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MEETING WITH ATTORNEY GENERAL'S
OFFICE w/Parsons, May, Lazarus
Monday, October 6, 1975
10:00 a.m.

Mr. Cannon's Office

THE WHITE HOUSE

WASHINGTON

October 3, 1975

MEMORANDUM FOR: JIM CANNON

THROUGH: DICK PARSONS *D.*

FROM: LYNN MAY *Lynn May*

SUBJECT: Meeting with the Deputy Attorney General to Discuss
the Department of Justice's Message Switching Plan
and Other Aspects of the National Criminal Justice
Information System

1. PURPOSE:

To demonstrate to the Deputy Attorney General the President's concerns about the implementation of a message switching capability in the National Criminal Information Center (NCIC) and to induce the Justice Department to review message switching and other aspects of the NCIC and arrive at alternative programs that are more acceptable to the Congress and State and local governments.

II. BACKGROUND:

The Department of Justice has initiated several changes in the operation of the NCIC directed at its expansion. These have received intense criticism from the Congress, State Governors and elements within the Administration including OMB, OTP and the Domestic Council Committee on the Right of Privacy.

One of the criticized innovations is the promulgation of LEAA regulations for the development of criminal justice information systems which mandate the "dedication" (i.e., require sole use) of State computers for criminal information. Buttressed by the implications of the Privacy Act, LEAA and the FBI maintain that computer dedication will insure privacy protection. Many of the less affluent States argue that dedication is a drain on their computer resources and is an unwarranted Federal imposition on their rights. The National Governor's Conference, the National Association of Counties and the National Conference of State



Legislatures have sent a joint letter to the Vice President asking to meet with him, the Attorney General and Jim Lynn on this issue (Tab A).

The second issue is that of message switching. The FBI has proposed the return of single State offender records to the States and the implementation of a message switching capability so that the FBI can re-route inquiries electronically to States where the necessary records are maintained. The FBI argues that this would enhance the ability of State and local law enforcement authorities to do their jobs and would promote Federalism by the return of State records now in FBI files. Critics have questioned the need of message switching, the appropriateness of its control by a Federal Agency when the vast majority of interactions would be State-to-State, and have pointed out the potential the system has for Federal abuse of individual privacy and Federal control of State and local criminal information (Tab B).

Dick Parsons relayed the objections of the Administration regarding these initiatives by memorandum to the Deputy Attorney General on June 27, 1975. The Deputy Attorney General replied last week basically defending the Department's earlier position. The increasingly belligerent attitude of State Governors and the Congress (which is considering legislation to halt message switching) compels resolution of this issue. As a possible way out of the impasse, we developed the concept of a Domestic Council Task Force, headed by the Attorney General, to examine criminal justice information systems, consult with outside interest groups and make recommendations to the President. Although we did not convey the idea to the Attorney General, he apparently got wind of it because he rebuffed the idea in his memo to you on September 23, 1975 (Tab C).

Since Levi is reluctant to adopt a Task Force approach to the problem, the purpose of your meeting with Tyler is to inform him of the President's concern about the current Justice position on this matter and prevail on him to meet with the NGC et al., to discuss it further. The key point we want to stress is that the President's policy is to limit the Federal role in matters where primary responsibility lies with State and local authorities, a policy which message switching and computer dedication are at odds.

The Attorney General is caught between the demands of the FBI and others within his Department on the one hand and the Congress, the States and critics within the Administration on the other. It is likely that the Attorney General is reluctant to override the FBI's wishes in this matter, because of the alleged law morale of the Bureau and the reported discontent of Director Kelly.

III. TALKING POINTS:

- As you are aware, there are a number of controversies surrounding the national criminal justice system. Among the more controversial aspects are message switching and computer dedication, as dictated by LEAA regulations.
- Although the authority for management of the National Criminal Information Center clearly lies with the Justice Department, opponents of message switching and computer dedication like Senator Tunney, Congressman Moss and the National Governor's Conference have directed their critical inquiries at the President.
- The crucial issue appears to be not so much the technical aspects involved but whether a national criminal telecommunications system, which primarily relays State and local data, should be in the control of the Federal government (i. e. , FBI) or in the hands of the States like the existent Nation Law Enforcement Telecommunications Systems. The President's policy has been to limit the Federal role in matters where primary responsibility lies with the State and local authorities.

NOTE: Only 7% of crimes committed in the United States are under Federal jurisdiction.

- I wanted to meet with you to get your ideas on this problem and attempt to achieve its resolution in accordance with the President's interests. Although I understand that you have talked to Governor Bond on the matter of computer dedication, I recommend that you meet with the National Governor's Conference, the National Association of Counties and the National Conference of State Legislatures to discuss these issues further, as requested in their letter to the Vice President.

Attachments: Tab A, Letter from the NGC et al., to the Vice President .
 Tab B, Synopsis of Criticism of NCIC.
 Tab C, Attorney General's Letter to Cannon.



