillances to a single vehicle at his home, and a single vehicle while driving. *Giancana v. Johnson*, No. 63 C 1145 (N.D. Ill. 1963). On appeal, the injunction was vacated for lack of jurisdiction under U.S.C. §1331 ($10,000 injury requirement). *Sub nom Giancana v. Hoover*, 322 F. 2d 789 (7th Cir. 1963).

Absent proof of harassment, no limitation on vehicle surveillance should be applied. As stated in *People v. Escarcega*, 117 Cal. Rptr. 595 (Cal. App. 1974):

> *...no rule occurs to us which would prevent a policeman from following a vehicle on a public highway without any reason; certainly no unreasonable search or violation of privacy would be involved. Such conduct might be offensive, or officious or ill-mannered, but it is not constitutionally regulated.*

In *Schultz v. Frankfort M. Accid. & P.G. Insur. Co.*, 139 N.W. 386 (Wis. 1913) it was held that the open, public and persistent shadowing of another without any attempt at secrecy and in such a manner to make it obvious the plaintiff was being followed constituted an actionable tort. The court, holding that the actions did not constitute false imprisonment or invasion of privacy (as recognized sixty years ago), nevertheless ruled that the acts complained of were unlawful acts "resulting in legal injury to the reputation of the person who is the object of such attentions." See however, *Chappell v. Stewart*, 33 Atl. 542 (Md. 1896) denying injunctive relief.

In *Ellenberg v. Pinkerton's Inc.*, 188 S.E. 2d 911 (Ga. App. 1972) an employee brought suit against his employer (who had earlier sued for injuries) and an investigative firm retained by the employer. The complaint alleged the detectives conducted open surveillances to the alarm of the plaintiff, his family and neighbors; they trespassed on his property and followed him in an obvious manner, all of which was alleged calculated to induce his dropping of the suit for injuries against his employer. The court ruled that a person waives a certain amount of privacy and subjects himself to a limited amount of investigation when he files a claim for relief. The reasonableness of the investigation, however, is a matter for the jury to determine. The court ruled, moreover, that the employer, Central of Georgia Railroad, could not insulate itself from liability through the guise of retaining an independent contractor. At 914.

Finally, in *Galella v. Onassis*, 487 F.2d 986 (2d Cir. 1973) the wife of the late President John Kennedy and three secret service agents were sued for false arrest, malicious prosecution and interference with trade. The lower courts dismissed the plaintiff's actions and granted the widow injunctive relief on her counterclaim against malicious and harassing photography.

The photographer sought to justify his actions based on the First Amendment; the court, although recognizing the public's interest in the cross-litigant Onassis, found that the photographer went far beyond reasonable bounds of news gathering by his constant surveillance, and his obtrusive, intruding presence. Holding that the First Amendment does not erect a "wall of immunity" the court said that torts committed in news gathering activities are not protected. However, the court modified the injunction against approaching within 100 yards of Mrs. Onassis and lowered it to 25 feet; the prohibition against interfering with secret service agents was continued.

Most of the suits filed against officers alleging harassment involve covert surveillances that become known by inadvertence. Cases in this category are discussed in the next chapter, pp. 30-35.

C - COVERT SURVEILLANCE

In the following sections this brief discusses covert surveillance operations conducted with a principal person, place or organization targeted. The respective subheadings cover public places, semi-public places, trespass and harassment.

PUBLIC PLACES

In this regard, the law relating to overt surveillance activities should be reviewed. The bulk of the case law in this field arises through criminal prosecutions. Due to the existence of the exclusionary rule, mandated upon the states in *Mapp v. Ohio*, numerous techniques have come into question. While a particular action may never have been called into question, most have been questioned in some form or another as a defense to a criminal prosecution, or in support of a motion to suppress and reject testimony or physical evidence gathered. If a criminal appellate court has sustained the lawfulness of the activity questioned, we can assume that it does not constitute a tort, and cannot form the basis for a civil suit seeking damages or injunctive relief. An exception, of course, is when a lawful investigative technique is misused for an unlawful purpose, as a mere cover for intended wrongdoing.

Cases which attack surveillance and infiltration cite, in addition to the N.A.A.C.P. membership roster cases below, two important U.S. Supreme Court cases. The first is *Katz v. United States*, 389 U.S. 347 (1967) which invalidated the use of an electronic eavesdropping device where no physical trespass was involved, on the basis of the defendant's "expectation of privacy." The expectation is not a subjective test, but is an objective test which must pass the criteria of reasonableness.

The second case of importance in the law of privacy is *Griswold v. Connecticut*, 381 U.S. 479 (1965) which invalidated that state's proscription against the sale of birth control devices. The majority of the court, in attempting to define the constitutional basis of the privacy doctrine, declined to connect it to any specific amendment. Rather, the court found the doctrine fell within the "penumbra" of the Bill of Rights. In many of the cases discussed in this section, courts have addressed themselves to the claimant's "Fourth Amendment right of privacy." Part of this affiliation of the two is due to a misunderstanding of the penumbra concept; part is due, based on the circumstances of the case at bar, to the inapplicability of the other Amendments in the Bill of Rights.

Not all states recognize the invasion of privacy as a suable tort; some states, such as California, have recognized the tort for over forty years. It is probable, even in states that do not recognize the tort, that damages and injunctive relief will nevertheless be available to litigants challenging surveillance excesses under the continuing nuisance and assault doctrines.

SURVEILLANCE OF HOMES

Police officers, in general, may look through undraped windows when they are standing in a public place, such as a sidewalk, street or other fully public facility, The cases upholding the validity of such surveillances are numerous. *People v. Holloway*, 41 Cal. Rptr. 325 (1964) involved the viewing of narcotics offenses through an open window at an apartment house. *Jenkins v. State*, 248 So.2d 758 (Ala. 1971) involved similar facts; as to the *Katz* argument, the court said signs or fences could become indicia of an expectation of privacy but were not involved in the case at bar.

In *United States v. Brown*, 487 F.2d 208 (4th Cir. 1973) the court upheld a surveillance of the defendant's barn, in sufficient proximity to smell fermenting mash.

The California Supreme Court has held that trash can searches are impermissible under their expectation of privacy interpretation to the California constitution. See *People v. Edwards*, 458 P.2d 713 (Cal. 1969) and *People v. Krivda*, 5 Cal. 357, 364 (1971), rem. 93 S. Ct. 32 (1972), suppression reaffirmed at 8 Cal.2d 623, 624. Other courts have wisely not followed the *Krivda* philosophy, and permit trash can searches, in the absence of a physical trespass upon the domestic economy of the dwelling. See *United States v. Dzialak*, 441 F.2d 222 (N.Y. 2d Cir. 1971).

. In *State v. Ashby*, 245 So.2d 225 (Fla. 1971) officers saw from the street in front of the suspect's home a trailer and auto which bore plates issued to another vehicle. The search, subsequent arrest and seizure were upheld under the general rule that there is no illegal search when an officer sees something from a place where he has a legal right to be. At 227.

USE OF BINOCULARS AND SCOPES

There is nothing improper *per se*, with the use of magnifying glasses or telescopes. See *Hodges v. United States*, 243 F.2d 281 (5th Cir. 1957); *Fullbright v. United States*, 392 F.2d 432 (10th Cir. 1968); *United States v. Grimes*, 426 F.2d 706 (5th Cir. 1970) and *United States v. Sims*, 202 F. Supp. 65 (D. Tenn. 1962). The *Hodges* case involved the surveillance of a still some 225 feet distant, outside of two surrounding fences and with the use of binoculars.

In *Johnson v. State*, 234 A.2d 464 (Md. 1967) the court sustained a binocular surveillance some 150 feet distant, through the open window of the defendant's home. And in *Comm. v. Hernley*, 263 A.2d 904 (Pa. 1970) a federal agent, using binoculars, viewed gambling violations through a defendant's window. The agent had to climb a stepladder to see into the premises; however, the place viewed was a business establishment and not a dwelling house. It is unlikely that most courts would sustain a search requiring the use of a stepladder to see in, particularly a dwelling, after *Katz*. The *Hernley* case also held that *Katz* was not retroactive, but said that ruling was not essential to its holding since the defendant should have closed his curtains. See also, *People v. Vermouth*, 116 Cal. Rptr. 675 (App. 1974).

In *United States v. Loundmannz*, 471 F.2d 1040 (D.C. Cir. 1972) cert. den. 410 U.S. 691, a gambling conviction was sustained based on evidence gathered through the use of high-powered binoculars, from a high vantage point in a nearby building.

ARTIFICIAL ILLUMINATION

If an officer's observations do not constitute a search without the use of artificial illumination, use of a flashlight or spotlight will not change the character of the surveillance. There are a number of flashlight cases: *State v. Lloyd*, 435 P.2d 797 (Ida. 1967); *Childers v. Comm.*, 286 S.W. 2d 369 (Ky. 1955); *State v. Plummer* 241 A.2d 198 (Conn. App. 1967); *Dorsey v. United States*, 372 F.2d 928 (D.C. Cir. 1967); *United States v. Wright*, 449 F.2d 1355 (D.C. Cir. 1971); *Parks v. State*, 248 So.2d 761 (Ala. Cr. App. 1971); *Walker v. Beto*, 437 F.2d 1018 (5th Cir. 1971) involving the shining of a flashlight into a car as not constituting a search; *Marshall v. United States*, 422 F.2d 185 (5th Cir. 1970) where is was said, "The plain view rule does not go into hibernation at sunset;" and *People*

Superior Court (Mata), 84 Cal. Rptr. 81. Additional cases are cited in Fisher, *Search and Seizure* §31, Northwestern Univ. (1970).

Plummer was a pre-*Katz* decision upholding a surveillance by an officer, perched on a fire escape, who peered into a window with the aid of a flashlight. *Dorsey* involved the shining of a flashlight into the defendant's car, by narcotics officers in a high-crime area in D.C.; it was also decided before *Katz*. *United States v. Harold Wright* was decided post-*Katz* and involved a surveillance of a partly opened garage with the use of a flashlight.

Wright is an important case because it held (1) the act was not a search because it fell within the"plain view" exception approved in *Chimel*, *Harris v. United States*, at 370 F.2d 477 (1966) and *Dorman v. United States*, 435 F.2d 385 (1970); (2) it found that if the officer has to perform contortions to conduct his surveillance, the viewing was still legal, citing *James v. United States*, 418 F.2d 1150 (D.C. Cir. 1969). *James* held that an officer could "crane his neck, or *bend over, or squat*...so long as what he saw would have been visible to any *curious* passerby." (Emphasis added.) At n.7 in *James*. *Wright* also held that (3) *Vale v. Louisiana* protected *dwellings*, and that while "a garage is perhaps more deserving of...protection than an open field [it deserves] less than that afforded [a] dwelling." At 1362.

Finally, *Wright* holds that (4) *Katz* is not applicable to anything which might be exposed to the public; and the simple pronouncement that *Katz* protects people, not places, is not a sufficient basis to afford the defendant any protection. At 1363-64.

Another case cited above, *Parks v. State*, held that "the lack of daylight required the use of a flashlight" in an auto surveillance case. At 762.

Two decided cases seem, at first blush, to restrict the use of flashlights. These cases go not to the use of a light *per se*, but to the scope of the search in which a light was utilized. In *Barnes v. State*, 130 N.W. 2d 264 (Wis. 1964) the court invalidated a stop-and-frisk of the defendant where the officer searched the inside of his coat pocket without first feeling a bulge, and with the aid of a flashlight. The court found the exploration of the pocket to be beyond the scope of a permissible "pat-down." At 269. In *Pruitt v. State*, 389 S.W. 2d 475 (Tex. Cr. App. 1965) the court invalidated the opening and search of a box located in the defendant's vehicle. The auto was stopped for a license check, and the box was spotted with the aid of a flashlight. The court made clear that if the evidence was visible without opening the box, it would have been admissible. At 476.

Spotlight surveillances are no different. In *United States v. Lee*, 274 U.S. 559 (1927) the U.S. Supreme Court affirmed the conviction of a defendant who was transporting contraband on the deck of a ship, spotted with the aid of a searchlight.

Likewise, the use of an ultraviolet lamp which excites fluorescein powder is permissible. *Brock v. United States*, 223 F. 2d 681, 685 (5th Cir. 1955).

USE OF VIDEOTAPE EQUIPMENT

Two recently developed optical/recording systems have been adapted for law enforcement usage. The first is closed circuit television (CCTV) which can broadcast a live image, store it on tape for later viewing, or do both simultaneously. Low light level television (LLLTV) is a refinement of CCTV and does not require the emission of a beam or radiation (such as infrared). Such cameras are installed on poles above the street, can operate with an illumination range of 0.0001 to 10,000 foot candles (starlight to sunshine), are remotely controlled and feature a zoom lens. They are connected to police headquarters via coaxial cable or microwave; they are encased in a steel environmental housing and equipped with window wipers and sprayers, ventilating fans and heaters. While the cameras can rotate 120° vertically, they are usually fixed to prevent window peeping. Although fixed surveillance posts are the normal application of the cameras, portable units can be mounted for temporary surveillance purposes.

In *National Committee to Defend the Panthers v. Leary*, No. 70 Civ. 1764 (S.D.N.Y. 1970) supporters of Panther Bobby Seale,(on trial in New Haven, Connecticut) planned to leave New York by bus to that city. Police intelligence officers set up a remote CCTV atop a building facing Union Square, an East Village Park in Manhattan. Believing that officers would tape their embarkment, a suit was filed to enjoin the videotaping outright; the court ordered the department to retain any tapes made, pending final disposition of the suit. The city chose not to tape the event, and the suit was dropped.

Because of the videotaping capabilities of CCTV, it has been *suggested* that its use is violative of the First Amendment, in that it causes the usual "chilling effect" on the rights of speech (lip-reading), assembly and association. Those who complain about such activities cite as "authority" the following cases:

**N.A.A.C.P. v. Alabama*, 357 U.S. 449 (1958) where the U.S. Supreme Court invalidated an Alabama requirement that the NAACP furnish its membership lists. Similar cases include *N.A.A.C.P. v. Button*, 371 U.S. 415 (1963), *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539 (1963), and *Bates v. Little Rock*, 361 U.S. 516 (1960).

**Talley v. California*, 362 U.S. 60 (1960) involved the invalidation of a California ordinance by the U.S. Supreme Court; the law required handbills to carry the name of the distributor, sponsor or preparer.

**Lamont v. Postmaster General*, 381 U.S. 301 (1965), invalidated a requirement that addressees of communist propoganda mail first send a reply card in order to receive delivery.

Theoretically, an intensive camera surveillance of a meeting or demonstration could identify a substantial number of members and non-member participants and accomplish the same purpose as subpoenas for the membership and support lists. But there is a salient distinction between the disclosure of a membership roster, which would include the names of persons who would never dream of attending a public protest, and the photographing of those who take part in activities on a public street for all to see. On that basis, *NAACP v. Alabama* can be distinguished. *Talley v. California* involved a "prior restraint" on handbills, an aspect not involved in videotaping. *Lamont* can be viewed as a pure harassment case; the constitutionality of mail covers has been consistently upheld (see subsection *infra*).

SEMI-PRIVATE AREAS

Included in this category are those places which are not purely public, but which the public has access to, such as common access locations and open fields. They are distinguished from purely private places where the public does not have access, and a trespass is more than technical (such as entry upon the curtilage of a dwelling).

OPEN FIELD DOCTRINE

Mr. Justice Holmes first announced the doctrine in *Hester v. United States*, 265 U.S. 57 (1924). The gist of the holding is that a mere "technical" trespass upon private property does not, *ipso facto*, render a search unlawful. Simply stated, not every place is entitled to the protection of the Fourth Amendment, since the Constitution prohibits "unreasonable" searches, not warrantless searches.

Hester involved the secretion of revenue officers some 50 to 100 yards from the home under surveillance, and clearly not within the curtilage of the premises. Curtilage is "determined from the facts, including its proximity or annexation to the dwelling, its inclusions within the general enclosure surrounding the dwelling, and its use and enjoyment as an adjunct to the domestic economy of the family," *Care v. United States*, 231 F.2d 22 (10th Cir. 1956), cert. den. 351 U.S. 932). State courts have come to the same conclusion, such as *People v. Shields*, 43 Cal. Rptr. 188 (Cal. App. 1965); and *People v. Sprovieri*, 252 N.E. 2d 531 (Ill. 1961); other recent federal cases include *United States v. Johnson*, 467 F.2d 630 (2d Cir. 1972); *United States v. Shepard*, 473 F.2d 139 (D.C. Cir. 1972) and cases cited therein.

Since the landmark decision of *Katz v. United States*, *supra*, several cases have come down reaffirming the open field doctrine. In *State v. Stanton*, 490 P.2d 1274 (Ore. 1971) the Supreme court of Oregon upheld the entry of a police chief onto undeveloped pasture lands, surrounded by a fence. The court found that fences, in that area, were designed to keep cattle in, not people out, and that the owner did not have reasonable expectation of privacy. See also *People v. Bradley*, 460 P.2d 129 (Cal. 1969); *Wattenburg v. United States*, 388 F.2d 853 (9th Cir. 1968).

In *United States v. Brown*, 473 F.2d 952 (5th Cir. 1973) the officers opened a suitcase containing money taken in an armed robbery. The suitcase was dug up in a chicken coop located in an open field; The conviction was affirmed, citing *Hester*.

A post-*Katz* case invalidating the search was *Lorenzana v. Superior Court*, 511 P.2d 33 (Cal. 1973), involving narcotics violations. Based on the tip of a reliable informant, police officers kept a house under surveillance. Unable to see much from the street, they trespassed on private property which exhibited no invitation to public use. From this vantage point the officers viewed enough over a period of time to effect an arrest.

The California Supreme Court held that the arrest was invalid because the probable cause basis was founded on things seen and heard while trespassing, where the property owner had an expectation of privacy. The court said that unless the surrounding area of a private residence has been open to public use, the occupant can claim that he expected privacy. Implied permission is extended by a sidewalk, pathway, common entrance or similar passageway. At 35.

COMMON ACCESS DOCTRINE

In general, police officers may follow their targets, or establish fixed surveillance posts in the lobbies or hallways of hotels and apartment houses, multiple residence garages and parking lots. In *People v. Terry*, 70 Cal. 2d 410 (Cal. 1969) the officer peered through the windshield of an automobile parked in a garage exclusively used by tenants of the building. Things seen in the vehicle were admissible.

Conversations overheard while standing in a common hallway (or things routinely observed) also may be used in evidence, *People v. Rucker*, 197 Cal. App. 2d 18 (1961); *People v. Jefferson*, 230 Cal. App. 2d 151 (1964).

In *State v. Smith*, 181 A.2d 761 (N.J. 1962) the defendant was convicted of possession of heroin. Following an informant's tip, detectives went to the defendant's apartment house, stood in the

hallway and looked through a crack in the door. They saw the defendant with a tourniquet and a needle, which was held to be lawful surveillance furnishing probable cause.

In *United States v. Lewis*, 227 F. Supp. 433 (S.D.N.Y. 1964) the defendant was convicted for possession of heroin. Two narcotics agents had learned of a delivery to be made to defendant's apartment. One waited on a nearby stairwell and another on the roof over defendant's apartment. When the person delivering approached the apartment so did the agent on the stairs. The delivery person dropped a package and started to flee; a scuffle ensued. The defendant heard the commotion and threw a package out her window. The agent on the roof retrieved it; it appeared and tested as heroin. The defendant alleged the agents were trespassers and their actions constituted an unreasonable search. The court held that the agent on the roof committed a technical trespass on the landlord but this and nothing more did not invalidate what he saw and what he did (at 436). Among the factors the court found important are the householder's interest in privacy, the nature of the actual dwelling and the fact that the agent on the roof was not peering in but only saw the defendant do what any member of the public could have seen her do. At 436.

In *Gil v. State*, 394 S.W. 2d 810 (Tex. 1965) the court sustained the defendant's conviction for possession of narcotic paraphernalia. On a tip from a motel owner, police discovered the defendant in a cabin and placed him under surveillance with the motel owner's permission. In walking by the defendant's cabin, the police noticed incriminating activity through partially open venetian blinds. The police subsequently forced their way in and arrested the defendant. On appeal, the defendant claimed the walkway from which the police observed his activities was part of the curtilage of the cabin and the officer had trespassed without a warrant. The Texas courts affirmed the conviction, which was sustained by the Fifth Circuit, reviewing the case on a *habeas corpus* petition, *sub nom Gil v. Beto*, 440 F.2d 666 (5th Cir. 1971).

In *State v. Penna*, 241 A.2d 385 (1967) the Connecticut Supreme Court sustained the appellant's conviction for sodomy and indecent assault, following his arrest on the scene. Officers had observed his acts through a window from a common corridor, and were present at the time, based on an informant's tip.

In *United States v. Llanes*, 398 F.2d 880 (2d Cir. 1968) officers had watched the defendants enter an apartment and heard loud voices while standing in the hallway. The conversation indicated that a drug related transaction was occurring behind the door. The Second Circuit held that where the conversations took place in a loud voice, and were heard without any mechanical aides, the officers did not violate the Fourth Amendment and the words heard could be used to establish probable cause for arrest.

. In *Ponce v. Craven*, 409 F.2d 621 (9th Cir. 1969) the defendant had been convicted of narcotics violations. In response to a tip by the motel manager, police observed the defendant's room. In passing by a partly open bathroom window, officers saw narcotic paraphernalia and heard the defendant talking to a companion about heroin. The defendant alleged an invasion of privacy. The Ninth Circuit held that while the occupant of a motel room is entitled to the same protection as an owner of a house against unreasonable searches and seizures, the very nature of motel residency distinguishes the scope of protection. This is because the motel occupant must share corridors, sidewalks, yards, and trees with other occupants.

Also in 1969, the California Supreme Court reveresed a narcotics conviction in *People v. Berutko*, 453 P.2d 721. However, the court based its findings on the lack of necessity demonstrated in justification of an unannounced entry to effect the arrest. The fact that the officer had seen drug paraphernalia through a gap in the defendant's curtains did not affect the legality of the raid.

In *People v. Colvin*, 96 Cal. Rptr. 397 (App. 1971), the defendants were convicted for narcotics violations. The arresting officer observed the violations through a bathroom window adjacent to a common area. The surveillance was upheld, as not an invasion of their expectation of privacy, due to the neglect of the defendants to protect against a viewing through the window.

In *United States v. Sin Nagh Fang*, 490 F.2d 527 (9th Cir. 1974), the court affirmed a conviction for narcotics violations. The defendant on several occasions sold heroin to a government informer. On one of these occasions a government agent in an adjacent motel room overheard the defendant with the informer. The agent used only his own ears -- no eavesdropping equipment. The contents of the conversation were used later against the defendant. He argued that a motel room is like a bedroom and has significant rights to privacy. On appeal the Ninth Circuit held that conversations in a motel room overheard by a government agent in an adjoining room (without the use of electronic eavesdropping equipment) are not subject to suppression on ground of violation of an alleged Fourth Amendment right to privacy.

It is important to distinguish cases that involved use of the naked eye and unaided ear from those cases where stepladders are used to obtain visual access and electronic and other sensory devices are used to overhear conversations. The use of magnifying lens and artificial lights is permissable as discussed above.

BUSINESS PREMISES

Respecting commercial places, officers may enter business premises posing as customers and lawfully observe criminal activity. *People v. Arnold*, 243 Cal. App.2d 510 (1966); *People v. Roberts*, 182 Cal. App. 2d 431, 437 (1960). In *Roberts*, officers entered the defendant's store; inside, they saw and seized stolen property. The items were admitted into evidence and the surveillance and seizure were upheld on appeal.

In *People v. Rayson*, 17 Cal. Rptr. 243 (App. 1961) police officers entered a shine parlor and observed bookmaking. In sustaining the conviction the court said that the surveillance, through a window from one room to another, was not a search within the meaning of the Fourth Amendment.

Similarly, in *Thorp v. Department of Alcoholic Beverage Control*, 346 P.2d 433 (Cal. 1959), an action was brought to reinstate a liquor license. The revocation was for bookmaking, and the evidence used consisted of a surveillance of the tavern by agents posing as customers. The California Supreme Court held that a barroom is a public place, no warrant is needed to enter it, and observations therein are not a "search."

In *United States v. Sorce*, 325 F.2d 84 (7th Cir. 1963) the defendants were arrested for unlawful possession of goods stolen from an interstate shipment. They had been seen in an open air nursery unloading cartons, removing the contents and burying the cartons. The cartons were identified as similar to those stolen. The defendants were arrested and contended that the arresting officers violated their right of privacy. Citing *Hester*, *supra*, and *Martin v. United States*, 155 F.2d 503, 505 (5th Cir. 1946) the Seventh Circuit concluded the actions did not constitute a "search" within the meaning of the Fourth Amendment.

For other cases related to this point, read the chapter on infiltration, (Section D, *infra*).

RESTROOMS AND RELATED SURVEILLANCES

Probably no rooms or areas have been the subject of greater litigation than toilets. Because of their semi-private nature, they are sometimes used for the sale of narcotics, the taking of bets, the passing of illicit monies, and acts of sexual perversion.

In *Britt v. Superior Court*, 374 P.2d 817 (Cal. 1962) an officer set up a surveillance in a men's room of a department store. He secreted himself above the ceiling and watched through the vents. The defendant was seen engaging in sex perversion and was arrested. The court reversed his conviction because the defendant closed himself off from public view by shutting the door on his stall. A similar result was reached in *Bielicki v. Superior Court*, 371 P.2d 288 (Cal. 1962).

In *Smayda v. United States*, 352 F.2d 251 (9th Cir. 1965) the Ninth Circuit affirmed a conviction for sexual perversion which took place in a men's room at Yosemite Park. Again, the arresting officer observed the illicit activity through a hole cut in the ceiling for that purpose. The conviction was affirmed, even though the room was equipped with stall doors. The court noted that the doors were not lockable, the officers had ample cause to believe acts of perversion were frequented there, and refused to entertain the distinction made by the California Supreme Court in *Britt*.

The mere fact that a surveillance is surreptitious through a ceiling vent or hole is not determinative. In *People v. Young*, 29 Cal. Rptr. 492 (App. 1963) the court sustained a conviction for perversion and upheld the surveillance because the acts were performed in an open stall. In *People v. Hensel*, 43 Cal. Rptr. 865 (App. 1965) a conviction for oral copulation was sustained because the defendant perpetrated the act in plain view of anyone who could have entered the room. *People v. Maldonado*, 50 Cal. Rptr. 45 (App. 1966) is in accord as is *People v. Heath*, 72 Cal. Rptr. 457 (App. 1968). In *Heath* the acts took place in a doorless commode. Finally, in 1970, California again resounded the "public area of the room" doctrine in *People v. Crafts*, 91 Cal. Rptr. 563 (App. 1970), involving activity in front of the urinal.

Georgia had indicated its willingness to follow the *Smayda* decision, in *Mitchell v. State*, 170 S.E. 2d 765 (Ga. App. 1969). The case involved clandestine surveillance of a toilet stall leading to an arrest for sodomy.

Two cases have been decided involving the use of the so-called "two-way mirror." In *Poore v. State*, 243 F. Supp. 777 (N.D. Ohio, 1965) the officers observed the acts of sodomy in a public toilet with the use of a two-way mirror. The acts were in the public portion of the room, and the court sustained the surveillance.

In *People v. Triggs*, 506 P.2d 232 (Cal. 1973), the California Supreme Court banned all restroom spying, based on a recently enacted statute that prohibits the use of two-way mirrors in public facilities; the court found the public policy of the state prohibits all restroom surveillances with or without mirrors.

MISCELLANEOUS

AIRCRAFT SURVEILLANCE

With the advent of routine police helicopter patrols, some criticism has developed concerning low level flying, hovering, use of artifical illumination from extremely bright lights and

the use of binocular equipped flight observers. The problem stems from observations into backyards surrounded by high fences and other places where the occupant might have a reasonable expectation of privacy under the *Katz* doctrine. Case law has been slow to develop, despite a decade of helicopter patroling.

In *People v. Sneed*, 108 Cal. Rptr. 146 (App. 1973) an appellate court reversed the conviction of a man for unlawful cultivation of marijuana in his backyard. The ground was not visible from the road, and the surveillance was from a helicopter hovering 20 to 25 feet above. The surveillance was not an inadvertent sighting; rather, the flight crew was summoned by officers on the ground to confirm the surveillance for the purpose of confirming a tip.

The People contended that since the plants were visible from a neighbor's property the appellant could not have had a reasonable expectation of privacy. The court said that the matter was not absolute and all factors that bear on the issue must be considered. Citing both *Triggs* and *Krivda* (discussed above) the court said the petitioner had "a reasonable expectation of privacy to be free from noisy police observation by helicopter from the air at 20 to 25 feet and that such an invasion was an unreasonable governmental intrusion into the serenity and privacy of his backyard." At 151.

In *Dean v. Superior Court*, 110 Cal. Rptr. 585 (App. 1973) another California appellate court district reviewed the problem in a similar case. This time the officers used a fixed-wing aircraft to confirm a telephoned tip. The area was not a backyard, but an isolated area in the Sierra foothills, hidden from view by surrounding hills and woods. The plane passed at some 300 feet above the area, and a deputy observed marijuana plants of 15 to 20 feet in height with the aid of binoculars.

Going beyond the issues discussed in the *Sneed* case, the court looked to the law of property. In general, a landowner may claim exclusive possession of overlying airspace as he can occupy or use, citing 25 A.L.R. 2d 1454. However, the court said the *Katz* decision makes clear that the Fourth Amendment protects people, not places, and property rights and the Fourth Amendment are not synonomous.

The court said that one who plants a three-quarter acre tract of contraband cannot reasonably expect immunity from overflight. Accordingly, the court refused to quash his indictment, and ruled there was no Fourth Amendment violation.

Finally, in *People v. Superior Court (Stroud)*, 112 Cal. Rptr. 764 (App. 1974) still another California appellate court considered the issue. Officers investigating a recovered stolen car case began searching for missing parts. A police helicopter crew summoned

to assist them observed the parts, at an altitude of 500 feet, in the backyard of the defendant. Verification was made at this height, using 20 power gyrostabilized binoculars. At no time did the aircraft hover over the yard. Officers on the ground made the apprehension. The court said:

> *We have concluded that upon this evidence, there can be no finding that defendants enjoyed a reasonable expectation of privacy for the storage of stolen automobile parts in this backyard. Lorenzana and Sneed are distinguishable on their facts.*
>
> *Patrol by police helicopter has been a part of the protection afforded the citizens of the Los Angeles metropolitan area for some time. The observations made from the air in this case must be regarded as routine. An article as conspicuous and readily identifiable as an automobile hood in a residential yard hardly can be regarded as hidden from such a view. Our conclusion here is supported by the reasoning and decision in Dean v. Superior Court, (1973) 35 Cal. App. 3d 112, 110 Cal. Rptr. 585, upholding an aerial observation of a field of marijuana plants.*

No civil cases on the matter have been located.

INSPECTION OF BANK RECORDS

In recent years the propriety of surveillance inspections of a citizen's bank records has come under considerable criticism. Suits like *Kenyatta v. Kelley*, No. 71 Civ. 2595 (E.D. Pa. 1974), *Fonda v. Nixon*, No. 73 Civ. 2442 (C.D. Cal. 1974) and *Jabara v. Kelley*, 42 L.W. 2528 (E.D. Mich. 1974), have challenged the FBI's right to look at bank statements for law enforcement purposes.

In *California Bankers' Association v. Schultz*, 416 U.S. 21 (1974) the U.S. Supreme Court, in upholding portions of the Bank Secrecy Act of 1970 that were attacked, ruled that banks do not have the same Fourth Amendment rights that individuals have. Numerous federal cases have held that a depositor has no proprietary interest in the records of his accounts which a bank maintains, and that he has no standing on Fourth Amendment grounds to resist a subpoena or summons directed to a bank ordering the production of such records. *United States v. Gross*, 416 F.2d 1205, 1212-13 (8th Cir. 1969); *Harris v. United States*, 413 F.2d 316, 317-18 (9th Cir. 1969); *Galbraith v. United States*, 387 F.2d 617, 618 (10th Cir. 1968); see also, *I.C.C. v. Brimson*, 154 U.S. 447, 485 (1894).

In *Fifth Avenue Peace Parade Committee v. Gray*, 480 F.2d 326 (2d Cir. 1973), cert. den. *sub nom FAPPC v. Kelley*, 94 S. Ct. 1469 (1974), an F.B.I. agent inspected bank records of the plaintiff. The bank voluntarily permitted the agent to view certain records, without legal judicial process. Citing *Donaldson v. United States*,

400 U.S. 517 (1971) and *Application of Cole*, 342 F.2d 5 (2d Cir. 1965) the court found that the plaintiffs did not have a "right to complain" about the voluntary surrender of the records to a government agency. At 332.

In *Burrows v. Superior Court*, ___ P.2d ___, Civ. No. LA 30308 16 Crim. L. Rptr. ___(12-27-1974) the California Supreme Court invalidated warrantless or subpoenaless searches of a citizen's bank records. A sheriff's detective obtained photocopies of a criminal suspect's bank statements without resorting to a grand jury subpoena or search warrant. Although the bank voluntarily turned over the photocopies, the court found the scheme violated the suspect's right against unreasonable searches. Art. I §13 of the California Constitution is similar to the Fourth Amendment of the U.S. Constitution, which is the basis of the *Burrows* holding, and is not reviewable by the U.S. Supreme Court. Two bases were used to formulate their conclusions: first, a bank customer has an expectation of privacy under *Katz v. United States*, *supra*, and the search of such records without judicial process violates the California Constitution.

In *United States v. Miller*, 491 F.2d 638 (5th Cir. 1974) the Fifth Circuit reversed a conviction based on evidence obtained by subpoenas issued by the U.S. Attorney, an executive official who lacks judicial powers. Under the rationale of *Miller* and *Coolidge v. New Hampshire*, 403 U.S. 443 (1971), it would be risky to compel production of bank records without *judicial* process, such as a grand jury *subpoena duces tecum*.

It should be noted that, while inspections which are reasonably related to a legitimate investigation are permissible, if the stated purpose of the inquiry is a mere cover for an extralegal purpose, a court may well intervene. For example, in *United Servicemen's Fund v. Eastland*, 488 F.2d 1252 (D.C. Cir. 1973) the court held that Congressional internal security committees could not subpoena the bank records of selected peace groups in order to publicly expose the identities of contributors; the decision should not be viewed as a restriction on bank inspections, but rather, follows the logic of *N.A.A.C.P. v. Alabama* discussed earlier. An investigation proceeding under color of legitimate purposes which is a mere sham to discourage further contributions constitutes an impermissible interference with the First Amendment rights of the targeted group.

INSPECTION OF OTHER RECORDS

It is probable that even the California Supreme Court would not object to inspection of records made by businessmen, relating to others, without judicial process. That is not to say that the California Supreme Court would allow seizure of such records

over the objection of a businessman. Other courts might, under the logic that the third party transactor lacks standing to object to the search. See in regard to standing, *Brown v. United States*, 93 S. Ct. 1565, 1569 (1973).

In *Fifth Avenue Peace Parade Committee v. Gray, supra*, the Second Circuit upheld the right of the FBI to inspect records relating to charter buses at the bus company. The investigation pertained to the domestic surveillance of peace demonstrators traveling from New York to Washington.

In *Donaldson v. United States*, 400 U.S. 517 (1971) the U.S. Supreme Court held that a suspect could not object to the gathering (by administrative summons) of information from his former employer. Simply stated, the third party is viewed to have no Fourth Amendment rights to object to the inspection.

In *Couch v. United States*, 409 U.S. 322 (1973) the IRS sought enforcement of a *subpoena duces tecum* served on an accountant, directed for the records of a named taxpayer. The court said, at 337:

> *We hold today that no Fourth or Fifth Amendment claim can prevail where, as in this case, there exists no legitimate expectation of privacy and no semblence of governmental compulsion against the person of the accused.*

Surveillances should be corroborated by inquiry with appropriate public and quasi-public agencies such as utility companies. A partial list of these follows:

County Clerk's Office: marriage licenses; personal property liens.
County Recorder of Deeds: Real estate deeds and mortgages.
Court Clerk's Dockets: Change of name petitions, probate matters and suits.
Electric Company: Service subscriptions.
Gas Company: Service subscriptions.
Municipal Clerks: Business and occupational licenses; health permits.
Motor Vehicle Departments: Title ownership, registrations (if different), liens, serial numbers and motor numbers of vehicles and trailers.
Refuse Hauling Companies: Subscribers to scavenger services.
Secretary of State: Corporate charters and annual reports; limited partnership agreement filings; certain state licenses.
Telephone Company: Service subscriptions and long-distance toll records.
Vital Statistics Bureaus: Birth and death records.
Voter Registration Bureaus: Current and previous addresses.

Other information collecting private agencies will provide a report for a stated fee including the local credit bureau, the local stores' protective association, the insurors' claim index bureau and Dun and Bradstreet.

In the past police have had ready access to student records at publicly owned or supported schools, and limited access at private educational institutions. Under recent amendments to the General Education Provisions Act 45 U.S.C. §438, effective November 19, 1974, new confidential relationships are created for student records. The act applies to all educational institutions that receive federal funds. Essentially, the act and proposed regulations forbid an institution to permit access to or release of student records to law enforcement personnel without a "judicial order or pursuant to any lawfully issued subpoena, *upon condition that the parents and students are notified of all such orders, or subpoenas in advance* of the compliance therewith by the educational institution." 40 Fed. Reg. 1214, Reg. 99.30. (Emphasis added). An exception is made for "directory information," which includes the student's name, address, telephone listing, birth date and last school attended.

MAIL COVERS

The use of a mail cover, by local and federal law enforcement officers, has been consistently held constitutional. *United States v. Costello*, 255 F.2d 876 (2d Cir. 1957); *Cohen v. United States*, 378 F.2d 751 (9th Cir. 1967); *Lustinger v. United States*, 386 F. 2d 132 (9th Cir. 1967), and more recently, as part of highly publicized suit against the FBI.

In the latter case, the New Jersey Civil Liberties Union brought an action in behalf of a 16-year old girl whose name was added to the FBI subversive file after she wrote a letter to the Socialist Labor Party, seeking information for a high school essay. A mail cover on the Party revealed her name, and she was subjected to a full field investigation. The U.S. District Court ordered the FBI to expunge its files on her, but refused to invalidate the mail cover or to award damages. *Paton v. LaPrade*, 15 Crim. L. Rptr. 2534, 43 U.S.L.W. 2115 (D.N.J. 1974).

A law enforcement agency may ask the U.S. Postal Service to institute a mail cover for a 3-day period on all mail addressed to a firm or an individual; in some cases the period can be extended. The postmark and name and return address of the sender, if any, is recorded from the envelope and is furnished to the agency making the request. Mail covers may be placed with respect to the following types of investigations: national security, and efforts to secure evidence of the commission or attempted commission of a crime.

From the standpoint of an organized crime investigation, mail covers can reveal the identity of banks and savings institutions, identity of suppliers, and conspirators. Mail covers are instituted through the Postal Inspection Service.

TRESPASS

The curtilage concept is of English antiquity and referred to the enclosures within the high stone walls surrounding the feudal premises. As stated in *25 C.J.S. 65*, "The word orginally signified the land with the castles and outhouses, enclosed often with high stone walls, and where the old barons sometimes held their court in the open air."

In modern times the curtilage of a dwelling house is the necessary and convenient space habitually used for family purposes. Black's Law Dictionary (3rd Edit.). It does not apply to commercial premises or residential structures not used as a dwelling. *United States v. Potts*, 297 F.2d 68 (6th Cir. 1961).

Curtilage is determined on the facts of each case. *Care v. United States*, 231 F.2d 22 (10th Cir. 1956), *cert. den.* 351 U.S. 932. A dwelling house has a curtilage, but outbuildings on the property do not. *United States v. Vlahos*, 19 F. Supp. 166 (D. Ore. 1937). Examples of curtilage include a trash receptacle on the porch, *Work v. United States*, 243 F.2d 660 (D.C. Cir. 1957), a barn 70 yards from a farmhouse and surrounded by a fence, *United States v. Walker*, 225 F.2d 447 (5th Cir. 1955) and a separate garage adjacent to a dwelling house, *Taylor v. United States*, 286 U.S. 1 (1932).

Curtilage does not include an outbuilding 150 feet from the dwelling and separated by a fence, *Brock v. United States*, 256 F.2d (5th Cir. 1958), a chicken house, *Hodges v. United States*, 243 F.2d 281 (5th Cir. 1957) and a cave located in a'pasture, *Care v. United States, supra*.

Thus, if a surveillance is made outside of the curtilage of the dwelling house, the "search" is legal. *Ramsey v. United States*, 278 F.2d 369 (6th Cir. 1960). This includes binocular surveillances, *United States v. Sims*, 202 F. Supp. 65 (D. Tenn. 1962).

The *Brock* case above involved entry onto the curtilage of the dwelling, and a visual surveillance into the home. The evidence was suppressed.

In *Gonzales v. Beto*, 266 F. Supp. 751 (W.D. Tex. 1967) the court held that a surveillance through a curtained window of the suspect's dwelling was a trespass, and the conviction was reversed.

In *State v. Kent*, 432 P.2d 64 (Utah, 1967) the surveillance was from the attic of a motel; the officer peered through a crack

in the ceiling. Although the officer took no affirmative action, such as enlargening the hole, the surveillance was held to be unlawful.

