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C I L I P

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AND POLICE DEVELOPMENT

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EDITORIAL

In the police use of fire-arms we have an example of the comprehensive system of state interventions reduced to its most basic: the decision regarding the violation of the individual's physical integrity. To plead the exceptional nature of this supreme weapon in the arsenal of state power and to see in the use of fire-arms merely the "ultima ratio" in the exercise of such power is to deliberately ignore the manifestly routine nature of this "ultimate expedient". Just how routine first become clear, however, when we set about pinpointing the exact objectives of state coercion, as for instance in the USA where - as the article by D.and P.Takagi shows - the target is, significantly, the black population. The abstract notion of the "ultimate expedient" is suddenly transported into a socially justifiable function. This "functionalisation", however, need not necessarily take the form of an empirically demonstrable and blatantly practised racialism as in the USA; it manifests itself on different levels too. A good example to this is the FRG where steps are currently being taken - and have in some areas already been successfully implemented (in Bavaria, for instance, under the right-wing politician and current Minister President F.J.Strauss) - to establish an institutionalized right to kill over and above the normally applicable provisions regarding self-defence. And for the individual police officer this right is tantamount to a duty to kill. Thus the state secures for itself the prerogative of a comprehensive claim to power which takes precedence over the individual's right to live: the authoritarian state's solution, evident even prior to any empirical analysis of the exercise of such power in practice. In addition, the securing of this prerogative by the state touches another essential area of personal privacy when the state sets about adding to its monopoly in the use of supreme coercion an information monopoly. A monopoly whose very expediency lies in the individual's powerlessness in the face of a collection of data meticulously compiled by state institutions and inaccessible to any outside scrutiny.

One of our central aims in the present edition has been to show how the legal provisions already in force - provisions governing the individual's right of access to officially compiled data concerning his person and to other data not concerning him personally - vary in their intensity and range from country to country. Quite apart from the openness and transparency practised by the various national administrations, their respective legal provisions give some idea of the degree of reticence shown by the various states in the face of the individual's demand for information. What would happen, say, if as a matter of principle there were no sphere whatsoever barred to access by the individual citizen, including state security? The authorities would then be compelled (why compelled though?) to set about establishing a two-stage data collection system in order to avoid exposure by possible judicial rulings. At the other extreme - and this phenomenon seems rather to have taken root in European soil - we have a conception of the state, in no way lacking in legitimacy, which immediately declares the whole sphere of state security, i.e. police, judiciary and armed forces, to be a general "zone of no entry". An additional barrier can also be erected by imposing a total ban on the supplying of personal data to third persons. Since the state too, however, still acts through the medium of individual persons, areas considered confidential again remain impregnable.
The liberal concept of the state as the body of its citizens is thus reduced to the concept of the state as the body of its governors.

For this reason what is urgently needed is a discussion of the courses already adopted with a view to increasing the transparency of the state in those countries which are "lagging behind". And here the experiences already made by those in the vanguard will be an indispensable help.

I. METHODOLOGICAL PROBLEMS OF POLICE RESEARCH

USA

ISSUES IN THE STUDY OF POLICE USE OF DEADLY FORCE

Paul Takagi and Dana Takagi

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Dana Takagi is a graduate student in Sociology at the University of California, Berkeley.
This paper was originally presented in a slightly different version, at the annual meetings of the National Black Police Association in Chicago, Illinois, August 1978.

Back in 1971 when the police killed an all time high of 412 civilians, there were but a handful of empirical studies on the topic. The best study at the time was by Gerald Robin published in 1963.[1] Robin calculated fatality rates by race and was the first to note that blacks were killed by the police at an alarmingly high rate. He compared black-white ratios of civilian deaths at the hands of the police across several cities. They ranged from a low of 5.8 blacks to one white in Akron, 7.4 to one in Chicago, to an incredible 25.2 to one in Boston and 29.5 to one in Milwaukee. The only southern city included in his study was Miami, which killed blacks to whites on a ratio pf 8.8 to one. The significance of Robin's study is that he showed cities have varying rates on police use of deadly force and that northern cities, including "the city of brotherly love", Philadelphia, which killed blacks on a ratio of 21.9 to one, have mucher rates of killing blacks than at least one southern city, Miami.

Other comparative studies of cities have since been published verifying the extensive variation by city in rates of police use of deadly force.[2] The major problem in studying cities is that the researcher must rely upon police departments to supply the data, something the police are frequently reluctant to do. The FBI, however, does collect data by cities, but does not make them available to the public. As a result, we do not know whether Robin's 1963 findings on the ratio of black-white shooting victims continue to hold or have changed during the past 15 years.

Since 1971, perhaps because of the unprecedented number of civilians killed by the police in that year, several studies on police killings of civilians have appeared in print. A major criticism of these recently published studies is their failure to analyze race as an explanatory variable. For example, Milton, et al.[3] (hereafter the Police Foundation Report) studied police shooting victims in Birmingham, Oakland, Portland, Kansas City, Indianapolis, Washington,D.C. and Detroit. In the study, the researchers collapsed the number of black shooting victims into a percentage and compared it to the percentage of blacks arrested for index crimes. The researchers failed to calculate rates of black-white shooting victims and their arrest rates, but went to on conclude:

> "The percentage of black shooting victims is disproportionately high in comparison with the percentage of blacks in the population; however, the figure corresponds quite closely to black arrest rates (sic) for Index Crimes." 4)

There are serious problems with the conclusion. In order to make the conclusion quoted above, the researchers needed to test the arrest rates and the fatality rates from police bullets by race. Morover, the findings reported do not warrant the conclusion that because blacks are more often arrested for serious crimes, there are more black shooting victims. This criticism becomes obvious a few pages later in the Police Foundation report.

The researchers discover there is no correlation between police shootings to index or violent crimes. They explain that:

> "This is not surprising, given the fact that a sizeable number of shooting incidents occured on conjunction with less serious offenses which are not reflected in Index or violent crime rates." 5)

In other words, the rate of police use of deadly force, it turns out, is not related to the crime rate, index crime rate, violent crime rate, size of city, or the number of

authorized police personnel per capita population.

Previous studies have shown that police shootings frequently occur during investigations of domestic disturbances or from police-civilian conflicts that arise out of minor defenses. Kobler, for example, reports that 3o percent of the civilians killed by the police were not involved in criminal activity;[6] Knoohuizen, et al. in a study of Chicago police killings report that fully one-third occured under highly questionable circumstances.[7] Even the Police Foundation admits that as many as 4o percent of the shooting victims were not involved in serious criminal conduct.[8] The Police Foundation study, however, did not conduct a further analysis of race thereby leaving the casual reader with the impression that blacks are killed because of their involvement in criminal conduct. The report perpetuates the belief among police officials that blacks are killed by police in violent criminal situations. To illustrate the point, Takagi gave a talk at the annual meetings of the National Organization of Black Law Enforcement Executives in St. Louis in which he said:

"The data on police killings of civilians suggest that police have one trigger finger for whites and another for blacks."

A reporter for the St.Louis Post Dispatch interviewed police officials on Takagi's comments and wrote:

"Police officials dismiss that attitude as preposterous. Blacks are killed because more of them are arrested than whites." 9)

Takagi studies national trends over time in police homicides by examining the deaths of male civilians ages ten and over by race.[1o] He reported that black males have been killed by the police at a rate ten times higher than white males. Between 196o and 1972, police killed 1,899 black males and 1,914 white males in a population in which about ten percent are black. The rate of homicide due to police intervention increased over the years, beginning around 1962, but remained consistently at least ten times higher for blacks for the past 25 years.[11]

The ratio of ten to one is a minimum because the Spanish surnamed minorities - Mexican Americans and Puerto Ricans - are enumerated as whites. Kobler reported that 13 percent of the police shooting victims in his study were Spanish surnamed.[12] If the generalization can be made that Chicanos and Puerto Ricans make up 13 percent of the fatalities from police guns, then black males were killed by the police at a rate 13 times higher than white males. Thus, in examining the history of police killings of blacks by arrest, index crime, or violent crime rates, there is no consistent evidence to support the argument that black males commit these crimes at a rate 13 times higher than whites. Reasons compared arrest rates per 1oo,ooo population 14 years and older by race for the period 195o to 1968.[13] He found that the overall arrest rates of blacks to whites was about 4 to one. By controlling for specific offenses, blacks were arrested on a ratio of ten to one for murder, rape, assault, and robbery. Even if blacks are not over-arrested or over-charged by the police,

something that we cannot readily assume, the apparent relations of these crimes to black shooting victims do not lead to the conclusion that "blacks are killed because more of them are arrested than whites."

Race, however, emerges as a crucial variable and must be thoroughly analyzed in the study of police use of deadly force. The failure to do so results in either an apologetic for the high rate of blacks killed by the police or worse, an enterprise in scientific racism. Kania and Mackey's study illustrates the problems.[14]

Kania and Mackey studied police caused homicide by states for the period 1961-197o. The researchers calculated rates of police violence by states. Georgia had the highest rate of police violence, Nevada was second, Mississippi, third, followed by Louisiana, New Mexico, Alabama, and Missouri. California ranked 8th, Illinois, 1oth, Ohio, 13th, and New York, 14th. The states with the lowest rates of police violence were Hawaii, Maine, North Dakota, Vermont, Wisconsin, and Wyoming.

The ranking of the states were then correlated with measures of poverty and types of crime. Kania and Mackey found modest correlations between police violence and receipt of foodstamps, crude birth rates, receipt of welfare aid, homes without hot water, homes without television, homes without access to a car, and persons over 25 years of age without a high school diploma. The highest correlations were obtained with rates of violent crimes and homicides. From these associations, Kania and Mackey concluded:

> "It can be predicted that, as the level of community violence will fluctuate, so will that of police violence. Thus the police officer is reacting to the community as he perceives it, a perception which is usually correct." 15)

Kania and Mackey's explanation of police use of deadly force is that communities get the number of police killings which they deserve. This is much too simple if not a gross distortion of their findings.

The modest correlations on their measures of poverty needed to be interpreted. Moreover, they failed to examine race. If they had analyzed the proportion of blacks in the population, they would have obtained a rho of .685,[16] a correlation that is statistically significant at the same level they found with violent crimes and homicides. Thus, Kania and Mackey needed to explain the configuration of race, poverty, violent crimes, homicides, and police violence.

One way of proceeding to understand Kania and Mackey's findings is to examine the literature on homicides. Wolfgang showed that homicides tend to be intra-racial and occur primarily among people in the lowest socio-economic stratum of American society.[17] Gastil, by extending Wolfgang's subculture of violence thesis, hypothesized "a regional culture of violence".[18] Noting that violence and homicide tend to be concentrated in the southern states, Gastil argues that the southern culture of violence is a tendency toward violent solutions, placing a premium upon knowledge, use, and ownership of guns, and that the culture of violence has been historically rooted since the middle of the 19th century. To explain the high homicide rates in the West and in Northern industrial cities, Gastil explains that the southern culture of violence has subsequently spread over much of the country through (black?) migration. Gastil examined socio-economic factors, but he argues that the historical persistence of homicides in certain geographic regions (before the occurrence of internal migration) requires a cultural explanation. (See Appendix for a critique of Gastil's research method.)

Gastil's "southern regional culture of violence" has been sharply criticized by Lofton and Hill.[19] Lofton and Hill show that homicides in the United States are highly correlated with measures of poverty. Taking almost the same indices of poverty as Kania and Mackey, Lofton and Hill, following the lead from Wolfgang's findings that homicides occur principally among the very poor, employed variables that measured the lower ends of the distribution of inequality and poverty. Lofton and Hill found that their poverty index was the most powerful predictor of state homicide rates and the regression analysis washed out Gastil's index of southern regional culture.

The findings from these studies of homicide strongly suggest that police violence may turn out to be highly correlated with a more adequate measure of poverty, such as Lofton and Hill's poverty index. Gastil, and Lofton and Hill have shown that race is a critical variable. The central issue, however,

still remains. Blacks and whites experience different homicide rates as well as different rates of fatality from police guns. Gastil has shown that there is a strong relationship between race, age, income, education and homicide. Lofton and Hill conform the existence of a high correlation between structural conditions and homicide rates. And Kania and Mackey have established a relation between police caused homicides, homicide rates, and poverty. Put differently, these studies show that among the realities of being poor and black in the United States is the high level of interpersonal violence, including black on black homicide and death from police guns.

While the researchers agree that poverty and race are related to homicide rates, there is no consensus on how the variables interact to affect directly or indirectly the black and white rates. Despite their divergent conclusions, poverty and race are critical determinants of homicides. Although it is not an either/or matter, the relative effects of poverty and race may be evaluated by examining the different rates of homicide for blacks and whites. Simply put, is the black homicide rate higher because they are black, or is it because they are black and poor? It may be the case that blacks and whites of comparable poverty levels experience similar rates of homicide. If this were to be true, then one is forced to conclude that the structural conditions of poverty are more crucial than race in understanding the phenomenon. Alternatively, it may be that when we compare blacks and whites background, blacks still experience much higher homicides than whites. If so, it would then be necessary to conclude that race is the major variable in an explanation of homicides. In this way, we could also examine police caused homicides to elaborate the relationships reported by Kania and Mackey and to explain Takagi's findings that blacks were killed by the police at a rate 13 times higher than whites. While it is possible to study police use of deadly force in this fashion, there is another problem that needs to be addressed.

In order to get at race (and racism) in the analysis of police caused homicides, it would be necessary to construct a scientific category to classify the circumstances of each death similar to what Knoohuizen, et al. did in their study of Chicago police killings. The reason for this is that most studies collapse into a single category unarmed victims shot in the back with armed robbers who shoot it out with the police. The police killings of Joe Campos Torres and Richard Morales in Texas, the police killings of black ten year old Clifford Clover and black 15 year old Randolph Evans in New York City, and what the Washington Post described as the "incompetence and the poor judgment (not to say the racism)" of the police in Prince George County in the killing of William Ray and the beating of Raymond Braxton,[20] can only be constructed as genocidal attacks by the police. Legal categories are not adequate or sufficient to capture the violence of the police in such cases, which occur all too frequently in minority communities.

An analytic framework would need to take into account that police encounters with

selected segments in the population occur because being poor (and black) is highly correlated with social pathologies. We have some clues from Brenner's recent study on the long range impact of unemployment.[21] He found that an increase of unemployment by a mere one percent sustained over a period of six years results in a subsequent 3o year period increases in the following social pathologies: homicides, suicides, cirrhosis of the liver (alcoholism), cardiovascular diseases, penal commitments and mental hospital commitments. We know from studies in medical sociology that race and poverty are related to these pathologies. It is important to note that Brenner is not saying that unemployment is related to, for example, homicides. He is saying that unemployment over a period of years has long term consequences.

The official unemployment rates of anywhere from 6 to 8 percent conceal the subemployed, the discouraged job seekers, and the pauperized layers of the population. From Brenner's study and from studies of families during the Great Depression, there are clues which indicate that unemployment and sub-employment have serious impact upon intra-family relations. The problems of "just barely making it" require more family members to work, children go unsupervised, and the families does not have the energy or time for cooperative human endeavors. The pressures of urban life permeate the most private domain of personal life. The tensions and frustrations set husband against wife, children against parent(s), neighbor against neighbor, and an increasing reliance upon secondary institutions to intervene in areas that were previously family and meighborhood functions. The institution that is feared the most is most often called upon in these poor communities. It is within this context that modern policing takes on a different meaning.

A coherent analytic framework needs to consider the possibility that a racial community today is not an ethnic community in the traditional sense of the immigrant neighborhoods of the Midwest and the East Coast. Though racially hemogeneous, the barrios and the ghettos share the special characteristics of superexploitation. The structure of the present day ghettos is the product of over a hundred years of brutal labor practices; institutionalized racism, discriminatory legislation and extra-legal repression. On a day to day basis, this takes the form of massive poverty, extra-ordinarily high unemployment rates and demoralizing social conditions. The root of these problems lies in the labor market practices and labor processes which characterize the capitalist mode of production. Migrants in the United States (which Gastil failed to analyze) have been exposed to a pattern of exploitation that is increasingly a global phenomen of the capitalist political economy - an attack on the standard of living of workers in core capitalist nations, the emergence of a worldwide reserve army of labor through "runaway shops" and the degradation of labor and competency as a result of Taylorization of the labor process. The poverty of racial communities is not culturally determined. The "downward mobility" of minorities in the United States is linked to labor market segmentation and the historical process of routinizing and minimizing the significance of work. Racial communities exemplifies in all its forms what Braverman calls "the universal market".[22] All human activity has been reduced to the cash nexus and transformed into a "giant market-place" where "relations between individuals and social groups do not take place directly, as cooperative human encounters, but through the market as relations of purchase and sale".[23] Under these conditions, indivi-dualism replaces reciprocity as the basis of social relations:

> "It thereby comes to pass that while population is packed ever more closely together in the urban environment, the atomization of social life proceeds apace... The pressures of urban life grow more intense and it becomes harder to care for any who need care in the conditions of the jungle of the cities. Since no care is forthcoming from an atomized community ... the care of all these layers becomes institutionalized, often in the most barabarous and oppressive forms." 24)

It is necessary to understand what is

happening to the very poor in American society. William Julius Wilson has observed that "the black underclass is in a hopeless state of economic stagnation, falling further and further behind the rest of society".[25] Wilson calls it class subordination.

Appendix

Because Gastil's regional culture of violence thesis is at odds with other studies reporting a strong relationship between poverty and homicide, we examine in greater detail Gastil's research method.
Gastil sets out to explain why the homicide rates among blacks and southern states tend to be above the national averages. He argues that differential homicide rates are to be explained by differences in regional culture. In his view, economic and social factors do not adequately explain the different homicide rates between whites and blacks or between notherners and southerners. Gastil hypothesizes on historical grounds the existence of a regional culture of violence born out of the ante bellum South. Internal migration since the Civil War diffused the southern culture of violence, and that the "differences between sections of the country in homicide rates can still be related to an inferred degree of Southerness based on migration patterns".
To measure the degree of Southerness Gastil constructed a Southerness Index (SI). A score of 3o was given to the "traditional" southern states (Arkansas, Alabama, Georgia etc.); a score of 5 was given to states with only indirect Southern influence and virtually no white southern population (New England and most upper North Central states); a score of 2o was assigned to states with about half of the population of Southern background and a Southern majority at time of settlement (Missouri, Kansas, Illinois, Indiana,etc.); a score of 25 was assigned to states with overwhelming Southern background, but with strong non-Southern minorities (Florida, Texas, New Mexico, etc.); a score of 15 to definitely non-Southern states with a strong representation of Southern population (Washington, Oregon, Montana, etc.); and a score of 1o to states overwhelming non-Southern (Utah, Nebraska, Iowa, etc.). SI is therefore a six point index reflecting the effect of migration in the distant past and more recently.

The other variables in the study are based upon the 196o census - proportions of blacks, age, income, urbanicity, etc. Gastil describes his income and education variables as "median units". Two measurement problems become immediately apparent to the reader. Median income or median education mean that the great dispersions of actual income and education have been averaged out. Averaging income or education creates a problem because they are not properly coded variables for input into a regression analysis employed by Gastil. To assess correctly the relation of income to homicide, income needed to be coded in dollars. Moreover, to measure the effects of poverty, one cannot assume a continuous variable; one is either poor or not poor.
In the first regression, Gastil finds that SI accounts for 74.6 percent of the variation in homicide rates. The proportion of blacks in the population explains an additional 7.9 percent, age explains an additional 4.8 percent, and income 1.1 percent. Gastil notes that "it is characteristic of this form of regression that the relative effects of the first variable entered appears to be more than it is, even if there are low intercorrelations".
In an effort to show the importance of SI, Gastil runs another regression where the SI is forced to enter the equation last.He finds that proportion of blacks in the population account for 66 percent of the variation, and SI adds only 3.65 percent of the explained variance. An explanation of this contradiction is supplied by Lofton and Hill. They correctly argue that SI is not independent but is strongly related to the other structural variables, namely, race, poverty, etc.
Aside from the problems in Gastil's regression analysis, he reports a strong correlation of .86 between SI and state homicide rates. Such an unusually high correlation between homicide and a "cultural variable" deserves careful scrutiny. SI, as constructed by

Gastil, is actually a measure of geographic distance from the South and not a measure of "regional culture". Recall that Gastil's original research question was to explain why homicide rates are higher in the South than in other areas of the country. The correlation between SI and state homicide rates can be simply explained. Southern states have higher homicide rates than non-Southern states; Gastil admits that a factor analysis was not performed. If it was performed, it is highly likely that homicide rates and states would have combined to form a single factor.

SI is therefore not a measure of regional culture. That SI is a near identical measure of homicide rates means that to use SI in a multiple regression to explain homicide rates is like proving boiling water at zero elevation is hot.

Notes

1) Gerald Robin, "Justifiable Homicide by Police Officers", Journal of Criminal Law, Criminology, and Police Science, 54, 1963.

2) Ralph Knoohuizen, Richard P.Fahey, and Deborah J. Palmer, The Police Use of Fatal Force in Chicago, Chicago: Chicago Law Enforcement Study Group, 1972; Gerald E. Uelman, "Varieties of Police Policy: A Study of Police Policy Regarding the Use of Deadly Force in Los Angeles County", Loyola Law Review, 6,1973; Catherine Milton, Jeanne Wahl Halleck, James Lardner, and Gary L. Albrecht, Police Use of Deadly Force, Washington, D.C.: Police Foundation, 1977.

3) ibid., Milton et al.

4) ibid., 19.

5) ibid., 31.

6) Arthur Kobler, "Figures (and Perhaps Some Facts) on Police Killings of Civilians in the United States, 1965-69", Journal of Social Issues, 31, 1975.

7) op.cit., Knoohuizen, et al.

8) op.cit., Milton et al.

9) "Policing Police on Deadly Force", St. Louis Post Dispatch, July 3, 1978.

1o) Paul Takagi, "A Garrison State in 'Democratic' Society", Crime and Social Justice, (Spring-Summer) 1974

11) ibid., 29; Sid Harring, Tony Platt, Richard Speiglman and Paul Takagi, "The Management of Police Killings", Crime and Social Justice, (Fall-Winter) 1977.

12) op.cit., Kobler.

13) Charles E.Reasons, "Crime and the Native American", in Race, Crime and Justice, Charles E.Reasons and Jack L. Kuykendall (eds.), Pacific Palisades: Goodyear, 1972.

14) Richard Kania and Wade Mackey, "Police Violence as a Function of Community Characteristics", Criminology, 15, 1977.

15) ibid., 45.

16) Kania and Mackey's police-caused homicide rates by states were correlated with William Nagel's rank orderung of the states on the percentages of blacks in the population. See: William G.Nagel, "On Behalf of a Moratorium on Prison Construction", Journal of Crime and Delinquency, 23, 1977.

17) Marvin Wolfgang, Patterns in Criminal Homicide, Philadelphia: University of Pennsylvania Press, 1958.

18) Raymond D. Gastil, "Homicide and a Regional Culture of Violence", American Sociological Review, 36,1971.

19) Colin Lofton and Robert H. Hill, "Regional Culture and Homicide: An Examination of the Gastil-Hackney-Thesis", American Sociological Review, 39,1974

2o) "A Question of Competence and Common Sense", Washington Post, January 4,1978.

21) Harvey Brenner, "Estimating the Social Costs of National Economic Policy: Implications for Mental and Physical Health, and Criminal Aggression", Joint Economic Committee, Washington, D.C.: U.S. Government Printing Office, 1976.

22) Harry Braverman, Labor and Monopoly Capital, NY: Monthly Review Press, 1974

23) ibid., 277.

24) ibid., 28o.

25) William Julius Wilson, "The Declining Significance of Race", Society, 15,1978.

Federal Republic of Germany

USE OF FIREARMS

According to the present right firearms may be used by police executives in 2 sorts of cases:

1) in order to prevent criminal offences including situations of selfdefence
2) in order to prevent a person from escaping, i.e. to enforce the "state demand for punishment, as the lawyers call it.

This leads to the paradox situation that on one hand a police officer is not allowed to use firearms in order to hinder a person from stealing eggs. When - on the other hand - the thief has been arrested by the police the same police officer has the right to shoot in order to prevent him from escaping. According to the sentencing of the federal law court he also may be shot dead.

During the years 1950-1974 in the whole area of the Federal Republic including West-Berlin 83 policemen have been killed by law breakers. Apart from the exceptional year 1972 - 16 policemen killed - there is no tendency, which indicates, however, an increasing risk of police officers to be killed by criminals.
There are no official data on the amount of people killed by the police during the same period.

The table gives the two following facts:

1) There are many more citizens killed by police than vice versa
2) Firearms were less used for the actual prevention from committing criminal offences than for hindering a person to escape.

That is not very surprising: The right to use firearms in order to enforce the "state demand for punishment" is conceived much wider than in order to directly preventing criminal offences.

Federal state	Period	Use of firearms		deads	
		prevention of criminal offences - selfdefence as help in need	prevention of flight arrest	police officers	citizens
Nordrhein-Westfalen	1963-73	58 cases	770 cases	11	34
Baden-Württemberg	1962-73	124 cases	481 cases	5	25
Schleswig-Holstein	1961-73	36 cases	198 cases	-	3
Hessen	1962-73	181 cases: use of firearms for selfdefence 40 cases: use of firearms in order to break resistence	290 cases	1	11
		A very interesting fact concerning the data from Hessia is that only 66 out of 519 persons arrested after police use of firearms could be proved having carried weapons			

Source: "Die Polizei", several volumes
Rainer Buchert, "Zum polizeilichen Schußwaffengebrauch", Lübeck (FRG) 1975, tables in the appendix

II. STRUCTURAL DATA ON POLICE DEVELOPMENT IN WESTERN EUROPE

Federal Republic:

FEDERAL AND STATE POLICE MANPOWER

DAY OF VALIDITY: JULY 1, 1977

Amongst others, in CILIP No. o an overview on the development of manpower of Federal and State police was given for the years 196o-1978. The following data come from the statistics of the Federal Ministry of the Interior being made up internally every year. The tables are taken from "Deutsche Polizei" (No. 4/1978), the journal of the police union (GdP).

POLICE OF THE FEDERAL STATES — Number of State Police officials

States	Population	uniformed police total		criminal investigation department		police-women		total		police colleges		emergency police forces		others (reserve staff)		total police strength	
		I	II	I	II	I	II	I	II	I	II	I	II	I	II	I	II
Baden-Württemberg	9,119,266	12,415	11,87o	2,436	2,239	186	165	15,o37	14,274	75	67	3,837	3,351	45	42	18,995	15,734
Bayern	1o,812,336	2o,967	19,274	3,83o	2,85o	322	384	24,669	22,488	17	1o	4,768	4,681	-	181	29,454	27,36o
Berlin	1,944,489	7,463	7,154	1,636	1,519	1o4	1o4	9,2o3	8,777	1,7o5	1,526	3,4o7	3,249	-	-	14,315	13,552
Bremen	7o8,393	2,316	2,o84	431	423	29	29	2,776	2,536	2o	19	656	6o6	6	4	3,458	3,165
Hamburg	1,692,o88	5,136	5,o18	1,136	1,1o9	-	(18o[2])	6,272	5,127	1,o34	725	752	744	-	-	8,o58	7,596
Hessen	5,538,432	8,784	8,591	1,932	1,865	118	118	1o,834	1o,574	139	131	3,1o2	2,131	-	-	14,o75	12,836
Niedersachsen	7,226,791	9,956	9,883	1)2,447	2,118	-	343	12,4o3	12,244	3)333	3)533	2,335	2,22o	1o	-	15,581	14,997
Nordrhein-Westfalen	17,o62,2oo	25,461	25,o27	5,27o	4,959	included in crim. inv.dept.		3o,731	29,986	153	158	6,399	5,56o	58o	541	37,87o	36,245
Rheinland-Pfalz	3,649,oo1	5,151	5,138	1,194	1,194	35	35	6,38o	6,367	45	41	1,145	1,145	-	-	7,57o	7,563
Saarland	1,o88,961	2,291	2,21o	392	37o	-	14	2,683	2,594	17	17	569	569	11	11	3,28o	3,191
Schleswig-Holstein	2,584,887	4,528	4,269	7o6	681	33	33	5,267	4,983	195	12o	879	915	-	-	6,326	6,o18
Total	61,426,844	1o4,468	1oo,518	1o,36o	19,327	827	1,1o5	126,255	12o,95o	4,228	3,347	27,849	25,171	652	779	158,982	15o,247

1) authorized strength of policewomen included
2) These 18o policewomen are included in the effective strength of the uniforme police and the criminal investigation department

I - authorized strength II- established strength

POLICE OF THE FEDERAL STATES Comparative Density Index

Federal States	1 officer per population					
	total police		excluded police in barracks and police colleges		criminal investigation department	
	authorized police strength	effective police strength	authorized police strength	effective police strength	authorized police strength	effective police strength
Baden-Württemberg	1:48o	1:514	1:6o6	1:639	1:3975	1:4318
Bayern	1:367	1:395	1:438	1:477	1:3136	1:3364
Berlin	1:136	1:143	1:211	1:222	1:1189	1:128o
Bremen	1:2o8	1:224	1:255	1:279	1:154o	1:16o3
Hamburg	1:21o	1:222,7	1:269,8	1:276.1	1:1489.5	1:1525,8
Hessen	1:393	1:431	1:511	1:524	1:27o2	1:2793
Niedersachsen	1:464	1:482	1:583	1:59o	1:2721	1:296o
Nordrhein-Westfalen	1:45o	no data	no data	no data	no data	no data
Rheinland-Pfalz	1:482	1:483	1:572	1:573	1:327o	1:327o
Saarland	1:332	1:341	1:4o6	1:42o	1:2778	1:2836
Schleswig-Holstein	1:4o9	1:429	1:491	1:518	1:3497	1:362o
States/total	1:386.4	1:4o8,8	1:486.5	1:5o7.9	1:1o62.9	1:326o.9
States and Federal Rep	1:332.2	1:352.4				

FEDERAL POLICE

1.) Federal Border Police

1 a) Passport control service

authorized strength	effective strength
1,422	1,26o

1 b) Federal Border Police in barracks

	authorized strength	effective strength
Southern department of the Federal Border Police	5,174	5,249
Central department	3,393	3,4o1
Western department	2,789	2,649
Northern department	5,131	4,987
Coast department	3,487	3,358
Border Police College	152	144
Planned reserve establishment	5	-
Total	2o,111	19,788

2.) Federal Criminal Investigation Office

authorized police strength	effective police strength
1,2o2	1,o46

3.) Police executives in the administration of the "Bundestag"

authorized strength	effective strength
89	59

4.) Railway Police

	authorized strength	effective strength
railway police officers - full time staff	2,87o	2,8o8
railway investigation service	25o	224
total	3,12o	3,o32

Synoptical Table

	authorized strength	effective strength
Passport control service	1,422	1,26o
Federal Border Police in barracks barracks	2o,111	19,788
Federal Criminal Investigation Office	1,2o2	1,o46
Police executives in the administration of the "Bundestag"	89	59
Railway police officers/railway investigation service	3,12o	3,o32
Total	25,944	25,185

Police executives in the FRG-total strength

	authorized strength	effective strength
Police of the Federal states	158,982	15o,247
Federal police	25,944	25,185
Total strength	184,926	175,432

III. LEGAL DEVELOPMENTS

FEDERAL REPUBLIC OF GERMANY:

THE DRAFT FOR A UNIFORM POLICE CODE - CURRENT STATE OF THE LEGISLATION PROCESS IN THE FEDERAL STATES OF THE FRG

As reported in CILIP No. 0, the conference of the Ministers of the Interior of the West German federal states presented the final draft for a uniform police code in October 1977. For the first time, the demand for a standardized police code emerged in the Internal Security Programme of 1972. The main purpose of the standardization of police codes, as represented in the bill, was to provide a unified legal framework for the newly organized and defined police apparatus including the border police. In consequence of the federal political organization of the FRG the police law is under the authority of the federal state parliaments. That means, that each federal state parliament has to pass the uniform police code bill.

It must be noted as a first success of the relatively wide opposition against the bill that until now only the parliament of Bavaria has passed it with the majority of votes of the Christian Social Union.
In the first place, let us point out briefly the main points of public criticism:
1) the important point of public criticism was the new regulation of police use of fire arms, the so-called Death Shot Provision (§41 sec.2). Until now, in West Germany the police was not allowed to use fire arms for the intentional purpose of killing. In cases of deadly use of fire arms by police authorities the individual officer has had to justifiy this accident through the self-defence and emergency provisions. Under special conditions killing is now no longer handled as a justifiable individual action in borderline cases but as legitimate official acts. This is a qualitative difference. Now, if this regulation will be passed by the federal state parliaments, the police man can get the order to kill. In Bavaria, this regulation is now in force.
2) The extension of the concept of suspicion: On the basis of the criminal procedure (code) the police already has the right to check a person's identity and to search him and his actual possessions if he's suspected of having committed a crime or delict. Police intervention remained de jure tied to the existence of real danger or reasonable suspicion against individuals. In the future, searching of persons and objects as well as entering private dwellings will be made possible in situations where the concept of danger is no longer related to persons as suspects (potential criminals), but to geographical locations (check points, endangered property, suspicious dwellings etc.). When the police defines certain locations as security risks on own authority, all persons who are present in, or in the vicinity of, these locations are automatically suspected of crime.
As limits to the executive authority the criminal procedure and the police law contain the material substratum and the concrete general principles of the constitution. Of course, the legal standardization of police intervention authorities doesn't automatically reflect police actions under ordinary conditions. There is evidence that all rights described here new or extended were correspondingly used by the police in the past. Yet legal standard changes remain very significant for the empirical profile of police activity. To give an example: When in 1970, in West Germany, changes in the criminal law limited the right to use fire arms by police officers (since 1971 it is forbidden to use fire arms

in cases of ordinary theft), the use of fire arms by police officers in 1971 decreased about 50% in relation to 1970 in several federal states.

Although the draft for a uniform police code was confirmed by the Conference of the Ministers of the Interior (an institution in which ministers of all the four big political parties in West Germany - Social Democrats, Free Democrats, the Christian Democratic and the Christian Social Party - are represented), you can see today that the federal state cabinets submitted different bills to their parliaments. There will be no uniform police code neither in a literally sense nor in content. On the one hand, there are bills with restrictions in those federal states which are governed by Social Democrats, e.g. the government of Hessia will not allow the possession and use of hand-grenades as police weapons (as allowed in Bavaria); the government of North-Rhine Westphalia doesn't agree to the Death-Shot-Provision. On the other hand, just these special regulations passed in Bavaria without the expected strong opposition of the Social Democratic Party group of the Bavarian parliament. Just one member of the Social Democratic Party group voted against it.

Beyond the question of police weapons and the regulation of the deadly use of police force the Social Democratic federal state cabinets support in their bills all regulations which are characterized in this article under the headline "The extension of the concept of suspicion". But in fact, these regulations are of much more significance for people's day-to-day experience with police force than the planned new regulations for the police use of deadly force. Authorizing police force to intervene with people on preventive grounds - without the condition that the person in question is not suspected of concrete crime - brings us one step further to the reinstallation of a police state.

Two years ago, the conference of the Ministers of the Interior ordered a comparative legal survey on police law or regulations in Western Europe. In the general conclusions of this survey, which until now wasn't published by the"Conference of the Ministers of the Interior", the authors say, that there is no state in Western Europe which gives their police authorities the preventive right for intervention through their police laws respectively police regulations as it is planned for West Germany with the uniform police code. This may explain why the findings of this survey are never published by the German authorities.

By the end of this year we will know whether the opposition of the left and liberal against this law in West Germany will have been successfull.

IV. POLICE IN ACTION

FRANCE

When the police demonstrates

On 4th December last year there were demonstrations in France by members of the Police Nationale. Some 12,ooo police officers (more than 1o% of the total number of the Police Nationale) followed the call of their unions and joined the demonstrations. The reason for these demonstrations was the adoption of the Ministry of the Interior's budget with its "notorious deficiencies" which, according to the police unions, failed to allow for adequate protection of the public.

These demonstrations, in which 4,ooo police officers took part in Paris allone, throw light on the particular nature of internal security organisation in France. For it was not members of the civilian Police Nationale who were assigned to protect government buildings, but units of the military mainstay of the French security forces: the Gendarmerie Mobile, a special military force living in barracks and reserved exclusively for operations on home soil.

FEDERAL REPUBLIC OF GERMANY

Practices provided for by the passing of the Police Raid Laws in February 1978 for the effective combating of terrorism are now also being applied for so-called normal forms of crime-fighting.
After an attempted robbery at a supermarket in Berlin on 13.12.1978 the culprit had, according to one witness, taken refuge in a nearby eight-storey apartment block. After 4o police officers had cordoned off the building, a considerable number of the 215 apartments became the target for police operations: approximately 1oo of the persons present were questioned, and 15 apartments opened with a skeleton-key. The operations - executed under the cover of submachine-guns which were kept aimed at the doorways - were subsequently abandoned without result. (Der Tagesspiegel, Berlin, 14.12.1978)

According to Section 1o3 Para. 1 (1) of the Code of Criminal Procedure this sort of extension of 'normal' police search rights is not permissible since there were no indications that a particular apartment was involved. The subsequent systematic searching of an area of the building solely on the strength of a witness's contention that the culprit had taken refuge in the building would, even under the greater powers given to the police by the Raid Laws, only be permissible if the crime in question were a criminal offence within the meaning of Section 129a of the Penal Code (aiding and abett-ng of terrorist organisations) (Section 1o3 Para. 1 (2) CCP). There were, however, no such indications in this case.

HEAVY GUNS IN ACTION

Frankfurter Rundschau, 13.1o.1978

Ticket inspection with the aid of submachine-guns

Ticket control! No one to leave the carriage!

On leaving the platform of Grüneburgweg underground station, Mrs. N. ran into a so-called exit control and was asked for her ticket by a municipal transport official. Close by stood several policemen armed with submachine-guns. Her impression was that a search for criminals was in progress here.
The impression was, however, wrong for, as the police public relations office explicitly confirmed on Wednesday, when questioned about the incident, the operation was designed merely to catch potential fare dodgers. The municipal transport authority point out that it would be impossible to carry out the controls without police support since the latter alone are authorised to make checks on people's identity. However, no influence could be brought to bear on the police's appearence.
Police spokesman Kurt Kraus explained that submachine-guns were not normally carried when officiers were assisting in exit controls. However, when police patrol car crews were called in, these were compelled to carry their guns. This was due to a decree issued by the Minister of the Interior according to which automatic weapons may not beleft unattended in vehicles.

CLOSE CONTACT WITH THE PUBLIC?

Quoted from the West Berlin Senate's answer to M.P.Lange's question in the House on the subject of greater cooperation between the police and the public prosecutor's office:

"The appointment of a public prosecutor for sport events as part of a joint programme with the prosecuting authorities involved is a further example of the areas in which successful efforts are being made, such as the cultivation of close contacts between the prosecuting authorities and the public."

Source: Regional Press Office Berlin, 3rd April 1978

United Kingdom

THE BLACK DOG SYNDROME

One of last year's most discussed problems in the English police press is the black dog syndrome. CILIP doesn't want to conceal this present day problem from its readers.

The idea was borne when a scientific analysis of reports of causes of road traffic accidents involving police vehicles revealed that 72.35 per cent of the altogether 15.695 accidents involved a black dog of some kind. No particular breed dominates the statistics. Furthermore, representative replies show that from all the accidents only one black dog has been killed. In all the other cases the dogs left the scene and could never be traced, damage was mostly suffered by the police vehicles. Some typical replies from the police drivers reporting the accident: "The black dog ran off." "The black dog leaped away, howling." "It rushed off, shaking its head." "I swerved to avoid a black dog and hit a wall/a lamp-post/ church/bridge/etc. ." It would seem, therefore, that the low fatality rate and the high involvement of black dogs is not putting the dog population at risk from police vehicles.

Once this fact is appreciated, it could reveal a sinister plot designed to discredit or injure police officers. It could be a political ploy by an extremist group who train their black dogs to cause road traffic accidents involving police vehicles - at least, thus the English police press.

Even in the United States and on the Continent the accident rate to plice vehicles show black dogs involved in police vehicle accidents.

Finally, the question of colour is a very interesting one and has been considered in a detailed study by Professor K.Nyne of Houghlah University. He believes that the colour black has historic links with the devil and that the sighting of a black dog in circumstances of extreme stress

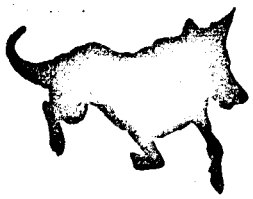
(e.g. when the officer's promotion prospects are at risk, or when it means the submission of many reports in triplicate) indicates the instant revival of a primitive form of death wish or expectation.

Worried about the risks attached to officers in cars, the Police Federation has made an approach for a Black Dog Allowance.

In a letter to the editor, an alarmed woman, an owner of a black dog, describes the precautions she took as follows: She gave her dog a luminous orange jacket and a red flashing light attached to the top of the head.

A silimar syndrome is also known to exist in Northern Ireland, confirmed by the Ulster Constabulary (RUC). While in Northern Ireland and Wales, the dogs are almost always black, officers of the RUC usually are able to name even the actual species. The reason might be that Irish police drivers have a more imaginative approach to the subject than their cross channel counterparts.

Ref.: Constabulary Gazette, September 1978
Police Review, Sept.1, 1978, No. 4468
Police Review, Sept.22, 1978, No. 4471



V. POLICE IN EUROPE

CONFERENCE OF EC MINISTERS OF JUSTICE

On 1o.1o.1978 the Conference of EC Ministers of Justice in Luxembourg adopted an Agreement on the Combating of Terrorism. This agreement is directed against the same criminal acts as are named in the Anti-terror Convention adopted by the Council of Europe: aeroplane hijackings, attacks on diplomats involving danger to life, assassination attempts with the aid of bombs, hand-grenades, automatic fire-arms etc.

The provisions of the two agreements also amount to the same thing: They leave the respective national authorities the choice between:

- extradition, or
- immediate prosecution by the authorities in that country.

This also applies to politically motivated crimes. No legal distinction is to be made between these and other crimes. The reason for this consonance may well have its origin in the following facts:

- in the endeavour to create a uniform law for EC countries and
- in the hesitant ratification of the European Anti-terror Convention by the member states of the Council of Europe; up to the end of October only 5 of the 2o member states had ratified the agreement in their national parliaments (FRG, Sweden, Austria, Denmark and Great Britain).

(Der Tagesspiegel, Berlin, 11.1o.1978)

WEST GERMAN-SWISS COOPERATION

On 19.5.1978 in an article marking the visit of Switzerland's Minister of Justice, Federal Public Prosecutor and Head of the Police Department, the Frankfurter Rundschau examined in some detail cooperation between the two countries in police matters. According to the article, the FRG is, among other things, helping the Swiss to train special anti-terror units, set up police data processing systems and coordinate the tracking down of terrorists. Some excerpts from the article:

SWISS POLICE ARE COACHED BY THE GERMANS

Under the code name "Sophie" a joint programme against terrorism is under way
(by Peter Amstutz, Bern)
Frankfurter Rundschau, 19.5.1978

Hardly a word is said about it, but the remark might reasonnably be ventured: none of the other European states are at present cooperating as closely in combating international terrorism as the Federal Republic of Germany and Switzerland.
The fact that the Swiss Minister of Justice, Kurt Furgler, is on an official visit to the Federal Republic along with the Federal Public Prosecutor, Rudolf Gerber, and the Director of the Swiss Federal Police Department, Oscar Schürch, in order to discuss questions concerning international terrorism, is merely a further indication of the close cooperation between the two neighbouring states in this field. (...)

The Swiss minister is also expected in Munich by experts from the European Patent Office for talks on questions relating to the safe-guarding of personal data. The President of the Federal Criminal Investigation Office in Wiesbaden, Horst Herold, also plans to meet Furgler again. Herold was in Bern about three weeks ago along with Brigadier-general Ulrich Wegener, Commander of the Federal Border Police Group 9,+) in order to instruct Swiss police officers in the techniques of freeing hostages from a train.
As early in 1973, a year after the bloody massacre at the 1972 Munich Olypic Games when Wegener formed a special unit from his 178 Federal Border Police volunteers, the German specialist had visited Switzerland in order to brief Swiss Police officers in the planning, organisation and execution of precise retaliatory measures. At present Switzerland has at its disposal about 5oo police rifle-men whose training can be traced back directly to Wegener's briefing trips. In a garrison town near Bern the ablest constables from all 25 cantons are regularly brought together for operational exercises lasting several days. (...)

Under the code name "Operation Sophie", Bern (for Western Switzerland) and Zurich (for Eastern Switzerland) are fully integrated into the hunt for terrorists which is being directed from Bonn and Wiesbaden. The wanted persons posters issued by the Federal Criminal Investigation Office which are on display in all Swiss police stations obviously have more than a merely decorative function. Police checks on members of the public are taken seriously as even innocent German tourists are at present discovering if they attract attention through unusual behaviour. For example, a German couple recently returning home from the Neuenburg Antiques Fair with rifles and pistols in their car boot were suddenly surrounded on the motorway between Wiesbaden and Bonn after a tip-off by the Swiss police.

+) The Border Police Group 9 is a special anti-terror-unit.

VI. POLICE AID FOR THE THIRD WORLD

THE ARMING AND EQUIPPING OF MILITARY AND POLICE AID IN AFRICA AND ASIA BY THE FEDERAL REPUBLIC OF GERMANY

If in recent years the Federal Republic too has been increasingly relaxing the practice of exporting arms, for example by undermining existing provisions, the role played by the FRG in the export of large-scale weapons (tanks, aircraft, submarines) is nevertheless a minor one (cf. antimilitarismus informationen 1o/78 K-13; 8-9/78 K -11). The major activities of the Federal Government are confined to a sector which appears, superficially, extremely effective. West German military and police are helping many countries build up modern efficient military and gendarmerie forces and police units. Characteristically, the question of the effect of this aid in stabilising the régimes in power in certain of these countries seems to be of no importance (for example in Iran and in Ethiopia under Hailé Selassie and afterwards). The important thing is the political influence which can be exerted on certain régimes by means of such aid, and not the effect of such aid on political conditions in the countries concerned. The justification for an additional unscheduled aid programme in 1976 was that such supplies of equipment and sending of advisers and experts were indispensable, "as in the past such aid had proved extraordinarily effective and particularly conducive to the enhancement of political influence". Consistently, the Federal Government practically doubled military and police aid in 1978. In 1976 approximately 24 million DM were earmarked for this purpose; the 1978 figure was 48 million DM.
For a programme whose major aim is "the enhancement of political influence" it would appear only consistent to make no great distinctions between police and military aid and in the case of certain countries to allow the "police aid" to be handled by the Ministry of Defence and military advisers (as, for example, in Ethiopia up to 1977). The military know-how doubtless suits the needs of a good many régimes better than civilian forms of police aid.
A striking feature of the allocation made in 1978 - as compared with 1976 - is the apparent increasing shift in emphasis of the "development aid for security purposes" towards the police sector. A total of 19 states in Africa and Asia are at present receiving military and police aid. Either in 1976 or 1978 the following countries were beneficiaries:

Ethiopia
Ethiopia received vehicles, radio equipment, generators, workshop fittings, medical and crime-fighting apparatus. Originally, 5.8 million DM's worth of equipment had been allocated for Ethiopian police and security forces up to 1978. The programme was interrupted in 1977 during the fighting in the Ogaden region.