A



NATIONAL GOVERNORS' CONFERENCE
NATIONAL ASSOCIATION OF COUNTIES
NATIONAL CONFERENCE OF STATE LEGISLATURES

August 27, 1975

The Honorable Nelson A. Rockefeller
The Vice President
Executive Office Building
Washington, D. C. 20510

Dear Mr. Vice President:

The impact of rule making by Federal officials which imposes unnecessary costs and administrative burdens upon state and local governments is too often ignored.

A most apparent illustration is a recent promulgation of regulations by the U. S. Department of Justice which mandates that state and local governments dedicate computer hardware and software programs solely to law enforcement activities. We are particularly concerned since the dedication of computers is not, in light of modern technology, necessary to insure the privacy and confidentiality of records, and may in many instances produce the opposite result.

This action moves beyond the Federal program directives normally associated with grant-in-aid programs into a management area traditionally considered to be a state and local government responsibility. If each Federal agency were to adopt similar policies requiring the earmarking of computers to narrow programmatic areas, the disruptive effect upon the efficient operation of state and local governments would be overwhelming.

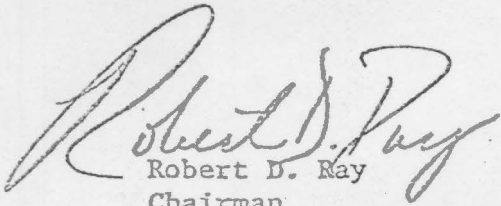
Over the past several years, state and local governments have made excellent progress toward the development of systematic and integrated management information systems. In light of this, each of the organizations we represent is officially opposed to the Justice Department action. We believe it is imperative that the decision to dedicate computers be left to state and local governments.

This issue is of such significance that we most respectfully request a meeting with you, the Attorney General, and the Director

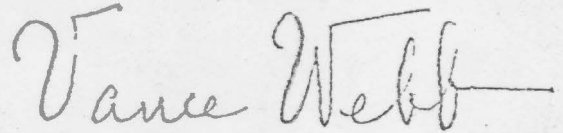


of the Office of Management and Budget for the purpose of demonstrating the adverse repercussions Federal regulations of this nature would have upon state and local governments.

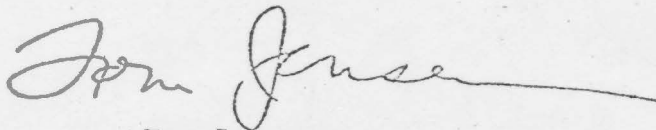
Sincerely,



Robert D. Ray
Chairman
National Governors' Conference



Vance Webb
President, National
Association of Counties



Tom Jensen
Chairman, Intergovernmental
Relations Committee
National Conference of
State Legislatures



B



Current Situation

1. The Department of Justice is currently under attack from all sides, for example:

- The Senate Subcommittee on Constitutional Rights (John V. Tunney, Chairman) sent the Deputy Attorney General a letter (dated July 25, 1975) containing 43 questions on the subject of the FBI's activity in this area. The FBI's responses to these questions will be included in the hearing record for S. 20008 (Tunney's criminal justice information bill). Senator Tunney's view point is clearly shown in the following quote from the first page of his letter:

"Please remember, however, that Congress should determine policy on issues as significant as message-switching and that, in raising questions about the FBI's specific proposal, I am not precluding other options.

Control over message-switching in a fully matured criminal justice information system conveys such extraordinary power to the controlling agency and carries such serious social implications that decisions about implementation should not be made by executive fiat issued by a single executive agency at the Federal level having a vested interest in the decision."

- The Domestic Council (Dick Parsons) sent a memorandum (dated June 27, 1975) to the Deputy Attorney General asking that the Department address the issues raised concerning privacy, State/Federal relations and the need for message switching; prior to a final determination on the FBI's request for an automated message switching capability.

- The National Governors Conference sent a letter (dated June 18, 1975) to the Attorney General. Major points in the letter were:

"The Governors are concerned that the expansion of the Federal Bureau of Investigation into law enforcement message switching encroaches on the police power of the States."



"In view of the pragmatic considerations of value and cost and the sensitive questions of Federalism we believe the department should reconsider its message switching initiation pending a full and complete inquiry which weights the views of State and local officials."

"Many of the provisions of the regulations portend large expenditures of money."

"We are also concerned that the NCIC Advisory Policy Board does not adequately represent the interests and concerns of the Governors and should be restructured."

° Individual Governors comments include:

Illinois Governor Don Walker told Levi that states "should be free to determine the issue of dedicated computer privacy and security in terms of their economic impact without undue federal restrictions."

Minnesota Governor Wendell R. Anderson questioned "the wisdom of the FBI as the sole authority in charge of security and privacy of criminal history record information."