In *Fixel v. Wainwright*, 492 F.2d 480 (5th Cir. 1974) the petitioner received a writ of *habeas corpus*, successfully contesting the surveillance of his home. The surveillance officer had encroached on to the enclosed yard behind his dwelling. Three appellate courts had, prior to the Fifth Circuit's decision, upheld the entry and surveillance.

Fewer cases will, in the future, be decided on the trespass issue, and more on the "expectation of privacy doctrine" announced in *Katz*.

HARASSMENT SURVEILLANCES

Already mentioned above, is the *Giancana* case involving an overt, notorious surveillance technique for alleged purposes of harassment. The following cases involve covert surveillances, which became known through inadvertence; they appear chronologically.

In *Souder v. Pendleton Detectives*, 88 So.2d 716 (La. 1956) a workmen's comp claimant and his wife sued the insurer and private detectives for invasion of privacy. They alleged the detectives were shadowing him so as to cause worry and anxiety. The complaint maintained the men took pictures, used binoculars and trespassed on his property. The court held the alleged activities stated a case of action for invasion of privacy.

In *Foster v. Manchester*, 189 A.2d 147 (Pa. 1963) the plaintiff sought injunctive relief from further surveillance. She had filed a claim for personal injuries sustained in an auto accident; the defendant was a private detective who was taking motion pictures of her on public streets. The court held that the detective was acting in the course of his employment in investigating a claim, that the plaintiff voluntarily exposed herself to view when in public places, and was not entitled to the same degree of privacy attendant within the confines of her home. The court differentiated legitimate surveillances for investigative purposes from those designed to cause emotional distress.

In *Pinkerton National Detective Agency v. Stevens*, 132 S.E. 2d 119 (Ga. 1963) a woman sued the agency and an insurer. Her husband had previously filed a pending suit for medical expenses and loss of consortium. The court noted that the petition alleged the agency had constantly shadowed her in a manner as to hurt her reputation, impaired her mentally and physically, and she required medical attention. Accordingly, the court ruled the petition stated a cause of action.

In *Delp v. Zapp's Drug and Variety*, 395 P.2d (Ore. 1964) the plaintiff alleged that in-store surveillance by two store employees, who suspected her of shoplifting, constituted false imprisonment. The judgment was for the defendant store.

In *Alabama Electric Co-op v. Partrige*, 225 So.2d 848 (Ala. 1969) the plaintiff sued for invasion of privacy and trespass. She had previously obtained a judgment against the firm in a prior action, and the firm followed and filmed her. The court ruled that if the surveillances were pursued in an offensive or improper manner, the plaintiff stated a valid cause of action; that determination, it was held, was a question of fact for the jury, citing *Foster v. Manchester, supra*.

In *Tucker v. American Employers Insurance Co.*, 218 So.2d 221 (Fla. App. 1969) the plaintiff alleged injury from secret surveillance and harassment. The plaintiff was a litigant in another case where the insuror was also the defendant. The carrier defended on the basis of *Foster v. Manchester, supra*, and obtained a summary judgment in the trial court. The pleadings in the second suit, however, alleged the detective obnoxiously peered into the plaintiff's windows at night and trampled the adjacent garden; the insuror denied these allegations. Since a genuine issue of fact developed, and since such activities did state a cause of action, the summary judgment was reversed for a trial on the merits.

In *Nader v. General Motors Corporation*, 307 N.Y.S. 2d 647 (1970) the famous author sued for invasion of privacy and infliction of mental distress. Holding that District of Columbia law applied, the New York court ruled that the right to privacy does not encompass a broad right to be left alone; that mere gathering of information does not give rise to a cause of action. It must be shown, the court held, that the defendant's conduct was truly intrusive and sought to gain information not normally available through routine inquiry or observation -- such as intimate secrets.

In *Nobel v. Sears Roebuck and Co.*, 109 Cal. Rptr. 269 (App. 1973) the plaintiff was a claimant against Sears for alleged injuries received while shopping in a Sears store. Attorneys for the firm wanted to take the deposition of a man who accompanied the woman on her visit, but could not obtain his address from her. The laywers hired a private detective licensed by the state; an employee of the agency went into the plaintiff's hospital room, pretended to be the chief resident, and obtained the address of the man.

In her second suit brought against the detective firm, attorneys and Sears, the plaintiff alleged trespass, battery, fraud, physical and mental injury, conspiracy, violation of statutory duties, violation of attorney's ethics, invasion of the attorney-

client relationship, invasion of privacy, and negligent entrustment of agents. Sears was sued for the last three of the ten counts. In quickly disposing of the invasion of attorney-client relationship, the court held that the canons of the ethics prohibited Sears' attorneys from contacting her directly through a detective they hired, but that while the violation is a disciplinary offense, it does not create a cause of action in tort. The court agreed with the plaintiff that she was the victim of an "unreasonably intrusive" investigation giving rise to a valid cause of action for damages.

Sears defended on the basis that the detective agency was hired on a contractual, not employment basis; that the agency was licensed by the state, and acted on an independent basis; and that Sears did not authorize or instruct the zealous detective to intrude upon the plaintiff in his disguise, citing *Inscoe v. Globe Jewelry*, 157 S.E. 794 (N.C. 1931). Holding that under California law Sears could be held liable for the negligent selection of a private detective -- even though licensed by the state -- the appellate court reversed a dismissal entered by the trial courts. As the matter now stands, a Superior Court jury will decide whether Sears should be held vicariously liable for the detective's tort.

All of the above cited cases were brought against *private* detectives; the principles enunciated are applicable in the public sector, however, with this qualification: detectives investigating criminal activity should be permitted a broader scope of activity than those who seek to verify insurance claims. It is arguable, on the other hand, that insurance investigators have a more legitimate right to conduct allegedly offensive surveillances than do police officers who are building dossiers on peaceful demonstrators who have not shown any inclination for violent activities.

In *Fowler v. Merry*, 468 F.2d 242 (10th Cir. 1972) a federal action was brought against the FBI and state and local officials for alleged harassment by reason of photographic surveillance during an intertribal ceremonial. The complaint alleged a deprivation of privacy and an interference with First Amendment rights of the named plaintiffs by the named defendants. A series of amended complaints were filed, adding Director J. Edgar Hoover, alleging the photographic surveillance was accomplished in pursuance of a conspiracy, etc. The relief sought included damages, an order for destruction of the photographs and injunctive relief. On July 15, 1971 the parties filed a joint motion to dismiss the action pursuant to a settlement stipulation, and the district court dismissed the action incorporating the terms of the agreement.

In *Village Book Stores, Inc. v. Wilson*, an action was brought to enjoin police surveillance of adult book stores. The department entered into a consent decree and agreed to limit the circumstances under which members of the department can enter such premises, namely: (1) when responding to a crime or (2) when they have probable cause to believe a crime is being committed. The suit charged the department with the harassment of customers causing the stores to lose business and chilling the rights of patrons.

In *Yaffe v. Powers*, 454 F.2d 1362 (1st Cir. 1972) an action was brought for declaratory judgment that surreptitious police photography and surveillance of public meetings were unlawful; the plaintiffs sought injunctive relief for themselves, and members of the class who express unconventional views. In 1970 some 200 persons attended a meeting at a community college in Massachusetts to protest U.S. involvement in Cambodia and the National Guard response at Kent State. The Fall River Police Department sent a photographer, not in uniform, to take pictures.

One or more pictures of one of the named plaintiffs (a local clergyman) were displayed in a public area of the police station thereafter. Another photograph, of an additional plaintiff, Yaffe, then a candidate for Congress, was given to the local newspaper; it appeared in an article entitled "Fall River Radicals." The usual First Amendment infringements were listed in the complaint. The trial court, after a hearing by the U.S. Magistrate, denied the motion for class relief and limited discovery to those matters directly affecting the named plaintiffs. It is important to note that the decision in this case by the First Circuit, dated January 26, 1972, preceded the U.S. Supreme Court's decision in *Laird v. Tatum* and those dealing with class actions, *Eisen v. Carlisle and Jacquelin*, 40 L. Ed. 2d 732 (May 28, 1974) and *Zahn v. International Paper Co.*, 38 L. Ed. 2d 511 (1973).

The court ruled that the issue of the existence of a class must be reopened by the district court and said:

> [P]*rogress toward resolving the class definition issue would seem to require some discovery, as the court may see fit to impose, of the extent of, say, the practice of the police photographing and making such photographs available to others. At 1367.*

No opinion was expressed on the future course of the litigation.

In *Philadelphia Yearly Meeting of the Religious Society of Friends v. Tate*, 382 F. Supp. 547 (E.D. Pa., 1974) a § 1983 suit was brought against the police department by the parent organization of Quakers alleging improper surveillance and photographing of citizen meetings, and the collection of over 18,000 dossiers compiled for political purposes.

The complaint claimed the police "civil disobedience unit" attended over 1,000 meetings a year which deters many individuals from participation. The relief sought included a permanent injunction against such collection and against dissemination, an order requiring destruction, and the appointment of a special master to supervise compliance and damages.

On October 17, 1974, District Judge James Gorbey dismissed the action on the basis of *Laird v. Tatum* and *Donohoe v. Duling*. The court noted that the Quaker suit differed from *Laird v. Tatum* in only one respect -- an allegation that police officials publicly disclosed the existence of dossiers on the plaintiffs. However, widespread disclosure did not create a cause of action in itself.

In *Philadelphia Resistance v. Mitchell*, 58 F.R.D. 139 (E.D. Pa. 1972) an action was brought against named government official for allegedly excessive surveillances. In a motion for discovery the court ruled:

1. The government can properly claim privilege since the documents contain matters related to an ongoing law enforcment investigation. At 142.

2. The government does not have to disclose the names of individual plaintiffs whom agents were attempting to locate. The matter is privileged and might tip off suspects. At 145.

3. Governmental photographs taken in public places, if the sole basis for a suit alleging harassment, does not per se constitute an actionable tort. But photography of the plaintiffs, when combined with allegations of physical violence, threats, excessive surveillance, illegal searches and seizures, becomes a part of a valid cause of action. At 145.

The suit is still continuing. The opinion goes into detail regarding interrogatories served and other matters of discovery.

In *Turbeville v. Goodman*, Civ. No. C-74-47 (W.D.N.C. filed 1974) ACLU attorneys filed suit in Charlotte, N.C. seeking to enjoin the city police and State Bureau of Investigation from subjecting the plaintiffs to "political surveillance." A class action requesting injunctive relief, the suit alleges the officers have been subject to "surveillance or investigation of their private or personal lives or political beliefs or activities, violating their constitutional rights of free speech, free assembly and security from unreasonable searches." The plaintiff alleges that the defendants have collected, maintained and published personal data about him which has caused him "serious emotional strain and anxiety" and caused him "to be discharged from his job." Moreover, the plaintiff maintains that such activities chill, hamper, impede, deter and inhibit his exercise of First Amendment rights and those of the members of his class.

The plaintiff is seeking over $161,000 in damages over the alleged infringements of his rights. To help prove his claim, the plaintiff has subpoenaed all documents, films, tapes, and other records relating to him and five other individuals.

In *Alliance to End Repression et al v. Rochford et al*, Civ. No. 74 C. 3268 (N.D. Ill., filed Nov. 1974) a collection of clergymen, the Socialist Worker's Party, the Womens International League for Peace and Freedom, and scores of others filed a §1983 suit against the police superintendent and named intelligence detectives. Seeking damages and injunctive relief, the complaint alleges that the officers visited friends of the plaintiffs to deter their continued association with them (¶77), shouted derogatory remarks at persons attending a conference (¶88), took pictures and shouted verbal abuse at demonstrators at a leafleting episode (¶90), invaded a rally and then harassed and assaulted the participants (¶91), continually conducted extensive and intrusive surveillances intended to damage the plaintiffs' reputation (¶104) and illegally entered private premises (¶119).

The suit was filed by the Alliance, counsel for the ACLU's Roger Baldwin Foundation, and lists a staff attorney of the national ACLU as of counsel. The case will likely be taken to the Seventh Circuit next year. (The complaint is on file at AELE, Ref. No. 625).

See also, in this regard, *Handschu v. Special Services Division* discussed in the next section.

D - USE OF INFORMANTS, INFILTRATORS AND UNDERCOVER AGENTS

Excluded from this discussion are those situations and cases where the presence of a police officer is known or presumed, such as *Gates v. Local 309, U.F.W. v. Gates, supra.*

Two major Supreme Court cases, decided in 1966, discuss in depth the legality of the use of informants and infiltrators. In *Lewis v. United States*, 385 U.S. 208 (1966), the defendant was convicted for the sale of narcotics. The evidence based on testimony by a federal agent who had misrepresented his identity and expressed an interest in the purchase. The agent was invited into Lewis' home and was sold contraband. In affirming the conviction, the court dismissed the defendant's argument that the entry violated the Fourth Amendment and said, "the particular circumstances of each case govern the admissibility of evidence obtained by stratagem and deception." At 208. Continuing, the court stated that a government agent can "accept an invitation to do business and may enter upon the premises for the very purpose contemplated." At 211.

The second case, *Hoffa v. United States*, 385 U.S. 293 (1966) involved the use of a government paid informant who was not an officer. The defendant was later convicted, based upon testimony given by the informant Partin, for jury tampering. Hoffa misplaced his confidence in Partin and discussed in his presence the bribe attempt. Partin had been instructed to infiltrate Hoffa's circle of associates and to "hang around" his hotel room in order to gather useful information. The government did not contend that Partin was a private person and thus exempt from constitutional prerequisites that attach to government agents; the case, therefore, applies to police infiltration as well as informant infiltration.

The cases which have upheld the confidentiality of informant indentities in non-participating cases are too numerous to cite here. The principal case is *McCray v. Illinois*, 386 U.S. 300 (1967) which if checked in *Shepard's Citations*, will reveal numerous authorities since decided. See also, annotations at 8 ALR Fed. 6 and 13 ALR Fed. 905. One case is important from the civil standpoint: *Metros v. District Court*, 411 F.2d 313 (10th Cir. 1971). It held that the identity of a confidential informant could not be revealed through discovery mechanisms in a civil rights suit.

If the plaintiffs in a civil suit allege that infiltration officers have gone beyond the observation stage and affirmatively instigated acts of violence, the complaint may withstand a motion to dismiss. For example, in *Kent State University Chapter of V.V.A.W. v. Fyke*, No. C72-1271 (N.D. Ohio, filed 1972) the plaintiffs alleged that one Mohr, at the directions of campus police chief Fyke, infiltrated the Kent V.V.A.W., conducted searches and removed documents and property without a warrant. It is further alleged Mohr tried to entrap the plaintiffs into blowing up the R.O.T.C. building, and tried to induce them into accepting a machine gun and grenade launcher. The case is still pending.

In *White v. Davis*, Civ. No. 42038 (Sup'r Ct. L.A. Co., filed 1972) the plaintiffs brought an action in state court to enjoin enrollment of police officers in college courses, in that such action chilled the right of expression of other students and faculty members. Another such suit, *American Federation of Teachers v. Los Angeles Community College District*, alleges extensive illegal electronic surveillance of faculty and students to overhear conversations at peace assemblies. The suit further maintains that law enforcement officials took photographs and photocopied student records.

In *Bagley v. City of Los Angeles Police Department*, No. 71 Civ. 166 (C.D. Cal. 1971), a federal civil rights action seeking to ban police attendance at college classes (as students), the court ruled that:

[T]he use of undercover agents for the purpose of obtaining evidence relating to past, present or future criminal activity is an approved police technique, even though its effectiveness often depends upon deception and secrecy. The admissibility of such evidence in a subsequent proceeding is another question with which we need not be concerned here. The use by police of deception and secrecy in this context is not impermissible and the fact that the innocent as well as the guilty may also be deceived is not in itself significant. Mem. Opin. and Order of 4-22-71, Pp. 4-5. *(AELE Ref No. 677).*

Recognizing that the use of undercover agents could be abused the court continued as to alleged constitutional deprivation, saying:

The constitutional intrusion of which the plaintiffs complain, is that of an invasion of their right of privacy. But we know of no rule or law, constitutional or otherwise, which gives a student in a classroom the right to restrict the use of statements made by him in open discussion or which protects him from the consequences of what he says or does. Id. at 4.

The court concluded saying that the potential threat of unlawful police action does not rise to the level of a civil rights action, citing *Progress Development Corporation v. Mitchell*, 182 F. Supp. 681, 713 (N.D. Ill. 1960). The state court actions are still pending as of this date.

As mentioned earlier, *Alliance to End Repression v. Rochford* is now pending in the federal court in Chicago seeking damages and injunctive relief from police infiltration tactics.

Another case, still pending, was mentioned earlier. In *Handshu v. Special Services Division*, 349 F. Supp. 766 (S.D.N.Y. 1972) the court ruled on, and refused to grant a defense motion to dismiss. In rendering its opinion on the motion, the court said:

The use of secret informers or undercover agents is a legitimate practice of law enforcement and justified in the public interest -- indeed, without the use of such agents many crimes would go unpunished and wrongdoers escape prosecution. It is a technique that had been frequently used to prevent serious crimes of a cataclysmic nature. The use of informers and infiltrators by itself does not give rise to any claim or violation of constitutional rights. At 769.

The court declined to rule for the defendants because the complaint alleged excesses which overstepped constitutional bounds: the provocation, solicitation and inducement of members of the plaintiffs' class to engage in unlawful activities, and providing funds for that purpose. At 770.

Although the use of informants, infiltrators and undercover agents has not itself always been the subject of controversy, acts which allegedly constitute entrapment have been frequently

in issue before the courts. In this regard, see *Sorrels v. United States*, 287 U.S. 435 (1932), *Sherman v. United States*, 356 U.S. 369 (1958), *United States v. Russell*, 411 U.S. 423 (1973), cases cited therein, and the following law review articles: Donnelly, *Judicial Control of Informants, Spies, Stool Pigeons and Agent Provocateurs*, 60 Yale L.J. 1091(1951), *Informers in Federal Narcotics Prosecutions*, 2 Col. J.L. & Soc. Prob. 47 (1966), and *Entrapment by Federal Officers*, 33 N.Y.U.L. Rev. 1033 (1958) to name a few.

Although a person is afforded a valid defense to criminal prosecution if he is entrapped into criminal conduct, he does not *ipso facto* have a valid civil claim. This is because entrapment is an affirmative defense and does not rise to constitutional proportions. Thus, a suit for violation of the entrapee's civil rights will fail to state a cause of action. See *Mack v. Lewis*, 298 F. Supp. 1351 (D. Ga. 1969) and *Johnson v. Hackett*, 284 F. Supp. 933 (D. Pa. 1968).

In *Socialist Workers Party v. Attorney General of the United States*, 95 S. Ct. 425 (12/27/74), U.S. Supreme Court Justice Marshall was asked for a stay order on the opinion of the Second Circuit Court of Appeals.

The District Court had granted a preliminary injunction against the Director of the Federal Bureau of Investigation and others, barring government agents and informants from attending or otherwise monitoring the national convention of the Young Socialist Alliance (YSA), to held in St. Louis, Missouri, between December 28, 1974, and January 1, 1975.

The Court of Appeals held that on the facts of this case, the chilling effect on attendance and participation at the convention was not sufficient to outweigh the serious prejudice to the Government of permanently compromising some or all of its informants. Justice Marshall said:

> *The 11th-hour grant or denial of injunctive relief would not be likely to have a significant effect on attendance at the convention, the Court stated, and since the convention is open to the public and the press, the use of informants to gather information would not appear to increase appreciably the "chill" on free debate at the convention. * * **
>
> *This case presents a difficult threshold question -- whether the applicants have raised a justiciable controversy under this Court's decision in Laird v. Tatum, 408 U.S. 1, 11 CrL 3184 (1972). * * **
>
> *The specificity of the injury claimed by the applicants is sufficient, under Laird, to satisfy the requirements of Art. III.*
>
> *Although the applicants have established jurisdiction, they have not, in my view, made out a compelling case on the merits. I cannot agree that the Government's proposed conduct in this case calls for a stay, which, given the short life remaining to this controversy, would amount to an outright reversal of the Court of Appeals.*

*It is true that governmental surveillance and infiltration cannot in any context be taken lightly. * * * But our abhorrence for abuses of governmental investigative authority cannot be permitted to lead to an indiscriminate willingness to enjoin undercover investigation of any nature, whenever a countervailing First Amendment claim is raised.*

*In this case, the Court of Appeals has analyzed the competing interest at some length, and its analysis seems to me to compel denial of relief. As the Court pointed out, the nature of the proposed monitoring is limited, the conduct is entirely legal, and if relief were granted, the potential injury to the FBI's continuing investigative efforts would be apparent. Moreover, as to the threat of disclosure of names of the Civil Service Commission, the Court of Appeals has already granted interim relief. On these facts, I am reluctant to upset the judgment of the Court of Appeals. * * **

As noted above, the Government has stated that it has not authorized any disruptive activity at the convention. In addition, the Government has represented that it has no intention of transmitting any information obtained at the convention to nongovernmental entities such as schools or employers. I shall hold the Government to both representations as a condition of this order. Accordingly, the application to stay the order of the Court of Appeals and to reinstate the injunction entered by the District is [d]enied.

INFILTRATION TO CONSUMATE ARREST

In *Lykken v. Vavrek*, 366 F. Supp. 585 (D. Minn. 1973) Minneapolis, Minn. police officers received a flyer announcing an "open house" party to protest an anti-ballistic missile in North Dakota. The flyer referred to a "donation and cash bar." Knowing that the premises, a private home belonging to university professor David Lykken, was unlicensed to sell alcohol, the officers began an investigation. Seeking counsel from the city attorney's office, they were advised that "no judge would issue a search warrant" and to handle the case in the "usual manner."

The officers maintained they had no interest in the political views of Lykken, only his operation of a "cash bar." Vice officers who went to the home in an undercover capacity found a quiet, dull and boring party. Beer was available for a 50¢ "donation," but no hard liquor was found. Many were drinking only soft drinks or coffee.

After purchasing some beer, the officers announced that everyone at the party was under arrest. Some 10 or 20 uniformed officers were called; a search of the home was conducted, presumably for other participants.

Charges against the guests for patronizing a disorderly house were dropped by the municipal court judge, and the charge of selling liquor without a license was dismissed by another judge.

Bringing suit under §1983 in federal court, the Lykkens and their guests alleged false arrest and illegal search. The court found that the officers, in making their search indicent to arrest, exceeded the scope delineated by *Chimel v. California*.

As for the arrests, the court challenged a defense of probable cause, citing that the motives of the officers as the prime factors. The court said: "The conclusion is inescapable that the arrests here in question were improperly motivated, undertaken not in the furtherance of good faith law enforcement but for the purpose of harassing those at the gathering because of their political beliefs and the arrest were illegal.

Noting that there was no evidence to support a belief that the police were engaging in political surveillance, the court found inescapable inference that the raid was a harassment tactic because of the Lykkens' political beliefs. The court therefore awarded damages against the three detectives in the sum of $19,000. Seventeen quests were awarded $500 each, totaling $8,500. Mr. and Mrs. Lykken were each awarded $3,500. All police records and files pertaining to the incident were ordered expunged. Complaints against supervisory officers were dismissed.

Although not a civil suit, *People v. Abrams*, 271 N.E. 2d 37 (Ill., 1971) came to the same conclusion. In that case plainclothes police officers went to a publicly advertised fund-raising party held at the home of a "war-protestor." The officers observed liquor law violations and arrested the homeowner; an ensuing altercation resulted in the arrest of ten other attendants at the party.

The Supreme Court of Illinois ruled that the public advertisement did not make the defendant's home a public place for that night, and that the invitation was aimed at people of persuasion similar to the defendant, precluding police investigation and surveillance without a search warrant.

The above two cases point out that if the infiltration is made to effect an arrest, and if the arrest is reasonably intended to harass the arrestees, a court may rule for these individuals in a criminal case, and award them damages in a civil case.

Whether infiltration can be legally accomplished to assist in consumating a legitimate arrest depends on two other factors. If the infiltration is conducted to learn if a suspect is in the premises or to insure that raiding officers will not be assaulted, the action is lawful. If, however, an infiltration is consumated to avoid adherence to a state rule of criminal procedure to first knock and announce their police presence, it is of questionable validity.

In *People v. Ambrozic*, 6 Cal. App. 670, mod. 8 Cal. App. 867 (1970) the court held that the knock and announce requirement did not apply to an undercover agent who entered, not to effect the arrest, but only to learn if the party named in an arrest warrant was on the premises. Other officers later effected the arrest.

On the other hand California courts have held that if entry is accomplished through ruse, trickery or deceit, nothing observed by the infiltrating officers may be used in evidence against an accused. See *People v. Mesaris*, 14 Cal. App. 71 (1970); in that case the officers entered, without identifying themselves, and asked to see a repairman on the premises. Once inside, they found marijuana and arrested the occupant; the evidence was suppressed.

In analyzing these cases, it should be remembered that if the infiltrating officer is an invitee (as in *Lewis* and *Hoffa*) and if the subsequent arrest is made in good faith, the knock and announce requirements are not applicable.

Cases which involve the reporting of intelligence data to a central source, or which discuss the retention, use, dissemination or expungement of such data are intentionally omitted from this issue. These topics will be covered in another brief to be published in the 1975 volume.

One of those cases, *Anderson v. Sills*, 265 A.2d 678 (N.J. 1970) peripherally dealt with many of the issues discussed in this brief. A civil suit seeking declaratory relief was brought by the ACLU against the New Jersey Attorney General and others, based on a memorandum issued to local law enforcement officials advising them of the manner in which "security incidents" were to be reported. The purpose of the memorandum was to collect information regarding protests and disturbances in the event the State Police would have to provide local assistance. It did not direct a local agency to compile dossiers on groups or individuals through surveillance or infiltration.

The plaintiffs challenged the memorandum, in their purported class action, on First Amendment grounds. They alleged that local law enforcement agencies would commence extensive recordkeeping activities in relation to peace marches, protests, etc. No such evidence was adduced, and the individual plaintiffs did not claim to have been themselves deterred from their activities.

The New Jersey Supreme Court found that the memorandum was informative and advisory only; it did not require any compliance, although it encouraged it; and the court said that the judiciary should not interfere with police reporting procedures simply because the judiciary does not understand the relevancy of certain compiled and reported data.

The court approved of police efforts to prepare for potential disasters, citing the *President's Advisory Commission on Civil Disorders Report* at 269 (1968). "The power to investigate is basic" said the court, and a subjective claim of "chill" must be "weighed" against the "investigatory obligation" of the police. That power, the court continued, includes "surveillance...[and] the deceptive use of undercover agents to infiltrate situations in which criminal events... may be anticipated." At 688.

E - DEFENSE PRACTICE POINTERS*

⚖ In general, uniformed police officers may attend meetings that the public is invited to.

⇨ The interest of public order and safety is sufficient reason. *Mohammed v. Sommers*.

⇨ The purpose of the attendance must be a legitimate concern for public safety or order, and not to promote hostilities. *Local 309 U.F.W. v. Gates*.

⚖ Police officers may openly photograph demonstrators, protesters and attendants at public or semi-public meetings.

⇨ The mere presence of officers does not cause a chilling effect. Cite *Laird*, *Baldwin*, *Aronson*, *Donohoe*, *ACLU*, *Handshu* and the two *VVAW* cases discussed.

⚖ Overt photography or surveillance may not be used to harass individuals.

⇨ Injunctive relief will lie against such action, *Giancana* and *Galella*.

⇨ Damages may be awarded. *Schultz* and *Ellenberg*.

⚖ Police officers may conduct covert surveillances in public places.

⇨ Observations, from public places, through open windows are permissible, see *Holloway*, *Jenkins*, and *Ashby*.

⇨ Binoculars may be used, *Hodges*, *Johnson* and related cases.

⇨ Flashlights may be used, *Marshall*, *U.S. v. Wright* and related cases.

⚖ Officers may enter upon open fields to conduct surveillances, *Hester*, *Carr*, and *St. v. Stanton*.

⚖ Officers may walk down open corridors, and lawfully observe or overhear incriminating things. *U.S. v. Lewis*, *Gil*, *St. v. Penna*, *Ponce* and related cases.

⚖ Officers may conduct clandestine surveillance in the public part of restrooms.

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* In most instances, only the first name of the case is mentioned. Refer to the index for the full name, cite and page number in this brief.

⇨ Covert watching of open stalls and urinals is permitted. *Peo v. Young*, *Peo. v. Heath*, and *Mitchell*.

⇨ A suspect has an expectation of privacy from visual surveillance in a locked stall. *Britt* and *Bielicki*. Note *Smayda* exception as to unlocked but closed stalls.

The use of undercover agents, informers and infiltrators is lawful, absent underlying motives of harassment.

⇨ An agent may assume a false identity and pretend to be interested in criminal activity. *Lewis v. U.S.*

⇨ A citizen informant may be recruited, and urged to gather information helpful to the police effort. *Hoffa v. U.S.*

⇨ Officers may pose as students or members of apparently legitimate organizations and institutions. *Bagley* and *Socialist Workers Party*.

⇨ If officers infiltrate a group in bad faith, or in reckless disregard of the rights of attendants, and do so to oppose the political philosophies of the group by making arrests, an action will lie. *Lykken v. Vavrek*.

⇨ The identity of informants will be preserved confidential in civil cases as well as criminal ones. *Metros* (civil), *McCray* (criminal).

Class actions are not created simply because diverse groups desire the courts to grant the same relief to all. The courts refused to certify a class in *Baldwin v. Quinn*, *Holmes v. Church* and *VVAW v. Benecke*.

Conclusionary allegations of subjective harm fail to meet the necessary tests which complaints must contain under the doctrine of *Laird v. Tatum*. See *VVAW v. Nassau Co. P.D.*, *Aronson v. Giarusso*, *VVAW v. Benecke*, *Handschu v. Special S.D., N.Y.C.P.D.*, and most recently, *Philadelphia, etc. Friends v. Tate*.

In defending broad based attacks on intelligence gathering, pursue the following steps:

TACTICAL STEPS

⇨ Resist discovery attempts to the fullest extent. See cases in Brief 73-1 on *Discovery* and later reported cases cited in the annual index issues of the *AELE Legal Liability Reporter* (December 1973 and 1974).

⇨ Serve upon the named plaintiffs and plaintiff organizations extensive interrogatories, in consultation with the police intelligence unit. Questions asked should seek information on their backgrounds, interrelationships, financial dealings and the existence of discoverable documents.*

⇨ Move to dismiss allegations in the complaint that are conclusory or complain of subjective harm such as "chilling effects." Match the allegations in the present complaint with those in *Laird v. Tatum*.

⇨ As to remaining allegations that allege actual harm (assaults, unlawful wiretappings, etc.), seek an order separating these claims into individual lawsuits.

⇨ Even if the court refuses to divide the action into separate suits, seek a determination that class relief is inappropriate or unnecessary. *VVAW v. Benecke*.

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* AELE has available a set of form interrogatories to be used by defense counsel seeking information from plaintiff organizations. Law enforcement agencies who wish to receive this set should write AELE and ask for Ref. No. 699. The present set of interrogatories contains over 150 questions, many in subparts, and is over two dozen pages.

To cover reproduction costs, secretarial time and postage, please enclose a check for $5.00.

Improved versions of the interrogatories are now being written and will eventually replace our present set.

This brief was researched and prepared by Wayne W. Schmidt, of the Supreme Court, District of Columbia, Illinois and New Mexico Bars. Mr. Schmidt is Operating Director of *Americans for Effective Law Enforcement, Inc.*, and also supervises the *AELE Law Enforcement Legal Defense Center;* he formerly was a supervising attorney with the International Association of Chiefs of Police (IACP). He also served as Operating Director of the Police Legal Advisor Program of Northwestern University School of Law and as Legal Advisor to the Chicago Police Department's Bureau of Inspectional Services. He received his Master of Laws degree from Northwestern University in police legal matters, his J.D. from Oklahoma City University, a B.A. in government from the University of New Mexico, and a Diploma in English Law from the City of London College of Law in England.

Research assistance was provided by Lt. Walter Jacobsen, U.S.N., who served, while on military leave, as a legal research associate with AELE. Lt. Jacobsen attended Suffolk University School of Law in Boston, and will be assigned in due course, to the Office of the Judge Advocate in the Navy Department.

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FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE

MANUAL OF INSTRUCTIONS*

[SUBVERSIVE ORGANIZATIONS AND INDIVIDUALS]

GENERAL GUIDELINES

Investigative jurisdiction.

FBI investigations under this section are based on specific statutory jurisdiction and Departmental instructions. Investigations conducted under this section are to be directed to the gathering of material pertinent to a determination whether or not the subject has violated, or is engaged in activities which may result in a violation of, one or more of the statutes enumerated below; or in fulfillment of Department instructions.

Definitions.

The term "subversive activities" as used in this section denotes activities which are aimed at overthrowing, destroying or undermining the Government of the United States or any of its political subdivisions by the illegal means prohibited by statutes enumerated in A.1. above (18 U.S.C. 2383, 2384, 2385 and 50 U.S.C. 781-810.) The term "subversive organization" or subversive movement" denotes a group or movement which is known to engage in or advocate subversive activities, as defined above.

INVESTIGATION OF ORGANIZATIONS

Purpose.

To develop evidence of any violations of statutes enumerated in A.1. above and to keep the Department and other agencies and officials of the Executive Branch apprised of information developed which pertains to their areas of interest and responsibility.

INVESTIGATION OF INDIVIDUALS

General Policy.

Purpose.

To develop evidence of any violations of the statutes enumerated in A.1. above and keep the Department and other agencies and officials of the Executive Branch advised of information developed which pertains to their areas of responsibility and interest.

Individuals to be investigated.

Investigations should be conducted to fully identify and determine the activities and affiliations of persons who:

Are reported to be engaged in activities which may result in a violation of statutes enumerated in A.1. above. This includes individuals who are current active members of a subversive organization or movement. Where formal membership in a subversive movement does not exist, it includes individuals who are actively supporting the subversive goals of the movement.

Priority investigative attention should be given to individuals who are known or suspected of being involved in subversive activities which are of a clandestine, underground, or violent nature.

Limitations on investigations.

All investigations conducted should avoid nebulous or sweeping inquiries which are not relevant to objectives. Under no circumstances should an investigation be conducted of any individual merely on the basis that such individual supports unpopular causes of opposes Government policies.

* Reprinted from 1 Domestic Intelligence Operations For Internal Security Purposes 3569-70, House Comm. on Internal Security (1974).

PROCEDURES

PUBLIC SECURITY ACTIVITIES OF THE INTELLIGENCE DIVISION

NEW YORK CITY POLICE DEPARTMENT

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I. <u>Mission</u>

The Public Security function of the Intelligence Division can most simply be stated as follows: to provide the police department with the intelligence necessary to the discharge of its duties to maintain the public order, protect life and property, and insure the orderly functioning of the city and its public agencies.

II. Events or Situations Related to the Public Security Mission
A. Information will be gathered concerning those events or situations which, after a reasonable exercise of police judgment, it is concluded that there is a substantial possibility that they will or tend to:

1. Have a potential for violence or disorder
2. Adversely affect the availability of important foods and services to the public
3. Create traffic, crowd control, or noise problems or otherwise require the deployment of police personnel and/or equipment, in order to secure the free movement of vehicular and pedestrian traffic
4. Require notification to, or coordination with, other state, city or federal agencies, in order to assist them in the performance of their duties
5. Have serious national and/or international ramifications, in the event violence or disorder should ensue

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6. Involve deliberate and concerted illegal behavior as a form of protest
7. Forment intergroup hostilities counter-demonstrations, assaults, destruction property, etc.
8. Involve groups or individuals advocating:
   a. violence and/or violent attacks on governmental operations or on public officers or other public officials
   b. racial, religious or ethnic conflict between religious and ethnic groups
   c. achievement of goals by unlawful means.

B. Examples:
1. Strikes - "job actions" - work stoppages, labor disputes
2. Disturbances, civil disorders, riots, intergroup hostilities, police-community-confrontations, etc.
3. Youth gang problems - tensions, gang fights, etc.
4. Marches, meetings, parades, demonstations, etc. which could or will involve one or more of the events or situations enumerated in sub-section II-A (above)
5. Security escorts of persons in public life who may be the potential objects of assault, assassination, or other untoward incidents, including events and situations involving the United Nations, various missions to the United Nations , consulates, embassies, foreign tourist

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offices, etc.
6. Disasters.
   a. natural - floods, snowstorms, hurricanes, etc.
   b. accidental - plane crashes - explosions, building collapses, etc.
   c. sabotage - explosions, arsons, destruction or interference with public buildings, accommodations, thoroughfares, etc.

III. Procedures
Statement of Intent:
In conducting public security activities, Intelligence Division personnel must be responsible to the legal principles and public policies that are developing with respect to the collection, storage, and dissemination of domestic intelligence data. In few other areas of professional police responsibilities is it as important to be especially sensitive to constitutional rights, societal interests and community values as in the operation of an intelligence system. "The impact of an intelligence system upon the constitutional rights of those about whom it collects information ultimately depends upon the whole of the system's operations: the categories of individuals included in its files, the persons and agencies to which it disseminates information, the provisions it

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makes for verification and purging, the adequacy of its security arrangements, and so on."*

* *Basic Elements of Intelligence - A Manual of Theory, Structure and Procedures for Use by Law Enforcement Agencies Against Organized Crime. E. Drexel Godfrey and Don R. Harris, November 1971, p. 253f. Published by: Technical Assistance Division, Officer of Criminal Justice, Law Enforcement Assistance Administration, Department of Justice.*

As law enforcement officers, members of the Intelligence Division performing Public Security Activities must, of necessity, pursue the goals stated in Section I in a legitimate manner, i.e., by lawful means. Furthermore, as law enforcement officers, members so assigned should recognize that the source and object of police authority and responsibility is the goal of justice under law. The law must be enforced and order maintained only in accordance with the methods considered proper by society, speaking throught legislature and the courts.

Procedures, priorities, and attitudes which in the past were publicly acceptable are now being re-examined and re-defined by society at large, as well as by its governmental agencies, and will in a free society continuously be redefined. Law enforcement must strive to keep pace with these developments and to ensure that police activities reflect them. In the operation of an intelligence system, there must be special care to avoid interference with constitutionally protected rights of freedom to speak and dissent, to write and publish, and to associate for peaceful purposes, while developing the intelligence necessary for public officials to safeguard life and property.

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Care must also be taken to avoid interfering with the privacy of citizens.

Accordingly, the following procedures are set forth to govern Intelligence Division personnel engaged in Public Security Activities. Because of the constitutional sensitivity of the areas involved, these rules and standards must be scrupulously observed.

A. General Procedures

1. The intelligence process in which Public Security is engaged includes the following steps:
   a. gathering of information
   b. evaluation of this information
   c. analysis of the evaluated information
   d. reporting of the results of the analysis
   e. recording and storage of information
   f. dissemination of information in Public Safety files.

This entire Public Security intelligence process should be thought of as one of critical refinement, with significant amounts of information initially gathered, by with only the most reliable, useful and important information recorded or disseminated.

Quantities of raw information are collected. This information is evaluated, whereupon some of it is rejected or discarded as irrelevant, inaccurate, or improper. Thereafter, this evaluated information is analyzed and certain predictions or projections are

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arrived at. This product of the analytical process is then reported to the appropriate members of this department. Some of this information is called from reports and recorded and stored on index cards for ready reference.

Although these procedures for the conduct of each of the steps in Public Security intelligence process must, of necessity, be strict, it is in the recording and dissemination processes that the procedures and the adherence to them must be particulary stringent.

2. Public Security Activities are to be conducted in such a manner that no infringement upon the statutory and constitutional rights of any individual, group or organization is occasioned.

In particular, any collection of information is to be done with discretion so as to minimize the possibility that citizens will be deterred from exercising their lawful rights. Similarly, information will be collected, recorded, and disseminated only on a strict "need to know" basis in accordance with the guidelines listed in sub-paragraphs III-B, E and F below.

3. The Intelligence Division Legal Officer, an attorney, member of this department, has the responsibility for continuously reviewing and re-evaluating these procedures to insure that they accurately reflect legislative and

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judicial decisions. The Legal Officer will advise the Commanding Officer, Intelligence Division, of any and all developments in the relevant areas of law which could require revision of these procedures. This review by the Legal Officer shall not be construed as preventing the Deputy Commissioner for Legal Matters, the Special Counsel to the Police Commissioner, or the Corporation Counsel City of New York from conducting a similar review and evaluation of these guidelines.

4. Public Security Activities shall be subject to review by the Commanding Officer, Intelligence Division, the First Deputy Commissioner, or his representative to ensure compliance with these procedures.
5. All members including undercover agents, of the Intelligence Division, will receive intensive training in relevant constitutional principles, especially those embodied in the First, Fourth and Fourteenth Amendments to the United States Constitution, upon initial assignment to the Section and periodically thereafter.
6. The following procedures relate to specific Public Security functions:

B. <u>Information Collectión Procedures</u>

1. Only the Police Commissioner, First Deputy Commissioner, Chief of Inspectional Services, or the Commanding Officer, Intelligence Division, can direct the initiation of an investigation

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concerning any event, situation, person, group or organization. When directing the initiation of an investigation under this section, the person so directing shall specify the purpose or object of the investigation.

2. Public Safety personnel shall not gather data on any individual, group, organization, publication, event or situation except to the extent that after a reasonable exercise of police judgment it is concluded that there is substantial possibility that this information will aid the police department in attaining its goal as defined in Section I. In part, this requires that the department be kept abreast of information concerning groups and individuals whose conduct or rhetoric indicates a substantial possibility that they will be involved in one of the situations described in Section II above, as, for example, the disruption of governmental operations or public activities. Care will be taken not to interfere with the exercise of legitimate rights.
   a. Some examples may make the foregoing procedures more specific:
      (1) the policital beliefs or preferences of any individual, group or organization are not, per se, of concern to the Public Security function. However, the

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activities of various groups and individuals are of legiti-

mate interest for the Public Security function when there is a substantial possibility that they will result in personal injury, property damage, crowd control problems, or disruption of vital municipal functions.

(2) Public Security is not, per se, interested in or involved in collecting data concerning the personal habits, predilictions and associates of any person, acting either individually or through a group or organization. Such matters are of interest only when they are directly related to the mission of Public Security as stated above, and will lead to the substantial possibility of making contributions to attaining goals as defined in Section I.

(3) In gathering information about any individual or group, the activities of Public Security personnel must be strictly limited to the degree that it is absolutely necessary to achieve legitimate law enforcement objectives.

(4) Electronic surveillance will be conducted only in the strictest conformity with court authorized warrants and with the provivisions of the Rules and

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Procedures of this department.

(5) Photographic surveillance will <u>not</u> be conducted without the prior authorization of one of the following -- the Commanding Officer, Intelligence Division, or when directed by the First Deputy Commissioner or Chief of the Inspectional Services Bureau. Such authorization will be given when deemed to be necessary to accomplish the Public Security Mission, as defined in Section I. Photographic surveillance will be approved in the following instances:

(a) to identify persons, who either as individuals or as members of associates of groups or organizations, are involved in acts of violence or other violations of law; or

(b) to provide evidence of such violations of law; or

(c) to identify individuals or groups who may pose a threat to the safety of persons who hold (or are candidates for) public life for whom this department may be called upon to provide personal security escorts.

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6. The use of an undercover agent (infiltrator) will be permitted only after approval by the First Deputy Commissioner or his special designee. Such approval will be given only upon the determination that there is a reasonable need to develop information about the activities of the group or organization that is the object of the proposed operation, and that the intelligence activity proposed is reasonably related to the gathering of such information. After the officer recommended for the undercover assignment has received adequate training in the appropriate conduct of such an operation, the First Deputy Commissioner, or his special designee, will give final approval to the actual inception of the undercover investigation. The First Deputy Commissioner, or his special designee, will be regularly apprised of the activities of any undercover agent.

7. To enable the Analysis Section of the Intelligence Division to perform its function properly, and to give appropriate weight to the information being submitted. Public Security members submitting

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information are to report its source by notations such as "personal

observation," "publication," "public announcement," "newspaper," "magazine," "radio or television program," etc. (When an informant is the source of the information, a statement regarding the informant's reliability shall be included and the basis for such judgement concerning his reliability.)

C. Analysis Guidelines

1. All raw intelligence information received by Public Security Personnel will be formally evaluated by the Analysis Section prior to any reporting recording/filing, or dissemination.
2. Only information which bears a substantial relevance to the Public Security goal of providing necessary intelligence to this department will be reported, recorded/filed or disseminated. If the information is not substantially relevant, it will be discarded for purposes of analysis and the report destroyed with concurrence of Chief Analyst or Commanding Officer, Intelligence Division.
3. After formal evaluation of the information, the following classification system will be employed, where applicable: Importance
A-Major e.g., large disorders; major strikes; large demonstrations; major parades; visits to New York City by highly controversial

persons; incidents involving use of weapons/deadly devices, or crimes against persons, or serious property damage; etc.
B-Intermediate, e.g., less serious strikes; smaller parades, local disturbances; incidents involving less serious property damage, less serious disruption of the peace, or interference with governmental processes, etc.
C- Minor, e.g., small demonstrations, visits to New York City by minor foreign dignitaries, etc.
Time Priority (Urgency with which police action or attention must be addressed to this matter.)
1. = Very High Time Priority - within 24 hours
2. = High Time Priority - within 24 to 72 hours
3. = Medium Time Priority - within 3 to 7 days
4. = Low Time Priority - more than 7 days
5. = For information only - requires no further action
Source
H = Highly Reliable
R = Reliable
U = Unknown Reliability

Content
S = Substantiated
N = Not Substantiated

4. If the nature and source of the information being evaluated is such that that further investigation by Public Security personnel or by other investigative units of this department is warranted, the Commanding Officer, Intelligence Division, subject to the review of the Police Commissioner or the First Deputy Commissioner is responsible for:
   a. Deciding such additional investigation is required
   b. Directing the information to the appropriate unit of this department for investigation.
5. Once the information has been evaluated, the Analysis Section must assemble the available data, concerning the subject under investigation. From these facts, the unit must attempt to develop an assessment of the causes and significance of a past event or to project future develop-

ments of interest to units of the department. This analysis will thereupon be reviewed by the Commanding Officer, Intelligence Division who has three (3) alternatives. He can decide that:

a. The analysis is correct

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b. The analysis is incorrect and/or incomplete and should be revised.
c. The event or situation requires further investigation.

D. Reporting Guidelines

1. Public Security Section reports and communications must be:
   a. Objective - the presentation must be as objective as possible to encourage decisions which are based on accurate information and sound analysis.
   b. Discriminating - the report must distinguish between positive, verified information and hypothesis, hearsay or inferences.
   c. Logical - the findings must be presented in a logical manner.
   d. Concise - the report should be as brief as possible, consistent with the requirements of accurancy and objectivity.
   e. Recipient - oriented - the format and content of the report should be consistent with the identity, interests and needs of the intended recipient.
2. Public Security reports and communications are of three (3) general types:

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   a. Strategic/indicative - the result of analysis of certain data indicating general background information, trends, patterns, forecasts, or possible courses of action. These are routed through the office of the Commanding Officer, Intelligence Division.
   b. Tactical/evidential - information which pertains to a specific event or situation and which requires immediate or future action by this department. These are routed through the appropriate operational command.
   c. Informational/for file only - information which is not to be forwarded at this time, but which is to be retained in Public Security files for future reference.
3. All written reports emanating from Public Security shall be subject to the final approval of the Commanding Officer, Intelligence Division or, in his absence, the Executive Officer.
4. Reports determined by the Commanding Officer, Intelligence Division to be of an unusually sensitive nature shall be prominently marked "Restricted -- Authorized Access Only." File copies thereof are to be stored in locked cabinets, separate and apart from other reports maintained at the Records Section. Access to these "Restricted -- Authorized Access Only" files shall be limited to the Commanding Officer, Intelligence Division, The Executive Officer, Public Security Coordinator,

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and to designated members of this command on a strict "need to know" basis, and those assigned to the necessary clerical tasks connnected with this file. Strict security procedures will be followed.

E. Procedures for the Recording and Storage of Information in the Public Security Card Files

1. Prior to recording and storage in the Public Security card files, all information must be reviewed by the Analysis Section.

2. Such information must be evaluated as bearing a substantial possibility of making a contribution to the goals of the Intelligence Division set forth in Section I, to provide necessary intelligence to enable this department to perform its legitimate police service functions. All information not meeting this criteria must be rejected and will not be stored in the Public Security card file.
3. Information which merely reflects the political preferences, personal habits, predilections, associations, or activities of any person, group or organization and which is not substantially relevant to legitimate police service purposes will not be stored in the Public Security files, but will be destroyed.
4. Information evaluated as being appropriate for storage

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in Public Service card file shall be capsulized on color-coded 4 x 6 index cards. A different specified color will be utilized yearly to indicate the year in which the information was included in Public Security files. This color-coded card system facilitates periodic review and re-evaluation of all information in the Public Security files.
5. Information to be stored in Public Security files must:
   a. be concise, yet accurate
   b. not lead to erroneous impressions
   c. be objective, i.e. - not biased or slanted
   d. not be repetitive or trivial.
6. The card on which the information is recorded must indicate the following:
   a. original source of information - e.g., personal observation, informant, leaflet, newspaper/magazine account, radio - T.V. program, etc. If the information was received from an informant, an evaluation must be made of the reliability of the informant, and the basis for such a judgment.
   b. Intelligence Division report or communication from which the information has been culled
   c. where applicable, the classification assigned to the information - viz:

H = Highly reliable
R = Reliable
U = Unknown reliability

S = Substantiated
N = Not substantiated

F. Public Security Activities Procedures for Dissemination of Information
Patrol Guide 116-22, page 1, provides that "A member of this department shall treat as confidential the official business of the department" and lists the types of departmental information which can be disclosed and to whom and under what circumstances it may be disseminated. In addition to this provision of the Patrol Guide, it must be kept in mind that some of the information stored in the Public Security files is of a particularly sensitive nature. Therefore, the following procedures must be observed.
1. Intra-departmental dissemination
   a. The only information which is to be disseminated by Public Security to other members and units of this department is that which would further the goal of providing this department with the necessary intelligence to perform its legitimate police service functions.

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b. Dissemination of such information must be approved by the Commanding Officer, Intelligence Division or his designated representative.

c. Such members of the department seeking information contained in Public Security files must comply with the procedures of S.O.P. 2, 1971, Section IV-D-1-c. In passing upon such requests, all of the following factors must be considered:

(1) nature of the information (if any) available at the Public Security Files - e.g., criminal record information; general intelligence information, etc.

(2) source of this information - undercover agent, informant, leaflet, newspaper/magazine article, radio, T.V. program, other law enforcement agency, etc.

(3) classification of this information - highly reliable, reliable, unknown reliability, substantiated, not substantiated

(4) rank, assignment and identity of the members of the service requesting the information

(5) reasons for the request - i.e., the nature of the

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investigation being conducted by the requesting member of the service - e.g. homicide, explosion, arson, narcotics, gambling, etc.

These and all other relevant factors must be considered in arriving at a determination concerning possible dissemination of information in the Public Security files and the type and amount of such informaton to be disseminated. The evaluation of all these factors will determine the propriety of honoring the request and will test the "need to know" of the person or unit requesting information from the Public Security files.

Almost all such requests are received during normal business hours when determination concerning this "need to know" is made by the superior officer in charge of the Records Section, a superior officer who has extensive experience in police intelligence and intensive training concerning all aspects of these procedures.

Emergency requests (during other than normal business hours) for information in Public Security files are received by the Officer-in-Charge, at the Records Section, as per S.O.P. 2, s. 1971, each of whom shall have been instructed in these duties and will have been thoroughly trained concerning these procedures.

In all cases where any doubt exists in the mind of the Officer-in-Charge at the time of the receipt of such a request, he must contact

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the Executive Officer, Intelligence Division or the Public Security Coordinator.

2. Extra-Departmental Dissemination

a. Under no circumstances will Public Security information ever be disseminated formally or informally to non-governmental individuals or agencies.

b. Public Security information will be disseminated only to specifically designated representatives of bona fide law enforcement agencies and of certain specified state, federal, municipal and local governmental agencies. Information which does not bear a substantial relationship to the legitimate responsibilities of the

agency will in no instance be disseminated from the Public Security files.

c. Prior to dissemination of information in the Public Security files, all of the following factors must be evaluated and analyzed:
   (1) nature of the information -- criminal record, raw intelligence, etc.
   (2) source of the information
   (3) classification of the information
   (4) agency requesting the information

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   (5) reason for the request - i.e., the use which the requesting agency will make of the information, if disseminated - e.g., investigation, prosecution of serious criminal nature, security clearance for employment in sensitive governmental agency, etc. Once again, these and all other relevant factors must be considered in arriving at a determination concerning possible dissemination of information in the Public Security files and the type and amount of such information to be disseminated. The evaluation of these factors will determine the requesting agency's "need to know."

d. Information contained in the Public Security files will be transmitted in writing to governmental and law enforcement agencies only over the signature of the Commanding Officer, Intelligence Division.

e. When time demands preclude written requests for information from Public Security files or written replies thereto, telephone requests for such information will be honored if made by properly authorized representatives of the agencies listed in Section IV-D-2.

To ensure the legitimacy of the request and to preclude unauthorized dissemination of Public Security information, the following procedures are to be followed:
   (1) telephone calls will be made by the recipient of the request to the requesting agency to verify the authenticity of the caller and of the request.
   (2) if during normal business hours, the Records Section superior officer will evaluate the request and approve same if appropriate. During other hours, a superior officer will be conferred with concerning approval of the telephonic request.
   (3) record of the request and of the information disseminated (if any) will be made in the Intelligence Log and Public Security card file.
   (4) in all cases,the Supervisor, Analysis Section, and the Commanding Officer, Intelligence Division, are to be notified of the request and disposition.

3. Dissemination of Surveillance Photos
Surveillance photos - much more so than criminal identification photos - are of a particularly sensitive nature. Accordingly, their dissemination must be

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strictly limited to instances involving the most compelling, legitimate

law enforcement purposes; such as investigations of homicides, bombings, kidnappings, and similar extremely serious matters. Only the Commanding Officer, Intelligence Division, will approve dissemination of the surveillance photographs. In emergencies, the Public Security Coordinator, or Executive Officer, Intelligence Division, may make this dissemination.

Only the Commanding Officer, Intelligence Division can authorize the extra-departmental dissemination of surveillance photos. He will do so only to bona fide enforcement agencies for such legitimate law enforcement purposes as identication of persons being sought for homicides, bombings, kidnappings or similar extremely serious matters. In emergencies, the Public Security Coordinator, or Executive Officer, Intelligence Division, may make this dissemination.

G. Re-Evaluation Process

1. The Commanding Officer, Intelligence Division and the Public Security Coordinator must continuously review and re-evaluate Public Security operations.
2. Procedures concerning Public Security operations are to be continuously reviewed and re-evaluated, at least

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annually, by the Intelligence Division Legal Officer, to ensure that they still accurately reflect statutory developments and relevant decisions in the area of constitutional law. The results of such review shall be reported, in writing, to the Commanding Officer, Intelligence Division, the First Deputy Commissioner, and to the Chief of the Inspectional Services Bureau. This review by the Intelligence Division Legal Officer shall not be construed as preventing those named in paragraph III-A-3 from a similar review and evaluation of these guidelines.
3. The events, situations, individuals, groups and organizations about which information is collected, recorded, or disseminated from the Public Security files will be frequently reviewed by the Commanding Officer, Intelligence Division, Public Security Coordinator, Intelligence Division Legal Officer and Chief Analyst, to determine the degree to which such information continues to have a substantial possibility of making a contribution to the goal of providing this department with the intelligence required to perform its legitimate police service functions. If that relationship no longer exists, processing of such information will be terminated without delay and the files purged.

