be to provide protection for information of this type obtained from the public with the understanding or assurance that it will be protected as privileged information, then section 1(c)(4) should be redrafted to say so clearly.

Section 1(c)(5) recognizes the necessity for protecting interagency and intra-agency memorandums. The reason for limiting this exception to those memorandums dealing "solely with matters of law or policy" is, however, not obvious. It is a well-accepted maxim that no large organization can function effectively if communications from subordinates to superiors or between subordinates are subject to general public scrutiny. If agency decisions by superiors are to be made with the benefit of full, frank, and open discussion, and recommendations by and between subordinates, these comments and recommendations must have the protection of privileged information. Otherwise, every memorandum would be carefully written with a view toward its possible impact on the public. The inhibiting effect of such a requirement is obvious. Yet exception 5 of paragraph 1(c) apparently would limit this privilege to exclude memorandums that contained any mixture of fact with law or policy. The difficulty of writing a memorandum of law or policy without including factual matters would have the effect of either denying the privilege to many memorandums that should be protected or promoting artificial memorandums splitting, with factual memorandums cross-referenced to policy or legal memorandums on the same subject. The extra administrative burden of the second possibility is apparent. Memorandums dealing with both law and policy would also not fall within exception 5 of paragraph 1(c) and would have to be split before qualifying for the privilege.

Although the exception provided by section 1(c)(6) is highly desirable, the burden in the event of legal challenge of proving in a Federal court that revelation of the record or information would constitute a "clearly unwarranted invasion of personal privacy" is a heavy one. Discretion of the agency to determine what is "clearly unwarranted" when privacy is invaded would be subject to the review of any district court judge before whom an action for production of the record or information was initiated. Furthermore, unless some provision is made for examination of the information or record by the court in camera, such as that in section 3500, title 18, United States Code, the invasion of privacy would occur in the course of the very litigation that attempts to prevent it.

Again, the exception provided in section 1(c)(7) for investigative files indicates recognition of the necessity for protecting such information, but the limitation on the protection significantly reduces its beneficial effect. There are many investigative files compiled and held by the Department of Defense for other than "law enforcement purposes" which nevertheless require the same protection. For example, investigative files compiled for the purpose of determining whether an individual is to receive a personnel security clearance for access to classified information often contain highly personal and sometimes prejudicial information (perhaps even inaccurate) that should not be available to the general public. The reasons for this are much the same as for those which justify the privilege for investigative files compiled for law enforcement purposes. The necessity of treating such files as privileged has been endorsed by several Presidents of the United States and has generally been respected by Congress. (See, for example, President Truman's memorandum of March 13, 1948, addressed to all officers and employees in the executive branch of the Government, who are directed to decline to furnish information, reports, or files dealing with the employee loyalty program.)

Other investigative files such as aircraft accident investigation reports also contain invaluable information that is obtained only by the assurance that it will be treated as privileged. Judicial recognition of the necessity for protecting such information in aircraft accident investigation reports is found in such cases as *Machin* v. *Zuckert*, 316 Fd. 2d 336 (C.A.D.C.), 1963, where the legitimate interests of the Government in promoting air safety was recognized by the court as a valid reason for denying to the litigants access to the accident report. Other inspection and survey reports of investigation are also dependent on full and frank exchanges between investigators and the persons questioned, and the continued protection of the information obtained in the course of these exchanges is absolutely essential to the continued flow of information vital to the effective and efficient management of the Defense Establishment.

Some additional examples of the kinds of information or records which the Department of Defense now considers it essential to treat as privileged but which might not receive protection under H.R. 5012 are the following: