showing that students who
ually drop out of school,
after adoption of the rule,
idents dropped out and a
mber of those who did con-
eir education at home. Since
irable to keep children in
til they have graduated from
ool, a policy designed to dis-
marriage among students is
o be a proper exercise of the
the school board.

udent, on the other hand,
that he has a constitutional
get married, and the rule
prives him of an important
his school's program because
arriage is an action taken
lor of state law which inter-
h his civil liberties.

e basis of this court's ex-
over almost 20 years, the stu-
acted wrongly and the rules
by the school board are based
very reasonably desire to deal
ocial problem of great com-
nd difficulty. This court has
ly expressed its strong ap-
f their objective of discourag-
age marriages. The Ohio Su-
Court in State v. Gans, 151
'09 (1958), while recognizing
les over the age of 18 have
ht to marry, noted that
he public policy of this state
ist 'child marriages' * * *,
though the minor participants
l marriages' are 'more to be
han scorned,' the same atti-
es not hold true of adults
rticipate in effecting such
es—and it is the opinion of
rt that it would behoove all
including parents, to discour-
l marriages."

theless, the fact remains that
dent did legally get married,
violating any law of the state.
thus attained the status where
ital privacy might not be in-
y the state, even for the laud-
rpose of discouraging other
l from doing what he did.

conceded that in the best
thinking, extracurricular ac-
are an integral and comple-
y part of the total school pro-
Part of the function of edu-
children is to provide them
le basic knowledge and train-
cessary to become productive
er or not in some of its manifesta-
tions it may come within the scope
of the antitrust laws. Hence, it is
difficult to refute the argument that
a secondary school system that de-
prives a student of the opportunity
to develop his full potential for en-
tering the field of professional base-
ball is not functioning as it should."

It seems clear that the effect of the
enforcement of the rule which the
school board has promulgated under
the color of authority of the state
laws is to put what may be an un-
endurable strain upon the students'
marriage. This court cannot escape
the obligation to protect from inva-
sion by the power of the state that
right to marital privacy that Gris-
wold v. Connecticut, 381 U.S. 479
(1965), holds to be protected by the
constitution. What greater invasion
of marital privacy can there be than
one which could totally destroy the
marriage itself?

[Text] The defendants should not
be faulted for trying, by the adop-
tion of their rule, to discourage
child marriages. Unfortunately, the
laudable purpose of their rule fails to
take into account the extremely
limited deterrent value of punish-
ment in areas where action is main-
ly governed by emotion. What the
rule does, as distinguished from what
it is intended to do, is to punish
the one who has not been deterred
at all even by the immediate pros-
pect of the punishment, much less
by the example it is supposed to of-
fer. The combined effect of the Gris-
wold and Tinker [393 U.S. 503, 37
LW 4121 (1969)] cases is to preclude
the defendants from even trying to do
what they have done. With real sor-
row, this court must so hold. **[End
Text]**—Young, J.

—USDC NOhio, Davis v. Meek, 5/
5/72.

Securities and Exchanges

FREEDOM OF INFORMATION—

Termination of Government agency's investigation and enforcement proceeding does not extinguish "investigatory files" exemption under Freedom of Information Act.

During a non-public investigation

of the statements and press releases made by a publicly-held corporation, the SEC amassed an investigatory file of over 7,000 pages of testimony and documents. On the basis of information obtained during the investigation, the commission instituted suit in Southern New York against the corporation for violations of Sec. 10(b) and Rule 10b-5, seeking to enjoin further violations of the statute and rule. One day after the complaint was filed, the parties agreed to a consent decree, ending both the suit and the investigation.

A shareholder commenced a class action for damages against the corporation, alleging violations of the securities laws, derived from the SEC's complaint. His attorney sought in vain the commission's permission to inspect and copy the documents that supported, explained, and discussed the violations claimed in the settled action against the corporation. Then the shareholder sued the SEC for an injunction against continued withholding of the documents in violation of the Freedom of Information Act, 5 U.S.C. § 552. The commission contended that the documents were not subject to the Act's mandatory public disclosure requirements due to the statutory exemptions for "investigatory files" and "inter-agency or intra-agency memorandums."

The district court denied the SEC's motion for summary judgment and granted in part the shareholder's motion for the injunction. Since the Commission had not taken any steps, subsequent to the consent decree, to maintain the file for current law enforcement purposes, the court below ruled that the "investigatory files" exemption no longer applied to the requested document. Although the district judge ordered the SEC to permit shareholder to inspect and copy non-exempt records, he referred the question of the "inter-agency or intra-agency memorandums" exemption to a special master for an in camera review of the documents and for a report on the extent any of the material in the files falls within that exemption.

The issue presented on appeal is "whether the exemption from disclosure to 'any person' of 'matter' contained in an 'investigatory file' compiled and utilized by an agency in an enforcement proceeding applies after the investigation and the enforcement proceeding have terminated." To resolve this issue, this court turns to the legislative history of the Freedom of Information Act. The congressional committee reports show that "the broad legislative intent behind enactment * * * was to give the electorate greater access to information concerning the operations of the Federal Government. The ultimate purpose was to enable the public to have sufficient information in order to be able, through the electoral process, to make intelligent, informed choices with respect to the nature, scope, and procedure of federal governmental activities." The legislative history and the various disclosure provisions "clearly indicate that the general purpose of the Act was that the public be informed about the processes of government so that the electorate would be in a better position to pass upon the structure and operation of government."

The Senate and House Reports on the "investigatory files" exemptions, also show a two-fold legislative purpose for the exemption: "to prevent the premature disclosure of the results of an investigation so that the Government can present its strongest case in court, and to keep confidential the procedures by which the agency conducted its investigation and by which it has obtained information." Therefore, termination of an investigation and an enforcement proceeding does not extinguish the exemption. "If an agency's investigatory files were obtainable without limitation after the investigation was concluded, future law enforcement efforts by the agency could be seriously hindered" because its investigatory procedures and informants would be revealed.

This court wishes to emphasize that nothing in its holding would bar the shareholder from obtaining information contained in the documents through the remedy of discovery under the Federal Rules of Civil Procedure.

Dissent. The ten year, legislative history of the Act is "so extensive and so full of internal inconsistencies" that the committee reports do not address themselves to the enacted version of the bill. The question presented is a narrow one because "a careful district judge specifically framed his order and accompanying memorandum to preserve to the SEC, through in camera production, its exemptions under 5 U.S.C. § 552(b)(4), 'commercial or financial information obtained from a person and privileged or confidential,' and (b)(5) 'inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency'."

The intent of Congress was to delegate to the federal judiciary the power to subject agency operations to public perusal. There is a long line of cases where Government agencies, on a showing of good cause, have been required to produce documents obtained in the course of an investigation.

[Text] I am of the view that the federal courts can amply safeguard investigatory agency procedures and informants by in camera examination of the files in doubtful cases. Thus the fear of exposure underlying the majority's view is largely groundless. The argument to which the SEC is ultimately reduced is that it should not be required to disclose its files to just "any person." The fact is that plaintiffs here are or were in litigation with Occidental Petroleum. Thus, if the words "any person" mean any person with standing, plaintiffs here surely have it. [End Text]—Oakes, J.

—CA 2; Frankel v. SEC, 5/4/72.