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4. The color-coded index cards maintained in the Public Security files should be reviewed frequently to determine whether the information on the card still relates to a legitimate Public Security function. Every card in the file will be reviewed and re-evaluated at least once within two (2) years of its initial filing. This review will be performed by the Analysis Section. In reviewing a card, one of the following three (3) dispositions must be made:

   a. Maintain in active file - still of current interest to Public Security
   b. Purged - the information on the card no longer serves a legitimate police service intelligence purpose. Cards that are purged from the file will be promptly destroyed. Although there is a

danger that some potentially valuable intelligence information will be lost in the purging process, it is deemed imperative, in the interests of accuracy, of relevancy, and of constitutionally sound law enforcement practice, that this re-evaluation and purging process be conducted on a continuing basis.

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c. Placed in "dormant file": no recent information re: subject, but information is of such nature that it will probably be required in the future. The cards in the dormant file must again be re-evaluated at the end of two (2) additional years.

5. All surveillance photos, must, within 90 days after having been taken, be evaluated by the Analysis Section to ensure conformity with these procedures. If evaluated as not conforming to these procedures (i.e., no violation of law were involved, not required as evidence, etc.) all negatives and all prints thereof will be destroyed. If found to conform to the Public Security procedures and to be of further legitimate concern to this department, these photographs will thereafter be re-evaluated at least once in each two (2) year period in a re-evaluation system that parallels that for the color-coded index cards. In reviewing such photographs, one of three (3) possible dispositions required in connection with review of index cards must be made; specifically, maintain in active file, purge, or place in dormant file.
6. The list of law enforcement and other governmental agencies to which Public Security personnel are authorized to disseminate information consonant with these procedures

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will be reviewed and re-evaluated each year by the Commanding Officer, Intelligence Division, to determine if any of them ought to be deleted from this list or if others should be added.*

7. Reports marked "Restricted -- Authorized Access Only" shall be declassified as soon as the subject matter not longer necessitates its inclusion in the "Restricted -- Authorized Access Only" files as determined by the Commanding Officer, Intelligence Division. Periodic review, at least annually, as determined by the Commanding Officer, Intelligence Division, of "Restricted -- Authorized Access Only" reports will be made for this purpose.

IV. <u>Methods of Gathering, Analysis, Recording and Dissemination of Information:</u>

A. Gathering of Information
1. Sources:
a. Overt sources
(1) assigned personnel, Public Security
(2) other police department personnel (patrol service, detective bureau, etc.)

* *Those agencies marked (*) in Section IV-D-2 are being re-evaluated in this way.*

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(3) other governmental agencies

(a) law enforcement agencies, e.g. F.B.I., New York State Police, United States Treasury Department, Alcohol, Tax, Firearms, and others
(b) non-law enforcement agencies, e.g., United States State Department, etc.

(4) general public
(5) Police Department records
(6) public records and documents
(7) mass media -- radio, television, various newspapers, magazines, etc.
(8) leaflets, underground press, publications of various groups
(9) public libraries
(10) intra- and extra-departmental conferences

b. Covert sources
(1) undercover agents (police personnel)
(2) informants
(3) court authorized electronic surveillance
(4) physical surveillance, including photographic surveillance

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B. Analysis - Prediction/Projection - Report

1. Analysis

The Analysis Section, Intelligence Division, performs the following functions:

a. All available information from the aforementioned sources -- overt and covert -- is assembled in logical manner
b. Informational gaps will be identified
c. Attempts will be made to secure the additional data, and if obtained, it will be integrated with that which has been previously assembled.
d. The reliability and weight of the various items of information will be assessed
e. The various items of information, the inter-relationships between these items, and the possible significance of the particular event or situation are to be considered and evaluated.

2. Prediction/Projection

Based upon this evaluation and analysis, the Analysis Section will make a prediction or projection concerning the particular event or situation. This projection/prediction may include one or more of the following:

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a. Purpose, reason or cause of the event
b. Nature of the situation
c. Groups and/or individuals involved
d. Number of persons expected
e. Locations affected
f. Time and/or duration of the event or situation
g. Potential for disorder
h. Effect upon the city, the department, visiting dignitaries, other individuals, etc.
i. Significance of the event or situation
j. Evolving patterns and trends
k. Recommendations for consideration by the Commanding Officer of various units concerning possible police action to be taken.

3. Reports

Written and/or l reports, encompassing these predictions/projections and other salient information, will be prepared by the Analysis Section

for the Commanding Officer, Intelligence Division who will forward them to other appropriate departmental officials. In this manner, intelligence will be transmitted which will aid in the effective deployment of police personnel

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and equipment, for the particular event or situation.

C. Recording of Information at Public Security, Intelligence Division
   1. Log - Information telephoned in by Public Security members in the field and by other departmental sources will be recorded in the "log" as it is received. The type of information thus recorded involves ongoing situations, scheduled future events, notifications, requests, etc.
   2. Written Reports and Communicatons - Written reports and communications, whether originating with Public Security personnel or others, will be serially numbered and filed by year of preparation. Where applicable, one of the following letters is appended to the control number of the report:
      I = Investigate
      L = Liaison
      A = Analysis
      X = Administration
   3. Diary - Future events or situations of the type listed in paragraph II-A (above) are to be listed in the "diary" according to the date on which they reportedly will occur. Thus, the "diary" will provide a ready reference concerning events scheduled for any given day.

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   4. Card File - After evaluation, information deemed appropriate for retention consonant with Public Security procedures (Section III, above), will be capsulized on 4 x 6 index cards, which are to be color-coded to indicate the year of inclusion into Public Security files and to facilitate periodic review and re-evaluation.
   5. Photo File
      a. By event
      b. By sphere of interest or activity
      c. By name

D. Dissemination of Information by Public Security Personnel
   1. Intra-Departmental
      a. Disseminated on Public Security Initiative:
         (1) Tactical Information - i.e., information requiring immediate or future deployment of police personnel and/or equipment. Such information is transmitted by written report or by telephone to the appropriate departmental official. The Commanding Officer, Intelligence Division, is also apprised thereof for his information.
         (2) Strategic information - (i.e., information indicating evolving trends and patterns and/or which may

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have a bearing on the formation of departmental policies and responses, etc.) Such information is transmitted by written

report or by telephone to the Commanding Officer, Intelligence Division, who thereupon disseminates it to the appropriate department officials.

b. Requested by Field Units:

(1) Records Section

This intra-departmental dissemination of intelligence from Public Security files to field units will be controlled by the Records Section. The authority and responsibility for this dissemination is delegated to the Records Section superior. He and his staff are thoroughly instructed in the legal and administrative regulations governing the dissemination of intelligence information. They are to be assigned to these positions on a steady, long-term basis, to ensure that they will continue to possess the necessary expertise to perform this function properly. In all instances involving intelligence information, the Commanding Officer, Intelligence Division, Executive Officer, or Public Security Coordinator is con-

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sulted by the Records Section, prior to any dissemination.

c. Procedures for Requests from Field Units

On April 7, 1971, this department promulgated S.O.P. 2, s. 1971, entitled: "Procedures to Encourage Flow of Information to the Intelligence Division from Field Units and the Obtaining of Information from Records Maintained at the Major Crime and Public Security files of the Intelligence Division." The relevant sections thereof read as follows: "Members of this Department requesting information concerning the identity of persons or leaders of groups who have violated sections of the law while engaged in the disruption of governmental activities or the peace and harmony of the community shall telephone the Operation Desk (577-7285). "When it is determined that information in the files of the Intelligence Division is useful to the requesting member, the commanding officer of such member shall prepare a request in duplicate, on official department letterhead, that access to the files be granted. The request shall contain:

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(1) the rank, name, shield number and command of the members of the department conducting the investigation.

(2) available information of the subject being investigated - e.g., name, addresses, known places of employment, affiliations, etc.

(3) Reason for request including control number -- e.g., Complaint Report - PD 313-152, case number, etc. "The designated member will deliver the official letterhead (PD 158-151) to the Records Section at the time he appears to receive the intelligence report.

A log will be maintained...to record the receipt of these requests.

Records should ordinarily be viewed during regular officer hours - i.e., 0900-1700 hours, Monday through Friday. However, in IMPORTANT cases where time may be a factor and some useful information is available, the superior officer in charge of the Records Section may give the information by telephone to a properly identified member of the department. Confirmation of the request and receipt of the information must be acknowledged within 48 hours by the submission

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of an official letterhead (PD 158-151) as indicated above. It should be noted that the Intelligence Division is in operation 24 hours each day and will furnish available information in emergency situations.
Commanding Officers of requesting commands shall evaluate the necessity of viewing records contained in the Public Security files before forwarding requests.
The person designated to view records should be knowledgeable in the subject matter of the investigation so that there will be a proper evaluation of the material furnished.
Upon completion of an investigation in which information was requested from the Intelligence Division, Records Section, a report of the results of the investigation shall be forwarded to the Records Section of the Intelligence Division from which the information was received. It should include any new information obtained by the investigator. It will be evaluated with the object of adding to, correcting, and expanding the intelligence information currently on file."

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2. Extra Departmental
Requests for information obtained in Public Security files, if received on official letterhead, signed by the Commanding Officer/ Director, or the specifically designated liason officer of the following governmental agencies, will be honored, consonant with the Dissemination Procedures set forth in subsection III-F above:
a. Federal Agencies
*(1) Civil Service Commission - Investigations Division
*(2) Department of the Air Force - Office of Special Investigations (OSI)
*(3) Department of the Army - Intelligence - 109th MI Group
(4) Department of Defense - Security Division
(5) Department of Justice - Federal Bureau of Investigation
(6) Department of Justice - Immigration and Naturalization Service (USINS)
*(7) Department of the Navy - Navy Investigation Service - Intelligence Recruiting
(8) Any duly constituted judicial, legislative, regulatory, or administrative body having subpoena powers.

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*(9) National Security Agency (NSA)
(10) State Department - Office of Security
(11) Treasury Department - Alcohol, Tax, Firearms (ATF)
(12) Treasury Department - Bureau of Customs
(13) Treasury Department - Bureau of Narcotics and Dangerous Drugs
(14) Treasury Department - Internal Revenue Service (IRS)
(15) Treasury Department - U.S. Secret Service (USSS)
(16) United State Coast Guard - Intelligence
(17) United States Postal Service (Postal Inspection Service)
b. State Agencies
(1) Department of Correctional Services - Bureau of Special Services
(2) New York State Identification and Intelligence Systems (NYSIIS)
(3) State Police - Special Services Division
(4) Waterfront Commissioner, New York Harbor
(5) Port of New York Authority (Police)

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c. Municipal Agencies
*(1) City of New York, Department of Correction
(2) Department of Investigation
(3) Department of Personnel
(4) Fire Department - Examining Unit - Fire Marshal
(5) New York City Housing Authority - Police Department
(6) New York City Transit Police Department
(7) District Attorney Office Squads
(8) All New York Police Department Units
d. Police Department Intelligence Units Throughout the United States.

3. Processing of Extra-Departmental Request for Information in Public Security Files:
a. Name Checks - (Forwarded by the above agencies to Public Security on a routine basis).
(1) If no information in the Public Security files. the name check requests are stamped "No Record" by Public Security Personnel searching

* *See Sub-section III-G-6 above*

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the files. These forms are then mailed to the requesting agency by the Records Section (see by-paragraph IV-D-1-b above).
(2) If Public Security files do reflect relevant information, the Records Section detective searching the files will attach to the name check request all 4 x 6 cards possibly relating to the subject of the inquiry and will be delivered to the Records Section. Here the information is evaluated as to relevancy and as to the propriety of the dissemination thereof, based upon the Dissemination Procedures. Prior to actual dissemination of any such information, the Commanding Officer, Executive Officer, Intelligence Division, or Supervisor, Analysis Section, will be consulted for a final decision.

b. Communications - (i.e., letters from the specified governmental agencies enumerated in sub-paragraph IV-D-2 above or from bona fide law enforcement agencies requesting information from the Public Security Files are to be processed as follows, again, consonant with the Dissemination Procedures

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set forth in section III-F above.
(1) logged into the Public Security Communicaton Book and serially numbered each year by Information Control.
(2) assigned to Liaison Section detective
(3) Liaison Section detective will confer with Analysis Section to determine information required
(4) draft of reply will then be reviewed by Analysis Section
(5) draft reply is then reviewed by Supervisor, Liaison Section
(6) Approved draft will then be prepared for signature of Commanding Officer, Intelligence Division for final review.
(7) reply will then be sent to requesting agency if approved by Commanding Officer, Intelligence Division

(8) all information disseminated pursuant to these guidelines whether verbal or written, will be with the understanding that the requesting agency agrees to strictly conform with the provisions of these procedures as set forth in III F 2-3 and IV D 2-3. These relevant sections will be furnished to these

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agencies who have not perviously received the aforementioned provisions of these Procedures at the time of their initial request.

(9) information disseminated under these Procedures will have the following restrictive statement, prominently stamped on the cover letter or read to the requesting party in those cases arising under III F (2) (e)
"THE INFORMATION FURNISHED IS DISSEMINATED PURSUANT TO THE INTELLIGENCE DIVISION PROCEDURES OF THE NEW YORK CITY POLICE DEPARTMENT AND IS THE PROPERTY OF THAT DEPARTMENT. IT SHOULD NOT BE DISCLOSED TO ANY PERSON OR ORGANIZATION EXCEPT IN ACCORDANCE WITH SECTIONS III F (2) (3) AND SECTIONS IV D (2) (3) OF THE AFORESAID PROCEDURES.

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