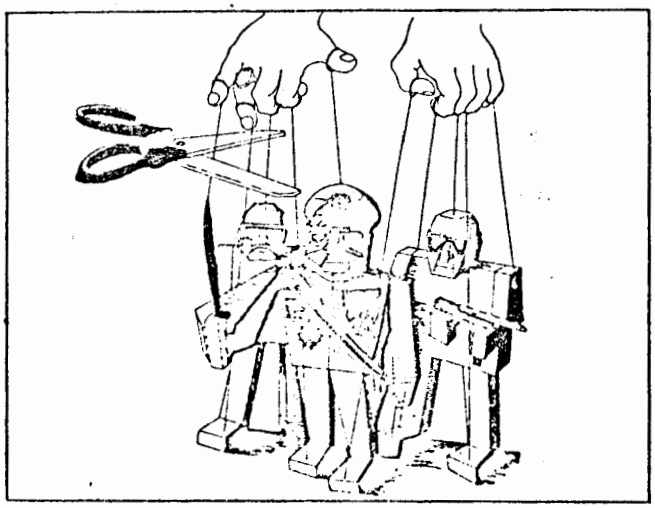
Somalia
Quasi-state of war with Etiopi.; received during the same per od vehicles and vehicle workshops, 2 aircrafts and a precision-instrument workshop for the police to the value of 6.9 million DM. (After the freeing of hostages in Mogadishu considerable tribute was paid in the press to the close cooperation between the German and the Somalian police.) In 1978 the Federal Government planned to supply Somalia with equipment worth 2 million DM. To renew and improve the vehicle fleet's efficiency the Federal Republic is to supply further vehicles, spare parts and workshop fittings. For the radio teletype system already supplied replacement components, permanent stations and repair measures are planned. Bonn also intends to step up the technical training of Somalians. The beneficiary is the Somalian police.

Liberia
Received an initial 4 million DM's worth of aid in 1978. This was used principally to purchase vehicles for the personal security escort of heads of state (BMW motor-cycles).

Kenya
Received motor-cycles, two helicopters,, emergency radio equipment, machinery and special apparatus for the security services. Up to 1978 the army and police were supplied with 3.1 million DM's worth of vehicles and equipment.

Upper Volta
Up until the end of 1978 received 4 million DM in the form of engineering and road-building equipment, workshop fittings and generators. A further million DM were earmarked for 1978.

Togo
Since 1969 supplied with machinery and equipment to the value of 6 million DM. Under an agreement signed on 31.8.1976 Togo received 2 million DM's worth of aid in the form of equipment. This consisted of road haulage vehicles, a breakdown lorry and a field hospital from German Army surplus. During his last visit to Bonn the Togolese President requested further transport and supply vehicles (for water and fuel) from German Army surplus. He plans to assign military units to work in selected areas of agricultural production.



Police Aid for the 'Third World'

Niger
The 6 million DM's worth of aid allocated in 1976 and supplied up to 1978 is being concentrated on the country's increasingly critical transport situation. There is no possibility in the foreseeable future of linking the vast, thinly-populated north of the country to the road network. Air transport is the only realistic alternative for the government and administration. Support for Niger is planned in the form of measures designed to modernise and rationalise the country's air transport capacity (for example, by helping with the maintenance and repair of the Noratlas transport aircraft already supplied). Another necessity is the maintenance and improvement of the road-building company's equipment. In order to realise such vital projects, a further 2 million DM are needed in 1978.

Mali
Up to 1978 Mali was supplied with 5.6 million DM's worth of vehicles, enineering and road-building machinery to help equip the army and police.

Sudan
Under a previous agreement outstanding supply commitments to the Sudan at the end of 1975 totalled 5.4 million DM (to be wound up 1976-1978). Owing the lack of funds the Sudan had to be excluded from the 1976-1978 follow-up programme. New commitments for 1978 totalling 2 million DM are to be used principally for financing projects in the transport sector. In particular it is planned to supply road tankers (for water and fuel), breakdown lorries, mobile repair-shops and stocks of spare parts.

Ruanda
Received an initial 4 million DM's worth of aid under an agreement concluded on 24.9.1976. This is to be wound up by 1978. This aid is intended to help Ruanda set up radio network for the army, police and administration. The funds allocated are sufficient only for the first phase of development. Additional funds totalling o.5 million DM have been applied for in 1978. These are needed to finance the second phase.

Cameroon
Received an initial 3 million DM's worth of aid under an agreement concluded on 3.8. 1976. This was used principally to purchase supply vehicles (unimogs, ambulances, water-tank lorries, field kitchens). In order to follow up this programme a further 1.o million DM's worth of aid is needed in 1978.

Morocco
Up until 1978 Morocco received 4.5 million DM's worth of equipment including road tankers, fire-fighting vehicles, four main dressing stations and a field backery for the army. For 1978 a further 3 million DM have been earmarked for military hospitals, refrigerator vehicles and the like. The Moroccan Ministry of the Interior has repeatedly requested German aid for setting up a police training college. Participation in this project offers the FRG the opportunity to initiate the desired cooperation with the Moroccan police. For 1978 an initial sum of at least 1 million DM is required for this sector.

Tunisia
Tunisia has so far received 2o million DM's worth of aid including vehicles, spare parts for vehicles, telecommunications equipment, medical supplies, and supplies of clothing and uniforms from German Army surplus. The aid provided between 1976 and 1978 amounted to 4.5 million DM. The beneficiary is the Tunisian Army. As from 1978 a further 2.5 million DM are to be made available of German aid to set up a radio teletype system, 1.5 million DM being earmarked for this purpose in 1978.

Jordan
Jordan has so far been supplied with 3 million DM's worth of motor vehicles, fire-fighting vehicles, disaster control and telecommunications equipment, military hospital supplies and crime-fighting equipment. Between 1976 and 1978 Jordan received aid to the tune of 1.6 million DM for the equipping of its police force (including traffic police). The Federal Government has shown particular interest in further improving cooperation with the Jordanian police in fighting internationally organised crime and international terrorism. To supplement the still inadequate equipment of the Jordanian police an additional sum of 1 million DM is planned for 1978. Equipment already supplied included: crime-fighting equipment, supplies for a stationary vehicle testing unit, generators, radar units, various police vehicles, police buses and a mobile police laboratory.

Arab Republic of Yemen
The 2 million DM's worth of aid allocated under an agreement concluded on 24.4.1976 took the form of transport equipment supplies to help solve the transport problems existing between the seaports and the capital which is situated in the interior. In 1978 a further o.3 million DM's worth of police equipment (crime-fighting apparatus inter alia) is to be supplied together with advisory and training facilities. The Foreign Office's justification for this step: the necessity of strengthening cooperation with the Yemen police and in the interests of combating international terrorism.

Iran
1o million DM were made available for the training of 125 graduate engineers, 25 graduate management consultants and 2o master craftsmen, every single one of them member of the army (cf. antimilitarismus informationen 5/78 K-7 f. and 6/78 K-9).

Afghanistan
Between 1958 and 1976 the police received 9.5 million DM's worth of technical aid. The Foreign Office in Bonn plans to make further police aid available as requested (two million DM for 1976/77) in the form of equipment supplies and top-level guidance for the Afghani police by two German police officers in view of political developments in South East Asia. The equipment still in use by the general police force and by the traffic police and detective force is extremely antiquated. The following equipment is needed: police technical apparatus and crime-fighting equipment for approximately 25 police stations, some 3o radio transmitters and receivers to improve the radio network, and transport equipment together with spare parts. For 1978 a follow-up aid programme to the tune of 1 million DM is considered necessary.

(Compiled from: GPA, Hintergrund-, Archiv- und Informationsmaterial, 1o.6.1976; Wehrdienst No. 636 and 637/1977).

US handcuffs to go henceforth only to states guaranteeing human rights

In future most states will only be able to buy American crime-fighting equipment such as handcuffs, manacles and fetters and fingerprint analysis kits after official approval by the American authorities. This was announced by the American Department of Commerce. A spokesman explained that guarantees would have to be given that "such articles would be used in accordance with US views on foreign affairs and for purposes compatible with the safeguarding of human rights". Previously only the Soviet Union, the East European countries, South Africa and Namibia needed official permission to purchase such articles. Only Japan, Australia, New Zealand and the NATO member states are to be exempted from the new provision.

From: Die bayerische Polizei, Heft 4/1978

FEDERAL GOVERNMENT'S NEW TECHNICAL AID PROGRAMME

The Federal Government's new aid programme provides for double the volume of aid allocated under the previous programme (cf. preceeding article from: ami 11/78). Between 1979 and 1981 it is planned to supply approximately 3o developing countries with technical, military and police aid to the tune of some 15o million DM. This method of so-called 'sprinkler distribution' is above all designed to open up the door to further commercial follow-up orders for German industry. The striking feature here is that the beneficiaries are practically all African states. A whole series of countries are to receive technical aid for the first time:

- The People's Republic of Benin and Djibuti are to receive supplies of equipment to help establish the police force and training in Germany.
- Tonga and West Samoa are to receive supplies of equipment and training to help set up a naval college.
- The following countries are to be supplied with motor vehicles principally for army use: Malawi, Mauretania, Chad, Malta and Zaire. The last two are also to receive telecommunications equipment. In Zaire an extensive border security system is to be developed.
- Lesotho and Zambia are to receive unspecified supplies of equipment.
- In view of "Indonesia's considerable contribution to the safeguarding of jobs in the German shipbuilding industry by the pruchase of submarines and accessory parts" (cf. ami 3/77 P-3), it is hoped that the provision of technical advisory and training facilities will lead to further export orders.

The following countries are to receive further technical aid (under a follow-up programme):

- "To supplement the inadequate equipment still in use by their police forces: Afghanistan, Algeria, Somalia, the Arab Republic of Yemen and Jordan.
- Principally motor vehicles are to go to the Cameroon, Togo, Ruanda and Kenya (whose security forces have since switched to German makes for their vehicle fleets).
- Niger is to receive an unspecified number of Dornier Skyservant aircraft; two of these are also to go to Somalia.

A new market for German police aid

Mexico's police officers pawn or sell their weapons

Mexico City (dpa). According to the results of a recently published police inquiry, approximately 75% of Mexico City's 30,000 police officers have either lost, pawned or sold their weapons. In consequence, police director General Arturo Durazo Moreno intends to deduct a fine of 2,000 DM from the salaries of those officers who fail to carry a weapon on duty. They are also threatened with a two-week suspension from duty. The inquiry's report points out that if the officers were to be issued with new weapons many of them would sell these and buy old weapons in order to supplement their salaries. According to the newly issued order, in future all officers will be compelled to hand in their revolvers at the station before going off duty. Previously they were allowed to carry their weapons at all times.

From: Der Tagesspiegel, 7.1.1979

- Further technical aid is to go to: Morocco, the Sudan, the People's Republic of the Congo, Upper Volta, Liberia, Mali and Tunisia (with 16.5 million DM the largest beneficiary of technical aid).

Source: Wehrdienst 13.11.1978

No Comment

"The right to refrain from notifying the person about official eavesdropping activities and to refer examination of such activities to an authority which is not a court of law is conducive to the effectiveness of the Federal Domestic Intelligence Office and a prerequisite for the meaningful application of official eavesdropping and and the interception of mail".

Federal Constitutional Court - 2nd Panel - Verdict of 15.12.1970 - Judgments Collection Vol. 30

VII. THE PUBLIC'S PREROGATIVE: CONTROL OF THE POLICE

Federal Republic of Germany

PARLIAMENTARY CONTROL OF THE SECRET SERVICE DEPARTMENTS?

The activities of the secret service departments in the Federal Republic of Germany, viz. the Federal Intelligence Service (Bundesnachrichtendienst), the Military Counter-Intelligence Service (Milit.Abschirmdienst) and the Federal Domestic Intelligence Office ("Verfassungsschutz"), are carried out - and this applies to institutional activities as well - outside the general political framework of the FRG. Whereas the institutions exercising political power are normally organised according to the principle of the seperation of powers, in the secret service sector controls of this sort, and consequently any judicial control of the work of the intelligence services is explicitly precluded (cf. Section 9 Para. 5 of the 1968 Interception Law - G 10). The third pillar of power in the political framework of the constitutional state has no business here.

The 1968 Interception Law (G 10) does, however, embody the parliament's legitimate need for control of the secret service departments in its - admittedly rather cautious - provision for the setting up of a special Parliamentary Supervisory Commission authorised to revoke "directives which the Commission rules out or considers inadmissable" (Section 9 Para. 2). The fact that in practice only limited use is made of this right of control was again clearly demonstrated recently by the Faust affair.

The Law on the Parliamentary Control of Intelligence Services of 11.4.1978, however, (justification: "Certain recent practices of the intelligence services which have come to light underline the need for legislative measures", thus

Federal Parliament Document 8/1599 of 8.3.1978, cannot be described as anything other than a law precluding any sort of control:

- Even in the case of intelligence activities being dealt with or discussed by the Supervisory Commission, no provision is made for following up these measures with sanctions.
- The topics dealt with are both for the present and the future subject to the strictest secrecy.
- The dependency of the commission members on their parliamentary party goes so deep that a commission member loses his seat if he resigns from the parliamentary party in the Federal Parliament.
- The supervisory role of the commission does not include any independent rights of inquiry, but merely the right to pass on information to the Federal Government as the politically responsible body.
- Even the right of passing on information is still further restricted since "the time, manner and extent of this passing on of information by the Supervisory Commission (is to be) determined by the political responsibility of the Federal Government (...) subject to the necessary safeguarding of intelligence material". (Section 3 Para. 2)

To speak in the case of this law of "parliamentary control" (the term used in the law itself) is, in view of the prescribed secrecy and mere discussions deliberately designed to remain "inconclusive" (Evers in: NJW 1978, p. 1445), a euphemism, to put it mildly. This law makes parliament a mere humble petitioner to a virtually sovereign executive. The question arises here of the constitutionality of this sort of parliamentary suicide.

The merely decorative role played by individual members of parliament with regard to the legal controls provided for at least theoretically by the 1968 Interception Law is governed though by legal distinctions affecting the range of control activities. Whereas under the 1968 Interception Law these activities are confined to examining the legitimacy of specific concrete surveillance practices (in the case of the so-called catalogue acts), the right to pass on information conceded by the law of 11.4.1978 covers "the activities of the intelligence services in general" and in addition "practices of particular significance" (Section 3 Para. 1). This means, instead of controls on a case-to-case basis, examination of the organisations' structure and operational potency, in a word: routine intelligence work. Parliament has, however, by precluding more effective rights of control and by confining itself to the mere right to pass on information, excluded itself from the very sphere which constitutes a basis for the many unlawful practices which never reach the public's ears and whose existence can reasonably be assumed alongside the few affairs which do come to light and generally lead to a public scandal.

Not even the "unrestricted right to pass on information" is called for, such as was provided for in the original bill. Provision is merely made for the passing on of information "in accordance with the circumstances" - whatever that may mean (cf. Federal Parliament - "Bundestag" Document 8/1599, synopsis to Section 3 Para. 1), and subject only to the discretion of the Federal Government (as regards the nature, manner and extent of the passing on of information).

It is not the intelligence services themselves that are to be "controlled" but merely any relevant statements that might be issued by the Federal Government: "The Comission wishes to emphasize the fact that it is not the intelligence services which are subject to the control of the Supervisory Commission, but the Federal Government itself". (Report by M.P.s Klein (Göttingen) and Dürr on the Legal Affairs Committee's draft bill, Federal Parliament Document 8/1599 II).

And in the same way that the authorities who should actually be supervising the activities of the intelligence services are denied any part in such control, it is the declared aim of the law of 11.4.1978 "to concentrate the exercising of the parliamentary control powers as far as possible in the hands of the Supervisory Commission". (Federal Parliament Document, loc. cit., Report III to Section 1). The parliament's oft-lamented decline in importance appears to have reached a new low. The "counterbalancing

of the parliamentary right of control with intelligence requirements" is no longer confined to the de facto deprivation of parliament's powers by the executive; this shift in power is also to be given legal sanction by embodiment in law.

This de facto waiving of rights by the parliament itself through its noble gesture of self-imposed restrictions was further underlined in September 1978 in what can only be described as a comedy acted out in the Federal Parliament in the course of which the immunity clause applying to Members of the House was revoked. The motion proposing the revocation of the immunity clause for a Member of the House contained no indication whatsoever as to either the nature of the accusation or the person of the Member involved. The vote was taken blindly, so to speak. While Members of Parliament meekly accepted that they are to take decisions on events concerning which they have received no official information, the daily papers already contained detailed reports on the nature of the accusations and the person of the Member of Parliament involved.

Deutscher Bundestag

(GERMAN FEDERAL PARLIAMENT)

Stenographic Report

102nd Sitting

Bonn, Friday, September 1st, 1978

Revocation of the Immunity Clause for Members of the German Federal Parliament

here: Search measures

- Document 8/2070 -

Report submitted by: Member of Parliament Kunz (Berlin

Does the submitter of the report wish to address the House?

(Kunz /Berlin/(CDU/CSU) : No!)

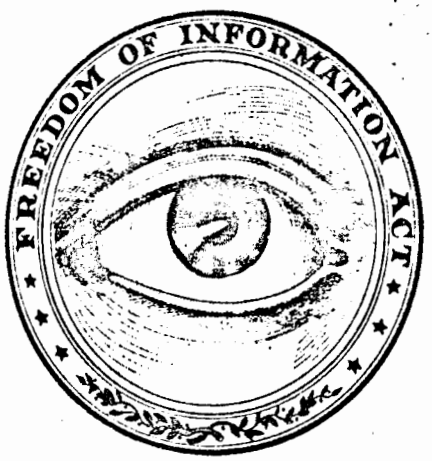
- That is not the case. Does anyone else wish to address the the House? - That is not the case either.

Then we shall put the motion to the vote. Those in favour of the 1st Committee's recommendation on Document 8/2070 please give a show of hands. - Those against the motion. - Abstentions? - Then the House is unanimously in favour of the motion and the recommendation is accordingly adopted.

This sort of ready subordination of the parliament to allegations made by the prosecuting authorities engaged in the investigations results in the degeneration of the fundamental right of immunity (Art. 46 of the Basic Law) into a mere acclamation.

In connection with this affair - sparked off by the allegation of Pacepa, the Rumanian secret service agent who defected to the West, that the SPD Member of Parliament Holtz had intelligence contacts - considerations were voiced by the executive as to a possible restriction on even informal cooperation between "top-ranking politicians", i.e. the passing on of information by the Domestic Intelligence Office to the chairman of the parliamentary parties. It had previously been the practice to pass on any information acquired by the intelligence services regarding possible dubious contacts of Members of Parliament (with the East) to the heads of the parliamentary parties. (cf. Innere Sicherheit, 1978, No. 46,

p. 23). If this sort of surveillance of Members of Parliament by the Domestic Intelligence Office appears to fit faultless into the executive's view of the constitutional state, the possibility now being considered is the restriction or complete stoppage even of this informal cooperation by the passing on of information to "top-ranking politicians" in order to prevent any obstruction of the activities of the investigating authorities. (cf. Frankfurter Allgemeine Zeitung, 14.10.1978).



Interview with John Shattuck
(Director of the American Civil Liberties Union)

concerning Problems and practical experience with the Freedom of Information Act (FoIA)

CILIP: 1. Please would you describe the basic characteristics if the FoIA?

Shat.: The FoIA is a statute which permits individuals to get access to government records. Any kind of documentary material that is recorded in government files is at least theoretically available for access. It has broad disclosure provisions but then it also has very broad exemptions, so that, for example, investigative information or information that would invade someone's privacy would not be subject to disclosure. The way the statute works in practice is that a person would write a letter to a government agency, for example the FBI, and say, I wish to get any and all information that you have on file concerning Wolf-Dieter Narr, and the FBI would then respond in a letter and say, we have a file on Wolf-Dieter Narr and we can disclose the following portions of it but other portions of it are subject to exemption. And then if the person doesn't like the exemptions that have been cited and feels that there should be more information disclosed, that person can go to court and press the government agency to justify the exemptions. This is the theoretical way in which the statute works. Now, in practice, of course, it breaks down often and very little information of a sensitive nature that might be of interest, say, to someone studying the police, is disclosed.

CILIP: 2. We come to this point later on. First, why did the FoIA come into existence in 1967 and how it was revised in 1974?

Shat.: It is interesting that the Act when it was passed in 1967 predated the general public's interest in government information. It was essentially the product of press pressure and pressure by civil rights groups like the American Civil Liberties Union, but it did not have a great amount of exposure when it was first

enacted. It was regarded essentially as a good government measure. After all, nobody could be against freedom of information. But the statute which was enacted in 1967 was so weak as to be relatively ineffective, and it justified the withholding of information as much as the disclosure. In 1974, the statute was amended so that more investigative information could be obtained, for example, information about the FBI, and more national security information, information from the CIA. This, I think, was a direct result of the so-called Watergate period and the impeachment proceedings against Richard Nixon where the public widely perceived and Congress perceived that there was too much secrecy in government and that secrecy was one of the principal causes of the abuse of power in the Nixon administration. The 1974 admentments to the act were strongly opposed by the Ford administration, by the FBI, and by the CIA, but they overwhelming passed the Congress. That demonstrates that the FoIA was regarded as a Watergate reform measure by the time it got strengthened in 1974.

CILIP: 3. Let me now come to the more difficult problems. Any legal act has at least two functions. A more symbolic one to satisfy specific constituencies and a more 'real' one to change certain patterns of social interactions. Could you please try to estimate the FoIA in this respect?

Shat.: Well, I think that's a very good way to get into the problem that I was beginning to discuss in my answer to your first question. The formal structure of FoIA and its very name, 'freedom of information', suggests that there's a great deal of disclosure that is going to be permitted and access to government files. In fact, the way in which the FoIA has been enforced has to a large extent underscored the secrecy that exists in many of the agencies who are withholding documents. Just recently, President Carter who campaigned against government secrecy and made all kinds of promises that he was going to open up government files, has moved against people who are disclosing secrets which are important to the public. Let me be specific. Frank Snepp, a former CIA official, wrote a book last year which discussed the withdrawal from Vietnam, the CIA hasty withdrawal and the way in which it abandoned many of its agents. It was a highly critical book. In response, the Carter administration did something that even the Nixon administration was never willing to do, that is, it prosecuted Snepp for breach of contract by saying that he failed to submit his book to the CIA for prior censorship and thereby broke his employment contract. The CIA made no claim that Snepp had disclosed classified information but only that he had published a book that was critical of the CIA and had not sought prior clearance from the CIA. Now this kind of prosecution runs directly contrary to all of the promises of the Carter administration and the formal structure of the FoIA. But in fact, I think, it better defines the government's attitude towards the need to protect sensitive information than does the formal structure of FoIA.

CILIP: 4. Let's come to the effective functions in more detail. The FoIA does define on the one side the right to be informed but it limited on the other side to agencies of the Federal Government. The FoIA also has many exemptions. Have these exemptions not become, so to speak, the living part of the FoIA?

Shat.: Well, the exemptions are certainly the most controversial part of the FoIA and the part that we see when we go to court, and my organization, the American Civil Liberties Union, spends a great deal of time in court trying to overturn these exemptions. What happens when a regulatory law like the FoIA is enacted is that there is a certain formalization of the very process which the law is intended to regulate. For example, the exemptions of the FoIA provide for the first time a formal possibility for the government to withhold investigative information. No longer can the FBI be charged with excessive secrecy with respect to investigative information to the extent that it now has an exemption under the FoIA for investigative information. That means that if the FBI does not wish to disclose

information it is not the FBI but the statute itself which provides for that formal possibility of withholding. So I think that the exemptions do risk swallowing up the statute in the area that's of most interest to those who are seeking access to government information about the way police agencies operate and the way in which private citizens and their political activities are regulated and controlled by the police. To have exempted that information by a statute which provides for freedom of information is to provide a formal basis for withholding which didn't exist before.

CILIP: 4a. What exemption have proved most effective as tools of the executive to hide clandestine policies and to withhold information about them?

Shat.: Well, the two leading exemptions are the investigative files exemption and the classified information exemption. The first one, investigative files, used to be so broad in 1967 when the act was passed that virtually no information in the FBI was disclosed. In 1974, when the investigative files exemption was amended in the Watergate period, it was limited to "informer" information, i.e. information about undercover agents and other people who are actively spying for the FBI, as well as information which would affect an ongoing investigation. But still, those are broad provisions which threaten the possibility of getting much information from the FBI. As to classified information, again in 1974 the exemption was narrowed so that the courts can make a determination of whether or not certain information is properly be classified, whether or not it is information that affects the national security, but here again we see an extremely broad exemption which risks authorizing withholding when there was no authority before.

CILIP: 5. From a German point of view it's striking that Morton Halperin in a casebook about the FoIA on which you collaborated can state the following: "Agencies sought to define exemption broadly and use a variety of means to discourage it [the reliance on the FoIA]..." "Courts interpreted most exemptions narrowly and fashioned procedural remedies..."* Could you please give some examples for this rather general statement? The difference between the agencies on the one side of course and the courts on the other side seemed to be very liberal.

Shat.: Well, let me give you an example from one of my cases which has pending for a long time. We've been seeking the files of the famous Alger Hiss prosecution. Alger Hiss, as you probably know, was charged in the McCarthy period with perjury and espionage, and the FBI had a very substantial file on him. Of course, the case has been in a way a symbol of the whole cold war period. When we first brought the case five years ago we got nothing. The FBI said it had a file and it wasn't going to disclose anything. Later when the amendments were passed in 1974 the FBI still resisted disclosing anything but at least told us that it had 53,ooo pages of files on Alger Hiss. It disclosed some of the information but basically it took the position that Hiss was still around, that many of the identities of informants in the case had to be protected because they were still alive, and that Hiss himself might seek to overturn his prosecution. So we went to court and what the court did procedurally was to require - and this was a dramatic step forward for procedural rights under the FoIA - the court required the FBI to identify, document-by-document, all 53,ooo pages and to come in with an index which said on this pages' there's information that relates to informants, on this page there's information that relates to an ongoing investigation, and therefore it cannot be disclosed, but at least, to demonstrate on a very detailed basis why it was citing the exemptions. After the FBI has produced such an index the court proceeded to inspect some of these documents itself, and decided that the exemptions should not be applied and ordered disclosure of the information. As a result of the court's action we got some 25 - 3o,ooo pages on the Hiss investigation. Now the problem with this so-called procedural remedy is that very few people can afford the time

* Morton H.Halperin, Overview and Introduction, in: Christine M.Marwick (Ed.), Litigation Under the Freedom of Information Act, Washington D.C.,1967[1], 1977[2] (pp.7-14)

and the energy that we had to put into this case. We were willing to spent five or six years because we felt the files were extremely important. A private attorney would not have been able to spend that amount of time. Fortunately, the FoIA provides for attorneys' fees so that if he prevails the attorney can get his time compensated. But the ressources that you have to press in this are enormous.

CILIP: 6. Let me come back to a former question you answered already in an almost sufficient way but I want to get further information. One exemption seems to me the most important one. The Act does not apply to matters that are "properly classified national defense or foreign policy information". Halperin underlines this impression by stating: "Courts interpreted two exemptions - those related to national defense ... and to investigatory files very broadly...". Isn't it possible for the governmental agencies and the courts to subsume almost all important information under these exemptions?

Shat.: Yes, important information concerning the operations of the national security state -- of the FBI and the CIA and the secret government which is a great concern to me and to many of your readers. However, there's a great deal of other information, not political information, but information which individuals seek to obtain about themselves and which is routinely discloses under the FoIA. Someone whose social security files may demonstrate why that person isn't being paid the proper amount of the social security material. Other files that indicate why the government is interested in purchasing the land of a farmer, and the farmer doesn't want to give the land up and therefore makes a request to the Agriculture Department to find out why this land has to be given up. This kind of information is in fact very broadly available and it's obviously not investigative or national security information. So, in a way the Act operates very well in the non-political sphere. But once you're in the political and investigative and police areas then there's no question that the exemptions become extremely broad.

CILIP: 6a) Well, of course, it would be political, too, if it works in the a-political field. Especially for the behaviour patterns of people and their courage to get informations and things like that.

Shat.: I think the Act has really changed the public's attitude toward government. There are many skeptics in the United States about government power. I wouldn't want to say that the FoIA is the reason for that but it's certainly a factor. People no longer trust bureaucracy. One of the reasons they don't trust bureaucrats in America, not only don't trust them but are not afraid of them, is that they know they have a tool to get information from them. Of course, this is not so much true in the national security and investigative fields.

CILIP: 7. Let's come back to the way the agencies try to undermine the intent of the FoIA legislation. Can you, please, elaborate a little bit with regard to these and potential executive countermeasures? What do the agencies do to hinder the possibility to get informations?

Shat.: Well, my favorite example is one that's recently come to light about practices in the CIA. The CIA has two sets of files. They have what they call their agency files, their indexed files, and then they have their "soft" files. Soft files are files that are not put into the central agency index and are available only to those on a need-to-know basis who are working on particular cases. For example, most of the CIA files on the Angola war were soft files and therefore not indexed or available for request. If I would write to the CIA and say, give me any and all files that you have pertaining to CIA expenditure of funds in Angola they would check their central index and find nothing and respond and say, our central index shows nothing. But the soft files which they've got in their offices would be protected from access. There are probably many other examples like that.

CILIP: 8. Now I want to ask about a specific problem of implementation - to use a new fashionable term of the political science community. "The Law requires", to quote Halperin's introduction again, "release of all reasonably

segregable portions which are themselves not exempt?" How can one control this kind of segregation process? What are the rights of the client with regard to the power of the agency to define what is an exemption and how to "segregate" material?

Shat.:Well, the only way you can effectively do it is to go to court. That's why I used the example of the Hiss case as a procedural remedy for implementing the Act, but to get the agencies to segregate unless they're going to be threatened with a lawsuit is almost impossible. So as a practical matter what I would do in representing someone under the FoIA is to say in my letter that if you do not comply with the Act we are prepared to sue. That way you immediately threaten the agency with ligitation. Without the threat of suit implementation means virtually nothing.

CILIP: 9. The FoIA is applicable only to acts and information of the federal bureaucracy, as far as I know it. Does not this limitation imply that very important areas of public concern are almost totally exempt - especially all acts of the state police and so on?

Shat.:Well, on a state-by-state basis there are similar statutes. Somes states have better freedom of information statutes than the federal government has; some states have worse; some states have none. One of the problems of regulating police behaviour in the United States is the federal nature of our political system and it is extremely rare that Congress would regulate state police activities or seek to legislate for all state and local governments as well as for the national government. So it's true as you suggest that the FoIA is limited because it is applicable only to the federal government. But it's not surprising because this is the way that much federal legislation in the United States operates.

CILIP: 1o. What are, in your opinion, the prospects of the FoIA? Can you please answer this question by focusing on activities you ,the ACLU ,and other institutions have undertaken or will initiate in this respect?

Shat.:Well, we have used the FoIA to get access to FBI and CIA files in the period after and during the Watergate episode as a way of building a public record to reform the FBI and CIA. We have, for example, requested all of the FBI files on its counter intelligence programs and its attempts to disrupt political activities and to provoke violence. A large portion of those files have now been disclosed as a result of ACLU litigation. But we don't just use the FoIA to do this. We also bring private law suits on behalf if people who have been damaged by the government. For example, I was Morton Halperin's lawyer in suing Richard Nixon and other members of his administration for wiretapping Halperin for 21 months. That suit was much more successful than the FoIA ever could have been in forcing the disclosure of a great deal of information about how the Nixon White House operated in its early days to try to stamp out enemies and investigate political dissenters. The information that we got in the Halperin suit amounted to some 1o or 15,ooo pages. And we were able to take depositions, i.e. to put under oath and to question various officials, including Nixon himself. I took Nixon's deposition after he left office. We were able to depose Kissinger, Haldeman, Ehrlichman and others. We never could have done this under the FoIA but because Halperin was a private litigant we were able to get a great deal of information out through this lawsuit. So in balancing the value of the FoIA against this more traditional form of litigation, the more traditional form is probably more successful as a way of getting access to police files and other sensitive materials. There are no exemptions for information sought in private ligitation, although the information does not necessarily become public. In the Halperin case, the information that we got and the depositions that we took were placed under a court protective order which means that we were not at liberty to disclose them publicly until the court permitted us to do so. But there was no way for the government to withhold that information unless the President were to assert executive privilege. An executive privilege is a much narrower concept than an exemption under the FoIA.

Since executive privilege was not cited in the Halperin case, a great deal of material came out.

CILIP: 11. Perhaps a more analytical question would be if the FoIA is not in itself a kind of danger, in so far it legalizes two exemptions? And therefore it could be that again there is an imbalanced kind of development.

Shat.: This is a constant theoretical and practical problem for civil liberties lawyers like myself. Not only with the FoIA but with other statutory reforms that we are seeking all these are possibly authorizations of government practices that were previously left vague. To be specific again, take the current bill that is pending in Congress to require a court order for wiretapping. This bill would authorize and legitimate a great deal of wiretapping that has been going on in the shadowy area of presidential power but has not been authorized by Congress. On the other hand the statute would bring the courts into the process and require them to review applications for wiretaps. The ACLU has opposed this bill repeatedly over the last six years and at the same time has sought improvements in it. And finally we have gotten most of the improvements that we sought. So we're now being asked whether the bill should pass and we're very reluctantly saying that it probably should because it takes us from A to B although it doesn't take us from A to C. It doesn't eliminate wiretapping but it would restrict its use. On the other hand, it would also authorize the use of wiretapping. This is going to be true of similar legislation to control the FBI; this will certainly also be true of legislation authorizing the CIA to do certain kinds of things.

CILIP: 12. Now the final question about the FoIA. I asked all these questions to get a few highlights about the 'theory' and 'practice' of the FoIA. But I have asked these questions also out of a specific interest. As you know all liberal democracies of the so-called Western World are today again and increasingly jeopardized by the expansion of the area of official secrets, the new arcana imperii. Do you think that the FoIA is a specifically North American measure which can be understood only in an American context or do you think that it would be possible to transplant - so to speak - into slightly different legal, political and historical settings and contexts, e.g. a German one?

Shat.: I think it would be difficult to transport the FoIA from what I understand has been the tradition and practice of secrecy in government in most other liberal Western democracies. The country which of course the United States is closest to and in many respects is modelled upon is Great Britain. In Great Britain there is a long tradition of official secrecy, in fact, probably broader than almost anywhere else among Western democracies. The British policy is to withhold all government information and to prosecute anyone who discloses it. This suggests the difficulty of transplanting the FoIA.

"We got information on you!"

STOP GOVERNMENT SPYING!

CAMPAIGN TO DEFEND CIVIL RIGHTS

THE RIGHT TO FREE ACCESS TO INFORMATION, "FREEDOM OF INFORMATION"

A survey of the legislation and practice concerning the access to government documents and state administration agencies

S.A. Barram (member of the managing committee of the Berlin Chapter of the Humanistische Union) and Utemaria Bujewski

Introduction

Public opinion, which assumes free access to information, is a component of democracy. Access to information is therefore an indicator of democratic state organization. Government and administration gather, process, judge and store enormous quantities of information that directly concerns the individual. For that reason alone the individual's title to access does not need a particular legitimation. There have, however, been attempts to legitimize the government's and administration's claim to secrecy: So far the arguments that have been brought into discussion are truely weak:

- Openness negatively influences the functioning of the government and administration and also impairs the efficiency of state actions;
- The involvement of the courts in the enforcement of the title to information contradicts the principle of secretarial responsibility;
- The costs of such administrative practices would be too high.

Such arguments are not suited to strengthen the individual's confidence in government. Democratic exercises of power must be transparent as Watergate particularly points out.

The demand for access to information excludes by no means a partial secrecy. The protection of the right to privacy must be secured, all other exceptions from the release of information must be strictly limited and rational and may not contradict the principle of governmental transparence. The "independent discretion" of officials to withhold information, should consequently be reduced to a minimum.

However, less spectacular examples of governmental misuse do not belong in closed committees, but in the open.

An example of the success of the legal duty to inform is the exposure of the practices of the CIA and the FBI in the USA (the persecution of religious and human rights groups, incitement of murder and violence, the encroachment upon individuals' right to liberty and fundamental rights); it likewise became possible to uncover corruption and inefficiency in various government agencies by means of the Freedom of Information Act.

Members of Congress, civil rights organizations and representatives of the news media and the public have made extensive use of this law. The consequence has been a significant number of congressional inquiries and hearings. This has led a new to a strengthening of legislative control of the intelligence services.

Because most of the member countries of the Council of Europe deny the public access to most official files and records, the delegates from the member states have discussed and now demand a new statutory regulation of the problem of the openness of the governments. It should include the following:[1)]

1. Personal information, which is gathered about a person, must be made accessible to him and he must have the right to have wrong information corrected or stricken.
2. A ban on the transmittal and dissemination of data on individuals, if this leads to an encroachment on the private domain.
3. Creation of the possibility of utilization of official information by the public.
   The demand for access to information excludes by no means a partial secrecy. The protection of the right to privacy must be secured, all other exceptions from the release of information must be strictly limited and rational and may not contradict the principle of govermental transparance. The "independent discretion" of officials to withhold information, should consequently be reduced to a minimum.

4. Guarantee of a speedy judicial ruling in cases where official authorities have held information back.

The Council of Europe bases the right to access to official documents and the right to alter and correct personal information on the European Convention on Human Rights: Article 1o guarantees free speech and liberty of opinion. This right includes the freedom to receive and distribute information.[2)]

It is recommended that the secrecy ruling be abolished and replaced by a modern concept of an open public administration.

USA

One must count, among the efforts aimed at "cleaning up" the country, the legislation dealing with freedom of information (FoIA) was signed by Lyndon B. Johnson with declamatory effect on Independence Day 1966, but first took effect on July 4, 1967.[1)]

It was meant to usher in a new era of transparence and accountability to the citizens.

The end of a long period of bureaucratic secrecy that the USA had inherited from England was expected. It was believed that this law would close a chapter in American history which was marked by a continuous conflict of interests between the individual and the administration: the individual demanded clarity and the administration was nervously anxious to protect and preserve the official secrecy.

The supporters of the bill trusted that the enactment of the FoIA would finnaly establish the right of the citizens to information about thefunctioning of their government.

Through the manner of application by the administration, the FoIA sank rapidly into meaninglessness. The administration used the legal loopholes, and above all the absence of implementing regulations. Immense fees were charged for information, and because there were no time limits for the delivery of material waiting periods went into months. The courts had no possibility of looking into the materials in order to examine the legality of the classification. The officials discretion was unlimited.

R.Nader, one of the driving powers in the human rights movement in the USA, said that legislation "that was introduced with liberal rhetoric, is being undermined through refined official subtleties" (from: The New Zealand Law Journal, July 19, 1977).

In the context of the Watergate affair and the ever more threatening uncontrollable authorized power of the intelligence services initiatives were started up with the aim of amending the law. After many congressional hearings an addition to the FoIA was passed against the veto of president Ford with an overpowering majority in both Houses. The amended FoIA came into force on Febr. 19, 1975.[2)]

The subject matter of the congressional discussion was primarily the secrecy classification and the related question of the competency of the courts to review the legality of a refusal to release information.

They were fused together in the authorization of the courts in look into files in private,[3)] to impose the costs of a trial on an agency that loses and the possibility of sanctions against an official who exercises faulty judgment.[4)]

The amended FoIA contains further regulations and mechanisms for sanctions concerning the availability of guidelines, principles of interpretation, guides and service instruction, information and individual sources as well as for the preparation of Indexes.

With the amended FoIA the opening of the government and agency documents became a declared principle. The exceptions in the

USA

Since the revision of the FoIA the organs responsible for criminal prosecution in the USA have spent more than 36 million dollars in order to respond to the applications that have been placed according to the FoIA. Most of the money was spent on the salaries for the officials who process these applications. (Source: Organizing Notes, Vol.2, No.7 (1978)).

1966 law that had become the rule were now limited and specified. There are 9 areas now legally defined as excepted from the right to information.[5] They will be cited here. Critized, and in practice controversial, is the interpretation of the areas:

(1) National defenxe and foreign policy

(2) Investigative files, and secret service activity of the CIA and FBI. (See in this issue: Interview with J.Shattuck)

Exempted from publication are documents and sources that concern themselves with affairs,

"(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order."

Prof. Rankin mentions in this context that there is, however, no reference in the American Constitution of giving the president the power to classify documents,[6]

"(2) related solely to the internal personnel rules and practices of an agency; (3) specifically exempted from disclosure by statute (other than the section 552b of this title) provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

Until 1976 it remained unclear as to how far this exception to the rule could be interpreted. The U.S. Supreme Court held from this point in time on that general classification had no legal validity and such a classification did not belong in the judgement of the agencies.

"(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential."

In contrast to this exception, however, there exists a duty to release for publication case summaries free from personal data,

"(7) investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D)disclose the identity of a confidential source and, in the case of a record compiled by criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel; (8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions,

(9) geological and geophysical information and data, including maps, conserning wells."

Although these exceptions still provide plenty of room for agency judgment, one must still keep in mind that these regulations of the exceptions are yet more precisely formulated than those in countries with comparable legislation.

Sweden

In Sweden the right to access to government files is guaranteed in the constitution. In Chapter 2 (Fundamental Freedoms and Rights) Art. 1 the freedom of information is guaranteed.[1]

While here every citizen is conceeded the general right to information, Art. 13 describes the information which may not be granted. Among that information is the publishing of papers which endanger

- the safety of the Realm
- the national economy
- the public order and security
- the integrity of the individual
- the sancticity of privacy

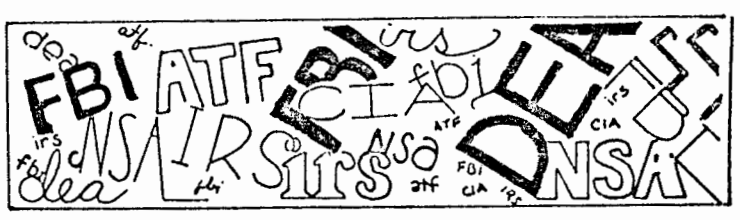
and

- the prevention and prosecution of crime.

Moreover information can be refused of certain grounds speak against release.

The Swedish press law from 1976/77 gave form to the constitutionally guaranteed right to access the information. In Art. 1, Chapter 1, the right of information for publishing

All the President's men .....



purposes is initially affirmed.
However, in Art, 2, Chapter 2, "necessary" modification are made which relate to a potential endangering of the Realm, the relations to other countries and international organizations, the finance and foreign currency politics and crime prevention. Art. 13 lays down strict fees for reproduction work done by the agency and makes an inspection in person possible when information cannot be duplicated for technical or other reason.
The applied process for requests for information is simple: The corresponding document is requested from the respective agency or the responsible official. He then decides whether the document is confidential and therefore not suited for transmission, or public and therefore accessable.
It is assumed that a paper is public if it has not already been classified as secret by law. Among those are the above mentioned exceptions and above all the exceptions in the Swedish "Secrecy Law" from 1937 (supplemented in 1962).
Aside from these regulations it is left to the judgment of the agency or official to decide what is suited for publication and what is not; normally there is a remark in the file estimating its importance. This remark is not binding, but is usually a determining factor in the decision.[3] The officials are obliged to respond without delay and the applicant has the right to call upon the next highest official if there is unreasonable delay or denial of his request.[4] In case of a renewed negative decision the courts have jurisdiction. Both the withholding of information and the publication of secrets in information is a criminal offence.
The"Swedish Model" wins, in the discussion of freedom of information in the other Scandinavian countries, deserved high esteem regarding the demand for transparance of government and administration and for "participatory democracy".
However, it must be critically remarked that the sometimes poorly defined exceptions as well as the relatively large room for judgment on the part of the officials more than slightly limits the at first sight progressive legislation. Three examples clarify the handling of the Swedish Information Law:[5] A citizen who wants to acquire facts about police measures against organized crime will receive no information based on documents. However, he can inspect a report of the Swedish police chief to the Attorney General in which the circumstances are described which led to the observing of a communist meeting by the secret police.
Furthermore a citizen searching for data on environmental protection was able to inspect the reports of the Royal Swedish Commission. Through them he learned of the commercial use of forest reserves that led to their destruction, of the misuse of DNT as well as a number of other poisonous substances that were added to foods and beverages. It is true that teletypes, document letters and minutes of a meeting etc. of the Foreign Ministry are classified and may not be inspected by journalists, presumably, however, they may be partially read out loud by a government official.

Finland, Denmark, Norway[1]

The Finnish Freedom of Information Law was passed in 1951, the Danish and Norwegian in 1970. While the Finnish law is outwardly similar to the Swedish, the Norwegian and Danish laws provide much less right to information. In Finland every citizen has the right to inspect government files and in case of a refusal he can turn to the court. The number of exceptions is,however,much higher than in Sweden.
The following may not be made public:

- "official documents", which are qualified as "applications, drafts, reports, opinions, memorandums or other studies";
- all materials, which relate to the national security, foreign relations, the police apparatus, personal sphere, competence or judicial proceeding of the government or of private persons.

The generality of the regulation of the exceptions leads to a severe limitation of the law.

The situation in Denmark and Norway is similar so that one can confidently say

The following sticks come from England. They have been published in a solidarity campaign for two journalists and a former soldier, who had been accused of having published officials secrets.

that the sealing of government documents is the rule and the publishing is the exception.
In Denmark there are such wordings as "where secrecy is demanded by the specific character of the circumstances", in order to avoid a public access to documents.
Norway denies among other things the inspection, if the government representatives are of the opinion that the documents could fall into the wrong hands and the dissemination may harm public and private interests. The access to information relates in Denmark as well as in Norway only to documents which originated after the effective data of the law.
The sense of such legislation has - at least it appears so - in these countries solely legitimation character. Nothing has changed in the practice of the government and authorities in their attempts to avoid control by the citizenry.

United Kingdom

The English Official Secrets Act can prohibit practically every information concerning measures taken by the government or administration. For years there have been demands for an amendment to the Secrets Act and especially the elimination of subsection 2 of the official secrecy act. This subsection can criminalize any distribution of any official information of an official of the Crown or the receipt or further distribution of such.

Resistance to an amendment comes from the civil servants who are traditionally conservative and endeavour to preserve the status quo through secrecy and social anonymity.

For some time a movement has established itself insisting on a change in the present situation. The discussion of the situation is indeed being carried out outside the parliament, but in spite of that fact it is supported by members of parliament. The "All Party Committee for Freedom of Information" has in the mean time prepared a basis for discussion, through design of a bill to be introduced. In it the six main demands are named:

1. *The Right to Know. As discussed above, essentially all official information is available for public utilisation.*
2. *The Right of Privacy. The first major exemption from free disclosure of information is that of privacy. Personal information shall not be freely divulged or distributed if it would constitute an unwarranted invasion of privacy.*
3. *The Right to Inspect. Each individual would have the right to inspect records concerning him personally and check the veracity of them. (Special limitations being made for categories of police information where this would be manifestly undesirable as a blanket provision).*
4. *The Right to Correct. Each individual would have the right to correct information about himself that was demonstrably incorrect.*
5. *The Right that only Valid Information may be disseminated and used by the Administration.*

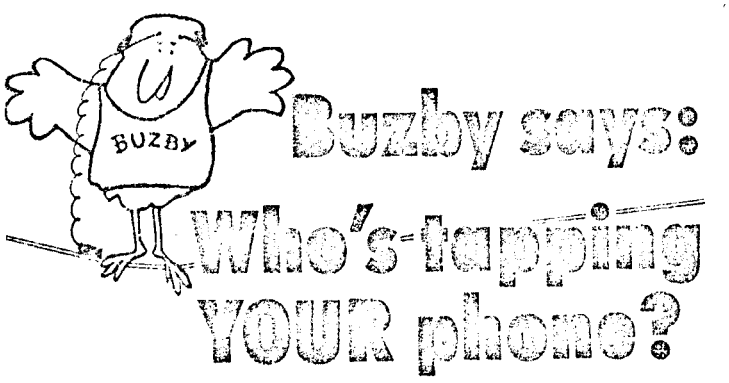
   This is probably the most vital point affecting administration and administrative law. Each organ of public administration would be required to ensure that their information is as accurate and valid as possible before relying upon it. It means in effect that not only must administration be done, but that it must be "seen to be done".
6. *A Right of Rapid Action before the Courts to enforce the above rights, in which the burden of proving the necessity of withholding or not correcting information lies on the government, and where costs are borne by the government if the plaintiff substantially prevails. This is an essential practical aspect of such legislation. The spirit of the original American Freedom of Information Act was frustrated by the U.S. agencies' ability to create excessive unrecoverable costs for individuals seeking access to information, through delays and side issues. Further, the plaintiff had the burden to convince the court that the withheld information, which he did not have, should*

be released over the objections of the agencies, who said it should not. The substance of the amendment passed in 1974 was that the agencies should prove why information should not be released; provision was made for in-camera inspection of the information by the Court; and plaintiffs do not need to be exclusively members of higher income bracketts.

The draft provides further, that deviations from the principle of Freedom of Information can only be based on exactly defined regulations of exceptions.

Access to information shall be excepted when it touches any of the following areas:

1. *On grounds of personal privacy. This follows the Younger Committee's recommendations and is a step ahead of the Swedish system where there is scant provision for privacy in the public sector. The government has accepted the Younger Committee's principles as they apply to computerised information. As stated above, these principles also apply to non-computerised information and the Committee's proposals are evidently in complete conformity with the Government's thought there.*
2. *Military Information. Certain types of military information must obviously be non-disclosable in the national interest. On the other hand, defence spending, what the public get for its money, and what our military capability is, should be publicly available. The Committee has suggested a way of differentiating this information which it is hoped is acceptable.*
3. *Police Information. Generally police information is not disclosable, except where investigations are discontinued, or where suspects' innocence has been established. Those involved, may, under certain circumstances gain access to materials relevant to a particular investigation to safe-guard their own interests. The principle incorporated in this provision is that it is better a hundred guilty persons go free than one innocent person be blackballed, harassed or falsely accused. This is especially important where police information can be transmitted overseas to countries whose laws and procedures are not necessarily such as would meet the standards of fairness and justice required in this country.*
4. *Internal Security Information. This is self explanatory. But the exemption from disclosure applies only to bona fida internal security activities, and if mala fides are proven, the exemption is overridden. There is no suggestion that mala fide acts have been or are being committed in this country, but the exposures of "Watergate" in the United States and abuses comitted by the FBI and CIA show that possibilities exist for such forms of corruption. With compurisation of data banks, it is as well to preclude such possibilities in this country.*
5. *Trade Secrets and Financial Information given by private individuals and companies to the government (a special form of privacy, worthy of seperate mention).*
6. *Medical Records. These would be made available to patients only through the agency of their own doctor.*
7. *Cabinet Minutes. The Committee proposes that Cabinet minutes should also be exempt from disclosure, unless a majority of the Cabinet rules otherwise. It is also suggested that the period during which these minutes are kept secret should be substantially reduced. However, this is not an essential point of this draft Bill, and is easily suspectible of minor or substantial amendment.*



In its campaign for a "Freedom of Information and Privacy Act for the United Kingdom" the "All Party Committee for Freedom of Information" refers to the rights to information in Sweden and the USA.

France

In France there is at the moment no legislation concerning freedom of Information.
A commission called together by the Minister President for the "Coordination of Administative Documentation" presented its report in 1974. In the report it submits suggestions for the improvement of access to official documents. As a result of that, an appointed working group under the chairmanship of a member of the State Council (Conseil d'Etat) worked up a draft of a law ("Rapport Tricot") and presented it to the Minister President in 1976.[1)]
On January 6, 1978 the French parliament passed essentially following the suggestions of the working group - a Law on protecting of data (loi sur l'informatique et des libertés) which regulates in its Art. 34-36 the access of private parties to agency data. The law did not, however, go into

effect. It contains a 2 year preparatory period; during this time it can however be effected by decree. This right limits itself however to personal information.
Basicly there exists an agency obligation to fulfill the application for information. Against a negative decision both the administrative courts and the "Commission nationale de l'informatique et des libertés" can be invoked. Personal data in the areas of state security, defence and the police cannot be obtained directly from the agency in question, but must be obtained, via direct inquiry, from the Commission de l'informatique et des libertés. The decision of the Commission is subject only to a limited review.[2)]
A bill which would open access to non-personal data is being discussed by the French parliament (Le Monde, June 29, 1978). This bill aims at excluding from notice both the internal administrative instruction, which also includes the basis of the French administrative system, the "structions", as well as data which in any way contains the names of persons.

Up to today the opening up of official documents has fallen under regulations in the French criminal code and the "General Service Instructions for the Civil Service".
Art. 7o et seq. of the French criminal code makes the passing of secret information a criminal offense, especially when it concerns the national defense. On the other hand, however, there is no obligation to secrecy for information which is not classified as secret. In the "General Service Instructions for the Civil Service" on this subject:

"...every civil servant is under an obligation of professional discretion in respect of anything concerning facts and information which come to his knowledge in the exercise or in connection with the exercise of his functions. Any diversion or communication of internal papers or documents to third parties, that is in contrary to the regulations is strictly forbidden. Apart from cases expressly provided for in the current regulations, a civil servant may not be freed from this obligation of discretion or exempted from the prohibition laid down in the preceding paragraph except with the authorisation of the minister to whom he is responsible."

In practice the difference between the obligation to explicite secrecy of non-secret information and the obligation to discretion does not receive any backing: There is no law that an agency is obliged to make information accessable to the public. The obligation to discretion, bound to the service instructions must suffer as a codified secrecy title so that the decision about the publication of non-secret information can only be taken at the ministerial level. That goes so far that even when one is personally affected he cannot look into the government documents unless it has to do with details about birth, marriage, death, sickness, or financial data.[4)] A series of examples shows how beneficial such legislation can be when it comes to depriving the public of control over the exercise of state power. For example in 1973 as a Senat Committee was called upon to examine the practice of telephone tapping (Affaire Le Canarol en-chaîné) it took consequent refuge in Art. 7o et seq. of the criminal code:

"The areas of enquiry of the committee set up to monitor administrative departments carrying out telephone tapping are covered by national defence secrecy from which no-one may release me. Owing to the mandatory nature of these provisions, I am unable to comply with the committee's request to appear before it." 5)

Finally it should be noted that the French local government law provides for a publication of the minutes of meetings and their chronological recording. The written inquiry to parliament members is legally secured as an instrument.[6)]
This cannot be seen however, as an extraordinary willingness on the part of the state to make the governmental and administrative apparatus more transparent for the citizen.

Austria

In Austria there is no Freedom of Information Law.[1)] However, in 1973, a federal law was passed which obliges the federal ministries to answer applications from citizens.[2)]
On the other hand this obligation, introduced through legislation, is limited: Information yes, but only so far as a ministry is not obliged to secrecy as is prescribed in the Austrian constitution.[3)] This law can, however, only be applied to federal

agencies. It does not oblige the state agencies to give out information.[4)]
The legal situation regarding the safeguarding of state secrecy in Austria is unclear. The government obligation to secrecy is not legally well defined.[5)] The 1973 law does not contain any regulation which obliges an agency to show, permit the copying of, or hand over of documents to an applicant. Based in this law there is not any legal possibility of enforcement in case of a refusal. It remains unclear to what extent the right of every Austrian citizen to appeal administrative acts also applies to the right to information from government officials.[6)]
The discussion about freedom of information in Austria has centered exclusively around the breath of interpretation of the 1973 federal law. A start toward basically new legislation as in Sweden or the USA has still not been undertaken.

Federal Republic of Germany

Art. 5 Abs. 1 of the Grundgesetz (constitution) of the Federal Republic of Germany provides the individual with the right, "to inform himself without obstruction from generally accessible sources".
Within the discussion about the right of freedom of information, and especially the right to inspection of files, no claim to inspection of files is or can be deduced from this fundamental right. This was affirmed in a fundamental decision of the high court on administration affairs in Münster relating to Art. 5 sec 1 of the Grundgesetz.
A potential legal title to inspection of files was denied, because official files are not generally accessible sources in the meaning of Art. 5 sec 1 of the Grundgesetz, "because they are not generally accessible to public inspection". This restrictive handling is contrasted with the conception, that the citizen's need for information can be ensured and satisfied through media reporting. Indeed the press enjoys a privileged status in comparision to that of the average citizen, however, their possibility of controlling state action is also limited by a series of laws.
For example the 1965 Berlin Press Law (Berliner Pressegesetz) § 4 subsec. 1:

"The agencies are obliged to grant information to representatives of the press, who establish their identity as such, for the accomplishemnt of their duty."

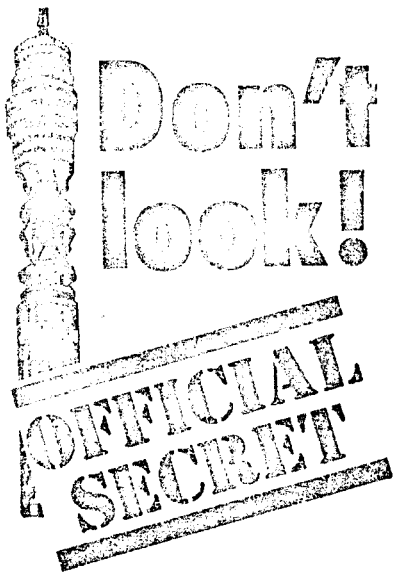
And in subsec. 3:

"General directives, which forbid an agency to give information to the press, are prohibited."

In contrast, however, is subsec. 2 of § 4:

"Information can only be denied, as far as
1. it contradicts regulations of government secrecy
or
2. measures, as a result of their character, must be kept permanently or temporarily secret, because their disclosure would injure or endanger the public interest
or
3. thereby the proper execution of a pending trial could be frustrated, impeded, delayed or endangered
or
4. a private interest worthy of protection could be injured."

The right to inspect files is regulated in § 29 *Verwaltungsverfahrensgesetz* (the Administrative Procedure Law). Accordingly files and other papers can only then be inspected, if they relate to administrative litigation, and only then from the point in time of the initiation of the litigation, and only as an involved party.[3)] Inspection of the files is dropped, if an agency could be impaired in its duties through inspection when the publication would injure the Federal Republic



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or a federal state, if a legal secrecy obligation exists, if need for secrecy results from the character of the matter.[4)]

The guaranteed right to information in § 25 *Verwaltungsverfahrensgesetz* likewise refers only to the necessary information concerning the rights and duties of the parties to the litigation (subsec. 2). This applies likewise to the press, so that summarized one must state, that:

1. the press is dependent on the information which the agencies release, and this decision is based solely on agency discretion.
2. The control function of the press is thereby decisively influenced, if not altogether prevented.
3. "Freedom of information according to the Verwaltungsverfahrensgesetz is primarily aimed at the protection of the rights of the parties. ....'the principle of openness with a secrecy clause' is not codified by the Verwaltungsverfahrensgesetz; rather the secrecy principle is extended to include a - narrowly defined - openness clause in favor of the involved parties."[5)]

In light of this fact the German Press Council is demanding the amending of 353b. *Strafgesetzbuch* (Criminal Code). In this law the passing of information is placed under penalty, if it is specified as requiring secrecy. Even in an administrative proceeding the examination of the legality of the secrecy of a piece of information is not admissable (§ 99 *Verwaltungsgerichtsordnung - Regulation on Courts of Administrative Affairs)*. The Court of Administrative Affairs has to be satisfied with the assurance of the officials, that the disclosure of the contents of a file would injure the "well-being of the Federal Republic" or federal state.[6)]

One can expect, that demands relating to a change in the current status would run into vehement resistance from the administrative authority. Up to now they have been able to successfully escape transparence and control by the citizenry. This fact must be considered in a reform of laws of information. Strategies of government secrecy that evade the publicity dictate, as used for example in the USA after the 1967 legislation, must be avoided from the beginning.

The German legislation on the protection of data is effected both for federal agencies as well as for state agencies. The citizen's right to information is directed thereby uniformly at personal data, all other administrative records are excluded. But even this reduced claim to information is from the beginning limited to a minimum by the principle exception of all data stored with the police, criminal prosecutor and Domestic Intelligence Office. At the same time there are still added limitations at hand, in the direction that all other agencies can also deny data, if this can lead to an endangering of its function, the public security and order are affected, or the well-being of the Federal Republic or a federal state could be injured. Even the transmission of personal data from an area which is not per se excluded, to, for example, the police, is subject to the information ban (compare § 13 *Datenschutzgesetz* - Federal Data Protection Law). Controversial is even, whether solely through the act of transmission to the police the data are already excluded from the right to information, according to the motto: Well-being of the state before the well-being of the citizen (compare Ordemann-Schomerus, Bundesdatenschutzgesetz, with commentary, 2.ed. 1978).

Introduction

1) Council of Europe, Strasbourg, June 21, 1978, AS/JUR (3o) 16 Parliamentary Assembly, Legal Affairs Committee, Access by the public to government records - Freedom of Information Draft Report by Mr. Lewis
2) Ibid., III. Explanatory Memorandum and Doc. 3651 (Statutory Report of the Committee of Ministers)

USA

1) Title 5 U.S.Code Section 552
2) See Morton H. Halperin, Freedom of Information Act; Overview and Introduction, in: Christine M.Marwick(editor),Litigation Under the Amended Federal Freedom of Information Act, Washington, D.C., 2.ed. 1977, p. 9
   See also: Freedom of Information Act and Amendments of 1974, Source Book, Joint Committee Print, 94.Congress, 1st session (March 1975)
3) Details in: Morton H. Halperin, l.c.S. 15 et seq.
4) U.S. Code, § 552 (a)(4)(6); for court fees and trials strategy see: Jack D. Novik/ John F. Shattuck/Larry P. Elleworth, in: Christine M.Marwick, l.c.

5) Public Law 93-502
6) Murray Rankin, Freedom of Information in Canada, Will the doors stay shut? An inquiry under mandate of the Canadian Bar Association and the University of. Victoria Law School, August 1977, p.47, footnote 14
7) The actual number of such secrecy laws is not clear, it is supposed that at least 100 exist; compare Joachim Scherer, Verwaltung und Öffentlichkeit, Baden-Baden, 1978, p.273, footnote 387

Sweden

1) Compare Constitutional Documents of Sweden, Amendments to the Instrument of Government, The Riksdag Act, The Freedom of the Press Act, adopted by the Riksdag at its 1976/77 ordinary session, Published by the Swedish Riksdag
2) Compare Stanley V. Anderson, "Public Access to the Government Files in Sweden", in: The American Journal of Comparative Law, 21, 1973, p.424
3) Chapter 2, Art. 14 of the Swedish Press Act; compare Stanley V. Anderson, l.c.,424, footnote 23
4) Ibid., Chapter 2, Art. 8-13, footnote 22
5) All in: Svenska Publikation Nr.93, Sept. 1975
6) Swedish Press Act, Chapter 2, Art. 3 and 4

Finland, Denmark, Norway

1) This chapter presents a summary of a report given on the occasion of a colloquium of the Council of Europe; Source: Proceedings of the Council of Europe on Freedom of Information and the duty of the public authorities to make available information, conducted by the Committee of Experts for Human Rights together with the Faculty of the University of Graz, Austria, 21 - 23 September 1976, p.14

United Kingdom

1) See about this topic: CILIP No. 0, March 1978, p.7
2) A Freedom of Information and Privacy Act for the United Kingdom, All Party Committee for Freedom of Information, London, 1978, pp. 6

France

1) Louis Fougère, Freedom of Information, Report given on the occasion of a colloquium of the Council of Europe on Freedom of Information
2) André Holleaux, La Loi du 6 Janvier 1978 sur l'informatique et les libertés, Revue administrative, Jan. 1978, No.182, pp.160
3) Art. 1o of the General Service Instructions from Feb. 4, 1959, in: Louis Fougère, Freedom of Information and Communication to Persons of Public Documents in French Theory and Practice - Present Situation and Plan for Reform, Report on the occasion of the colloquium of the Council of Europe on Freedom of Information
4) Compare Art. 378 of the French Criminal Code and Louis Fougère, l.c.
5) Louis Fougère, l.c., Original: Documents. parlamentaires, Sénat, 1ere session ordinaire de 1973-1974, Rapport No. 3o, p. 85
6) Art. 3o - 34
7) Based on regulation from December 3o, 1958, and Jan. 2, 1959 government officials are obliged to place at the disposal of the parliament, documents relating to financial transactions. Compare Louis Fougère, l.c.

Austria

1) On October 18, 1978, the Republic of Austria has enacted a legislation on personal privacy which gives more rights to the citizen than for example the German law.
   Source: Bundesgesetzblatt für die Republik Österreich vom 18.Oktober 1978
2) Law from June 11, 1973, BGBl. Nr. 389
3) Ibid., subsec. 3, § 5
4) Compare Ludwig Adamovich, The Obligation of Austrian Government Departments to Provide Information in Response to enquiries by Citizens as a Means towards Promoting Freedom of Information, l.c., p. 3
5) Ibid.; Art. 2o § 2 of the Austrian Constitution obliges all civil servants to say nothing relating to matters in connection with their activities.
6) Ibid.

How photogenic is the Police?

On Sept. 9, 1978, the provincial supreme court in Celle, Federal Republic of Germany (FRG), decided the question, whether the photographing of what was considered to be a legal police action at a demonstration could be construed as an imminent endangering of the public security and order, and therefore the arrest of the photographer were legal.

Excerpts from the opinion:

"...because, according to the conclusion drawn, the witness pursued a different goal: She wanted the reproduction for the publication of a presentation of a 'police mugging'. This means, however, that the officers were to be exposed to the unjust charge of illegal activities. With this an attack was planned on the police which was outside of contemporary documentation and was also meant to be outside the framework of exercise of political interests through slanted reporting."

Therefore the photographer was rightfully arrested - according to the provincial supreme court.

Federal Republic of Germany

1) High Court on Administrative Affairs, decisions 14, 199, 2o4. See also High Court on Administrative Affairs Rheinland-Pfalz AS 3 134, 136; and Federal Court on Administrative Affairs, in: Deutsches Verwaltungsblatt 1966, pp. 575
2) The legislation relating in the press is a matter of the states, on the federal level there is only skeleton legislation
3) See §§ 13 subsec 1 and 2, 29 subsec 1 Verwaltungsverfahrensgesetz (the Administrative Proceedure Law)
4) § 29 subsec 2 VwVfG
5) Joachim Scherer, l.c. p.23
6) compare ibid., p.81

X . REQUESTS FOR INFORMATION - CONTATCS

For an article about data processing systems of police and secret services following information material is required:
- statements to aims of those data processing systems given by police officers and other persons, who are entrusted with use and co-ordination of those data processing systems;
- newspaper and journal articles, which deal with construction of those data processing systems and circuit of data collection;
- information material about co-operation of polices and secret services of different countries in subject of data processing, data transfer and data collection;
- information material, which shows in what way different datas of physical condition, frontier-crossing, circle of friends, style of life and so on had been (can be) combined to facilitate search for persons.

We are looking for information material about NATO-institutions, which analyzes activities and aims of so-called terroristic groups, and which extract suggestions, recommandations or instructions, how to act against those groups, for the members of the NATO. We are interested in the organization structure of these institutions, in their concrete work and in their influence on national polices, secret services and governments.
Send your papers to
Torsten Schwinghammer
Seminar für Sozialwissenschaften der
Universität Hamburg
Von-Melle-Park 15
2ooo Hamburg 13

CHEMICAL MACE

Scientists, physicians and chemists, attention please!
To complete our selection of data on the effect of the use of tear-gas and its injuries to health we need contributions and scientific documents particularly on the tear-gas substances CN-CS and CR wich are used by the police in the FRG, the Netherlands, in France, Great Britain, Belgium, Luxemburg and Italy especially.
Newspaper reports documenting the usage of tear-gas in particular situations are also accepted.
Naturally, we pay any costs coming in.
Please, send your papers to the following address:

Jakob Petry
Ludwigstr. 51
6052 Mühlheim/Main

(Source:Christine M.Marwick (Ed.),Litigation under the Amended Federal Freedom of Information Act,Washington,D.C.,2nd.Ed.1977)

*The 1974 Amendments are underscored; the 1976 Amendment is double underscored.

A

§552. Public information; agency rules, opinions, orders, records, and proceedings.

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public--

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying--

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and

(C) administrative staff manuals and instructions to staff that affect a member of the public;

unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in writing. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if--

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

B

(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(4) (A) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees applicable to all constituent units of such agency. Such fees shall be limited to reasonable standard charges for documents search and duplication and provide for recovery of only the direct costs of such search and duplication. Documents shall be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its actions.

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

(D) Except as to cases the court considers of greater importance, proceedings before the district court, as authorized by this subsection, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

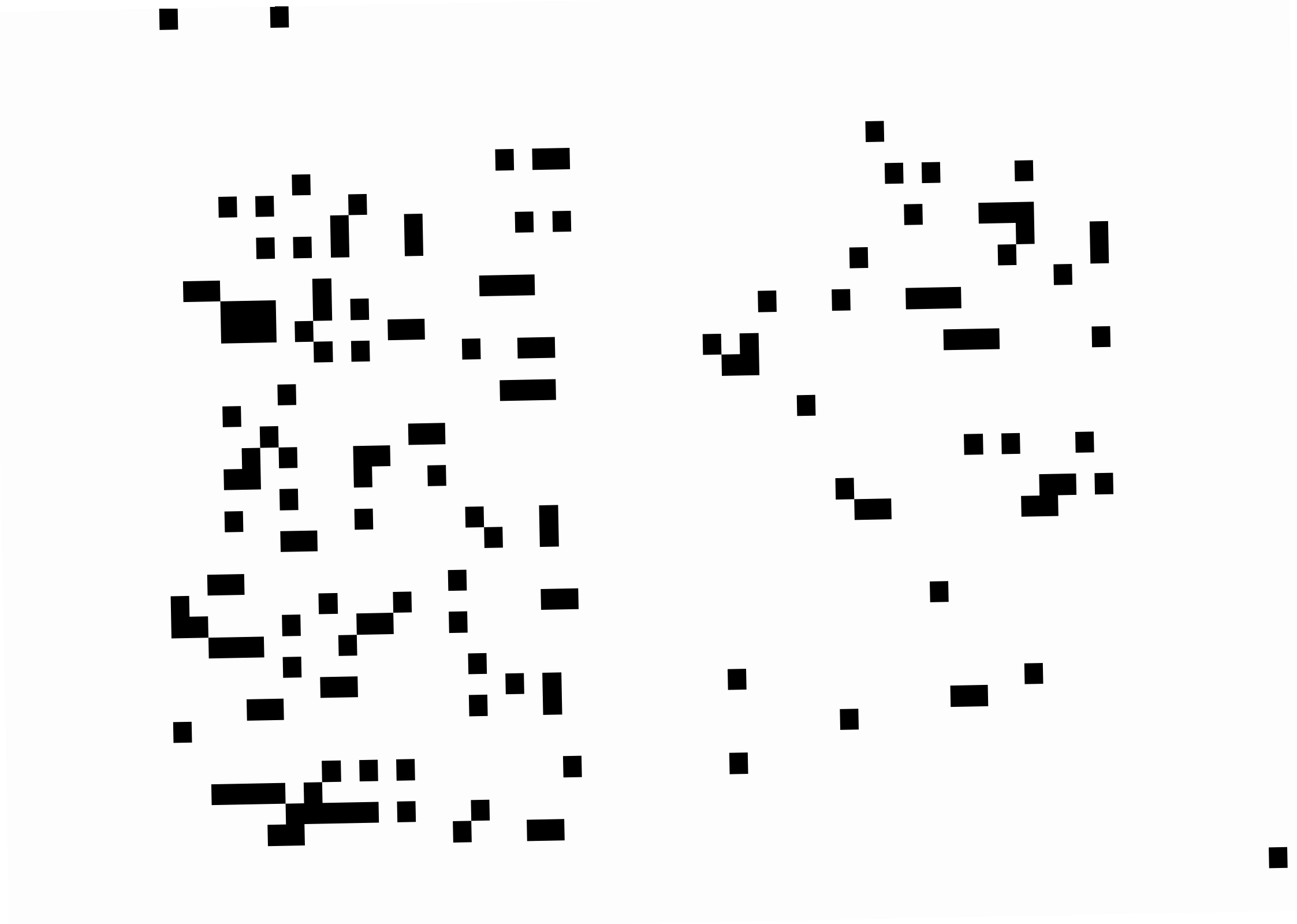
(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Civil Service Commission shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Commission, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority to the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Commission recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6) (A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall--



The Attorney General shall submit an annual report on or before March 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subsection (a)(4)(E), (F), and (G). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(e) For purposes of this section, the term 'agency' as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

LEGISLATIVE HISTORY: 1966 Act

(1) The most significant legislative materials concerning the original FOIA have been reprinted in Subcomm. on Adm. Prac. and Proc. of the Senate Comm. on the Judiciary, Freedom of Information Act Source Book: Legislative Materials, Cases, Articles, S. Doc. 93-82, 93d Cong., 2d Sess. (Comm. Print 1974).

(2) HEARINGS:
Senate Committee on the Judiciary, Hearings on S. 1160, May 12, 13, 14, and 21, 1965.
Senate Committee on the Judiciary, Hearings on S. 1663, July 21, 22, and 23, 1964.
House Committee on Government Operations, Hearings on H.R. 5012, March 30 and 31, April 1, 2, and 5, 1956 (and Appendix).

(3) SENATE PASSAGE - 88th CONGRESS:
S. Rept. No. 1219, 88th Cong., 2d Sess. (S. 1666).
Considered and passed Senate, July 28, 1964, 110 Cong. Rec. 17086.
On motion to reconsider, July 31, 1964, 110 Cong. Rec. 17666.

(4) REPORTS ON S. 1160 - 89th CONGRESS:
S. Rep. No. 813, 89th Cong. 1st Sess., Committee on the Judiciary, October 4, 1965.
H. Rept. No. 1497, 89th Cong., 2d Sess., Committee on Goverment Operations, May 9, 1966.

(5) FLOOR CONSIDERATION OF S. 1160 - 89th CONGRESS:
Considered and passed Senate, October 13, 1965, 111 Cong. Rec. 26820.
Considered and passed House, June 20, 1966, 112 Cong. Rec. 13007.

LEGISLATIVE HISTORY: 1974 Amendments

(1) The most significant legislative materials concerning the 1974 amendments to the FOIA have been reprinted in Subcomm. on Govt. Information and Individual Rights of the House Comm. on Govt. Opr. et al., Freedom of Information Act and Amendments of 1974. (P.L. 93-502), 94th Cong., 1st Sess. (Joint Comm. Print 1975).

(2) HEARINGS:
House Committee on Government Operations, May 2, 7, 8, 10, and 16, 1973.
Senate Committee on the Judiciary, April 10, 11, 12, May 8, 9, 10, 16, June 7, 8, 11, and 26, 1972 (and Appendix).

(3) HOUSE REPORTS:
No. 93-876 (Comm. on Government Operations) and No. 93-1380 (Comm. on Conference).

(4) SENATE REPORTS:
No. 93-854 accompanying S. 2543 (Comm. on the Judiciary) and No. 93-1200 (Comm. of Conference).

(5) CONGRESSIONAL RECORD, Vol. 120 (1974):
March 14, considered and passed House.
May 30, considered and passed Senate, amended in lieu of S. 2543.
October 1, Senate agreed to conference report.
October 7, House agreed to conference report.

(6) WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 10, No. 42:
October 17, vetoed; Presidential message.

(7) CONGRESSIONAL RECORD, Vol. 120 (1974):
November 20, House overrode veto.
November 21, Senate overrode veto.

LEGISLATIVE HISTORY: 1976 Amendment

(NOTE: Congress in passing the "Government in the Sunshine Act," P.L. 94-409, 94th Cong., 2d Sess., S.5, Sept. 13, 1976, 90 STAT 1241, amended section 552(b)(3), the FOIA exemption relating to other statutes. The pages cited in the legislative history are those pages related specifically to the amendment of the third exemption to the FOIA).

(1) HOUSE REPORTS:
No. 94-880, Part I (Committee on Government Operations) 9-10, 22-23, 25;
No. 94-880, Part II (Committee on the Judiciary) pp. 3-4, 7, 14-16, 25; and
No. 94-1441 (Committee of Conference)

(2) SENATE REPORTS:
No. 94-354, to accompany S.5 (Committee on Government Operations), and
No. 94-1441 (Committee of Conference)

(3) CONGRESSIONAL RECORD, Daily ed. (1976)
July 28, pp. 7867, 7871-73, 7886, 7897-98: considered and passed House
July 29, pp. E4187089: remarks of Rep. McCloskey
August 31, pp. H9258-62: House agreed to Conference Report, and S15043-45: Senate agreed to Conference Report

(4) WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 12 (1976)
No. 42: p. 1334
Sept. 13, 1976, signed; Presidential statement.