We agree with these views, for we find nothing in the wording of Exemption 6 or its legislative history to support the Agency's claim that Congress created a blanket exemption for personnel files. Judicial interpretation has uniformly reflected the view that no reason would exist for nondisclosure in the absence of a showing of a clearly unwarranted invasion of privacy, whether the documents are filed in "personnel" or "similar" files. See, *e. g., Wine Hobby USA, Inc.* v. *IRS,* 502 F. 2d 133, 135 (CA3 1974); *Rural Housing Alliance* v. *Department of Agriculture,* 162 U. S. App. D. C., 122, 126, 498 F. 2d 73, 77 (1974); *Vaughn* v. *Rosen,* 157 U. S. App. D. C. 340, 484 F. 2d 820 (1973); *Getman* v. *NLRB,* 146 U. S. App. D. C. 209, 213, 450 F. 2d 670, 674 (1971). Congressional concern for the protection of the kind of confidential personal data usually included in a personnel file is abundantly clear. But Congress also made clear that nonconfidential matter was not to be insulated from disclosure merely because it was stored by the Agency in "personnel" files. Rather, Congress sought to construct an exemption that would require a balancing of the individual's right of privacy against the preservation of the basic purpose of the Freedom of Information Act "to open agency action to the light of public scrutiny." The device adopted to achieve that balance was the limited exemption, where privacy was threatened, for "clearly unwarranted" invasions of personal privacy.

Both House and Senate Reports can only be read as disclosing a congressional purpose to eschew a blanket exemption for "personnel . . . and similar files" and to require a balancing of interests in either case. Thus the House Report states, H. R. Rep. No. 1497, at 11, "The limitation of a 'clearly unwarranted invasion of personal privacy' provides a proper balance between the protec-

tion of an individual's right of privacy and the preservation of the public's right to Government information by excluding those kinds of files the disclosure of which might harm the individual." Similarly, the Senate Report, S. Rep. No. 813, at 9, states, "The phrase 'clearly unwarranted invasion of personal privacy' enunciates a policy that will involve a balancing of interests between the protection of an individual's private affairs from unnecessary public scrutiny, and the preservation of the public's right to governmental information." [9] Plainly Congress did not itself strike the balance as to "personnel files" and confine the Courts to striking the balance only as to "similar files." To the contrary, Congress enunciated a single policy, to be enforced in both cases by the courts, "that will involve a balancing" of the private and public interests.[10] This was the conclusion of the Court of Appeals of the District of Columbia Cir-

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[9] The Report states further (*ibid.*):

"At the same time that a broad philosophy of 'freedom of information' is enacted into law, it is necessary to protect certain equally important rights of privacy with respect to certain information in Government files, such as medical and personnel records . . . .

"It is not an easy task to balance the opposing interests, but it is not an impossible one either. It is not necessary to conclude that to protect one of the interests, the other must, of necessity, either be abrogated or substantially subordinated. Success lies in providing a workable formula which encompasses, balances, and protects all interests, yet places emphasis on the fullest responsible disclosure."

[10] See generally H. R. Rep. No. 1497, at 11: "A *general* exemption for the category of information is much more practical than separate statutes protecting each type of personal record. The limitation of 'a clearly unwarranted invasion of personal privacy' provides a proper balance . . . ." (Emphasis supplied.) The Senate Report, as well, speaks of a "general exemption" which is "held within bounds by the use of the limitation of 'a clearly unwarranted invasion of personal privacy.'" S. Rep. No. 813, at 9.

cuit as to medical files, and that conclusion is equally applicable to personnel files:

> "Exemption 6 of the Act covers '. . . medical files . . . the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.' Where a purely medical file is withheld under authority of Exemption 6, it will be for the District Court ultimately to determine any dispute as to whether that exemption was properly invoked." *Ackerly* v. *Ley,* 137 U. S. App. D. C. 133, 136–137 n. 3, 420 F. 2d 1336, 1339–1340 n. 3 (1969) (ellipsis in Court of Appeals opinion).