Vermont Governor Thomas P. Salmon called the Justice Department's attitude toward state sovereignty "cavalier" and contrary to state policies of consolidating data processing services on larger and more cost effective systems.

° The National Conference of State Criminal Justice Planning Conference of State Criminal Justice paper (dated July 11, 1975) for the use of their members in developing a resolution on the subject. Some quotes from that paper include:

"The FBI proposes to provide telecommunications service designed to satisfy the needs of state and local criminal justice agencies on a routine basis. The philosophy of New Federalism calls for state and local governments to do this for themselves. State and local governments are fully capable of performing these services for themselves as they have demonstrated over the last eleven years."

"A constant fear of the public has been that the FBI, or some other federal agency, will create a National Data Bank. It is clear that the FBI message switching proposal contains that capability."



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"FBI control and management of the interstate message switching system creates further potential opportunities for abuse. The FBI would be placed in a position to monitor in detail the day-to-day operations of state and local law enforcement authorities and monitor the activities of certain individuals of interest who come into contact with a criminal justice agency anywhere in the country."

"An FBI-controlled telecommunications system would permit the FBI to have access to, utilize and control the system for propaganda purposes. The specter of "Big Brother" being heretofore 1984 is terrifying to many people."

- o Congressman John E. Moss wrote the President a letter (dated June 11, 1975) in which he said:

"The FBI's National Crime Information Center (NCIC) and plans for its expansion constitute a clear and immediate danger which cannot be underestimated, in terms of potential for abuse. The NCIC Telecommunications System should not be expanded to permit message switching for any purpose, particularly in light of the FBI's previous record and continued reluctance to cooperate with Congress." (Jim Cannon answered for the President on July 11, 1975 by thanking Moss for his views).

2. The House Judiciary Subcommittee on Civil Rights and Constitutional Rights chaired by Congressman Don Edwards (Calif.) is planning to hold hearings on this subject (as it relates to his bill on criminal justice information H.R. 8227) when Congress returns from recess.



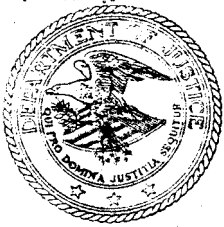
3. From the Executive Branch point of view, the Department of Justice has the responsibility for taking affirmative action. The Attorney General and his Deputy are aware of all the issues--they must now decide, (1) whether or not the FBI will be allowed to acquire a message switching capability and (2) whether or not to rescind and/or revise the departmental regulations pertaining to NCIC. So far the Department of Justice has not responded to any of the concerns expressed on this subject. However, it is clear that the Congress may decide to move quickly to enact legislation. (For example, Tunney's bill S. 2008 would establish a Criminal Justice Information Systems Commission which would have the authority to determine the extent to which telecommunications would be used in criminal justice systems. The commission would be responsible for administering and enforcing provisions of the bill, and would make regulations and issue orders on the exchange of criminal justice information.)

(Note: Should the Justice Department decide to move ahead with FBI plan, the Institute for Law and Social Research conservatively, estimates costs to the States to be \$320 million over a ten year period-- but in addition, converting the criminal history records to an automated data base could increase that figure by an estimated additional \$200-\$250 million. LEAA could end up paying all or part of these costs.)



C

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535



Office of the Attorney General

Washington, D. C. 20530

September 23, 1975

MEMORANDUM FOR

Honorable James M. Cannon
Assistant to the President for Domestic Affairs

I certainly do not have any objection to a meeting with Deputy Attorney General Tyler on the Criminal Justice Information Systems. Possibly, however, I should indicate my thoughts which may be relevant to the matter of a task force where the FBI's position is to protect the right of privacy and LEAA assumes this means Bureau control.

There has been a difference of view between LEAA and the FBI on some of these matters. While I do not think that has been well handled in the Department (it has gone on for some time), I do think that kind of difference within a single department is best handled, if possible, by the Department.

I regret to say it but I do not think the intervention of OMB in the past (OMB, I believe, was invited in) was helpful.


My view is that we ought to be able to work out a satisfactory solution here. I do not think it would be desirable for the President to be caught in this kind of dispute.

My own thought has been that, apart from the difference between LEAA and the Bureau, which I think Mr. Tyler can straighten out, I think legislation in this area is appropriate. Again, my information is that we have been moving closer to agreement with the concerned Congressional Committees on what is desirable. We are not going to insist on any October 1 deadline.

Such information as I have on the governors suggests to me that the Department can handle the problem which, in fact, relates to the controversy between LEAA and the FBI. Furthermore, the recent meeting between Governor Bond, the Deputy Attorney General and representatives of the FBI and LEAA suggests that the concerns of the Governors' Conference are being treated and re-



solved. One reason I feel this way is that, in addition to what I have been told by Mr. Tyler, I have discussed the assumed FBI position with Mr. Kelley and found him quite reasonable so that I do not assume this controversy need just go on and on.


Edward H. Levi
Attorney General