See also *Wine Hobby USA, Inc.* v. *IRS,* 502 F. 2d 133, 135 (CA3 1974).

Congress' recent action in amending the Freedom of Information Act to make explicit its agreement with judicial decisions [11] requiring the disclosure of nonexempt portions of otherwise exempt files is consistent with this conclusion. Thus, § 552 (b) now provides that "[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection." Pub. L. 93–502, § 2 (c), 88 Stat. 1561, 1564.[12] And

[11] *E. g., Vaughn* v. *Rosen,* 157 U. S. App. D. C. 340, 345, 484 F. 2d 820, 825 (1973); *Soucie* v. *David,* 145 U. S. App. D. C. 144, 156, 448 F. 2d 1067, 1079 (1971); *Bristol-Myers Co.* v. *FTC,* 138 U. S. App. D. C. 22, 26, 424 F. 2d 935, 938–939 (1970). Accord, *Rural Housing Alliance* v. *Department of Agriculture,* 162 U. S. App. D. C. 122, 126–127, 498 F. 2d 73, 78 (1974). Cf. § 552 (a)(2), providing that

"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."

[12] The Senate Report on this amendment cited with evident approval the decision of the Court of Appeals in this case remand-

§ 552 (a)(4)(B) was added explicitly to authorize *in camera* inspection of matter claimed to be exempt "to determine whether such records *or any part* thereof shall be withheld." Pub. L. 93–502, § 1 (b)(2)(B), 88 Stat., at 1562 (emphasis supplied). The Senate Report accompanying this legislation explains, without distinguishing "personnel and medical files" from "similar files," that its effect is to require courts

> "to look beneath the label on a file or record when the withholding of information is challenged. . . . [W]here files are involved [courts will] have to examine the records themselves and require disclosure of portions to which the purposes of the exemption under which they are withheld does not apply." S. Rep. No. 854, 93d Cong., 2d Sess., 32.

The remarks of Senator Kennedy, a principal sponsor of the amendments, make the matter even clearer.

> "For example, deletion of names and identifying characteristics of individuals would in some cases serve the underlying purpose of exemption 6, which exempts 'personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.'" 120 Cong. Rec. S. 9315 (daily ed. May 30, 1974).

In so specifying, Congress confirmed what had perhaps been only less clear earlier. For the Senate and House Reports on the Bill enacted in 1966 noted specifically that Health, Education, and Welfare files, Selective Service files, or Veterans' Administration files, which as the Agency here recognizes[13] were clearly included

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ing to the District Court for redaction of the case summaries to accommodate the dual interests. S. Rep. No. 854, 93d Cong., 2d Sess., 31–32 (1974).

[13] Brief for Petitioners, at 13–16.

within the congressional conception of "personnel files," [14] were nevertheless intended to be subject to mandatory disclosure in redacted form if privacy could be sufficiently protected. As the House Report states, H. R. Rep. No. 1497, at 11, "The exemption is also intended to cover detailed Government records on an individual which can be identified as applying to that individual and not the facts concerning the award of a pension or benefit or the compilation of unidentified statistical information from personal records." Similarly, the Senate Report emphasized, S. Rep. No. 813, at 9, "For example, health, welfare, and selective service records are highly personal to the person involved yet facts concerning the award of a pension or benefit should be disclosed to the public."

Moreover, even if we were to agree that "personnel files" are wholly exempt from any disclosure under Exemption 6, it is clear that the case summaries sought here lack the attributes of "personnel files" as commonly understood. Two attributes of the case summaries

[14] There is sparse legislative history as to the precise scope intended for the term "personal files," a detail which itself suggests that Congress intended that particular characterization not to be critical in the application of Exemption 6. But it is quite clear from the Committee Reports that the primary concern of Congress in drafting Exemption 6 was to provide for the confidentiality of personal matters in such files as those maintained by the Department of Health, Education, and Welfare, the Selective Service, and the Veterans' Administration. S. Rep. No. 813, at 9; H. R. Rep. No. 1297, at 11. Moreover, the Senate Report on S. 1666, the principal source for the Bill ultimately enacted as the Freedom of Information Act, and Exemption 6 in particular, specifically refers to such files as "personnel files." S. Rep. No. 1219, 89th Cong., 2d Sess., 14. See also Hearings on H. R. 5012 before a Subcomm. of the House Comm. on Government Operations, 89th Cong., 1st Sess., at 265, 267 (1965) ("Analysis of Agency Comments on S. 1666").

require that they be characterized as "similar files." First, they relate to the discipline of cadet personnel, and while even Air Force Regulations themselves show that this single factor is insufficient to characterize the summaries as "personnel files," [15] it supports the conclusion that they are "similar." Second, and most significantly, the disclosure of these summaries implicates similar privacy values; for as said by the Court of Appeals, 495 F. 2d, at 267, "identification of disciplined cadets—a possible consequence of even anonymous disclosure—could expose the formerly accused men to lifelong embarrassment, perhaps disgrace, as well as practical disabilities, such as loss of employment or friends." See generally, *e. g., Wine Hobby USA, Inc.* v. *IRS,* 502 F. 2d 133, 135–137 (CA3 1974); *Rural Housing Alliance* v. *Department of Agriculture,* 162 U. S. App. D. C. 122, 125–126, 498 F. 2d 73, 76–77 (1974); *Robles* v. *EPA,* 484 F. 2d 843, 845–846 (CA4 1973). But these summaries, collected only in the Honor and Ethics Code Reading Files and the Academy's Honor Records, do not contain the "vast amounts of personal data," S. Rep. No. 813, at 9, which constitute the kind of profile of an individual ordinarily to be found in his personnel file: showing, for example, where he was born, the names of

[15] Air Force Regulations in force at the time of the decisions below drew a distinction between "personnel and medical files," 32 CFR § 806.5 (f), and "files similar to medical and personnel files," 32 CFR § 806.5 (g) which clearly categorized case summaries among the latter: "Examples of similar files are those: . . . containing reports, records, and other material pertaining to *personnel matters* in which administrative action, including *disciplinary action,* may be taken or has been taken." 32 CFR § 806.5 (g) (1) (ii) (1974), 36 Fed. Reg. 4700, 4701 (1971) (emphasis supplied). After the Court of Appeals' decision, these regulations were amended, *inter alia* deleting the last four words, 32 CFR § 806.23 (f) (1) (ii), 40 Fed. Reg. 7901, 7904 (1975), but this alteration is in any event insignificant to the point here.

his parents, where he has lived from time to time, his high school or other school records, results of examinations, evaluations of his work performance. Moreover, access to these files is not drastically limited, as is customarily true of personnel files, only to supervisory personnel directly involved with the individual (apart from the personnel department itself), frequently thus excluding even the individual himself. On the contrary, the case summaries name no names except in guilty cases, are widely disseminated for examination by fellow cadets, contain no facts except such as pertain to the alleged violation of the Honor or Ethics Codes, and are justified by the Academy solely for their value as an educational and instructional tool the better to train military officers for discharge of their important and exacting functions. Documents treated by the Agency in such a manner cannot reasonably be claimed to be within the common and congressional meaning of what constitutes a "personnel file" within Exemption 6.

The Agency argues secondly that, even taking the case summaries as files to which the "clearly unwarranted invasion of personal privacy" qualification applies, the Court of Appeals nevertheless improperly ordered the Agency to produce the case summaries in the District Court for an *in camera* examination to eliminate information that could result in identifying cadets involved in Honor or Ethics Code violations. The argument is, in substance, that the recognition by the Court of Appeals of "the harm that might result to the cadets from disclosure" itself demonstrates "[t]he ineffectiveness of excision of names and other identifying facts as a means of maintaining the confidentiality of persons named in government reports . . . ." Brief for Petitioners, at 17–18.

This contention has no merit. First, the argument im-

plies that Congress barred disclosure in any case in which the conclusion could not be guaranteed that disclosure would not trigger recollection of identity in any person whatever. But this ignores Congress' limitation of the exemption to cases of "clearly unwarranted" [16] invasions

[16] The addition of this qualification was a considered and significant determination. *Robles* v. *EPA*, 484 F. 2d 843, 846; (CA4 1973), *Getman* v. *NLRB*, 146 U. S. App. D. C. 209, —, 450 F. 2d 670, 674 (1971). The National Labor Relations Board and Treasury Department urged at the hearings on the Act that the "clearly" or "clearly unwarranted" qualification in Exemption 6 be deleted. See Hearings on S. 1160 before the Subcomm. on Admin. Practice and Procedure of the Senate Comm. on the Judiciary, 89th Cong., 1st Sess., 36 (Treasury), 491 (NLRB) (1965); Hearings on H. R. 5012 before a Subcomm. of the House Comm. on Government Operations, 89th Cong., 1st Sess., 56, 230 (Treasury), 257 (NLRB) (1965). See also Hearings on S. 1160, *supra*, 417 (Department of Defense; objecting to "heavy" burden of showing a *clearly unwarranted* invasion of personal privacy). But see also Hearing on H. R. 5012, *supra*, 151 (testimony of Clark R. Molenhoff, Vice Chairman, Sigma Delta Chi Committee for Advancement of Freedom of Information; advocating the retention of "clearly" in Exemption 6). The terms objected to were nevertheless retained, as a "proper balance," H. R. No. 1497, at 11, to keep the "scope of the exemption . . . within bounds," S. Rep. No. 819, at 9.

The legislative history of the 1974 amendment of Exemption 7, which applies to investigatory files compiled for law enforcement purposes, stands in marked contrast. Under H. R. 12471, 93d Cong., 2d Sess. (1974), as originally amended and passed by the Senate, 120 Cong. Rec. S. 9329, 9337, 9343 (daily ed. May 30, 1974), although not as originally passed by the House, 120 Cong. Rec. H. 1802–1803 (daily ed. Mar. 14, 1974), Exemption 7 was amended to exempt investigatory files compiled for law enforcement purposes only to the extent that their production would "constitute a clearly unwarranted invasion of personal privacy" or meet one of several other conditions. In response to a Presidential request to delete "clearly unwarranted" from the amendment in the interests of personal privacy, the Conference Committee dropped the "clearly," 120 Cong. Rec. S. 17829 (daily ed. Oct. 1, 1974) (letters between President Ford and Senator Kennedy), H. 10002 (daily

of personal privacy.[17] Second, Congress vested the courts with the responsibility ultimately to determine "de novo" any dispute as to whether the exemption was properly invoked in order to constrain agencies from withholding nonexempt matters.[18] No court has yet seen the case histories, and the Court of Appeals was therefore correct in holding that the function of examination must be discharged in the first instance by the District Court. *Ackerly* v. *Ley, supra; Rural Housing Alliance* v. *Department of Agriculture, supra.*

In striking the balance whether to order disclosure of all or part of the case summaries, the District Court, in determining whether disclosure will entail a "clearly unwarranted" invasion of personal privacy, may properly discount its probability in light of Academy tradition to keep identities confidential within the Academy.[19] Re-

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ed. Oct. 7, 1974) (letters between President Ford and Congressman Moorhead), and the Bill was enacted as reported by the Conference, Pub. L. 93–502, § 2 (b), 88 Stat. 1561, 1563.

[17] The Court of Appeals held that the argument raised by the Agency that courts have a broad equitable power to decline to order release when disclosure would damage the public interest was not a substantial one in the context of Exemption 6, since that Exemption itself requires a court to exercise a large measure of discretion. 495 F. 2d, at 269. The Agency has not renewed this argument in this Court.

[18] 5 U. S. C. § 552 (a)(4)(B). One of the prime shortcomings of § 3 of the Administrative Procedure Act, in the view of the Congress which passed the Freedom of Information Act, was precisely that it provided no judicial remedy for the unauthorized withholding of agency records. *EPA* v. *Mink,* 410 U. S., at 79.

[19] The legislative history is clear that Exemption 6 was directed at threats to privacy interests more palpable than mere possibilities. The House Report explains that the exemption was intended to exclude files "the disclosure of which might harm the individual . . . [or] detailed Government records on an individual which *can* be identified as applying to that individual. . . ." H. R. Rep. No. 1497, at 11 (emphasis supplied). And the Senate Report states that the

spondents sought only such disclosure as was consistent with this tradition. Their request for access to summaries "with personal references or other identifying information deleted," respected the confidentiality interests embodied in Exemption 6. As the Court of Appeals recognized, however, what constitutes identifying information regarding a subject cadet must be weighed not only from the viewpoint of the public, but also from the vantage of those who would have been familiar, as fellow cadets or Academy staff, with other aspects of his career at the Academy. Despite the summaries' distribution within the Academy, many of this group with earlier access to summaries may never have identified a particular cadet, or may have wholly forgotten his encounter with Academy discipline. And the risk to the privacy interests of a former cadet, particularly one who has remained in the military, posed by his identification by otherwise unknowing former colleagues or instructors cannot be rejected as trivial. We nevertheless conclude that consideration of the policies underlying the Freedom of Information Act, to open public business to public view when no "clearly unwarranted" invasion of privacy will result, requires affirmance of the holding of the Court of Appeals, 495 F. 2d, at 267, that although ". . . no one can guarantee that all those who are 'in the know' will hold their tongues, particularly years later when time may have eroded the fabric of cadet loyalty," it sufficed to protect privacy at this stage in these proceedings by enjoining the District Court, *id.*, at 268, that if in its opinion deletion of personal references and other identi-

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balance to be drawn under Exemption 6's "clearly unwarranted invasion of personal privacy" clause is one between "the protection of an individual's private affairs from *unnecessary* public scrutiny, and the preservation of the public's right to governmental information." S. Rep. No. 813, at 9 (emphasis supplied).

fying information "is not sufficient to safeguard privacy, then the summaries should not be disclosed to [respondents]." We hold, therefore, in agreement with the Court of Appeals, "that the in camera procedure [ordered] will further the statutory goal of Exemption Six: a workable compromise between individual rights 'and the preservation of public rights to Government information.'" *Id.*, at 269.

To be sure, redaction cannot eliminate all risks of identifiability, as any human approximation risks some degree of imperfection, and the consequences of exposure of identity can admittedly be severe. But redaction is a familiar technique in other contexts [20] and exemptions to disclosure under the Act were intended to be practical workable concepts, *Mink* v. *EPA*, 410 U. S., at 79; S. Rep. No. 813, at 5; H. R. Rep. No. 1497, at 2. Moreover, we repeat, Exemption 6 does not protect against disclosure every incidental invasion of privacy—only such disclosures as constitute "clearly unwarranted" invasions of personal privacy.

Affirmed.

MR. JUSTICE STEVENS took no part in the consideration or decision of this case.

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[20] The Court of Appeals cited as examples Revenue Rulings collected in the Cumulative Bulletin of the Internal Revenue Service, and American Bar Association "Opinions on Professional Ethics" (1967). 495 F. 2d, at 268 n. 18.

SUPREME COURT OF THE UNITED STATES

No. 74–489

Department of the Air Force et al., Petitioners, *v.* Michael T. Rose et al.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[April 21, 1976]

MR. CHIEF JUSTICE BURGER, dissenting.

If "hard cases make a bad law," unusual cases surely have the potential to make even worse law. Today, on the basis of a highly unusual request for information about a very unique governmental process, a military academy honor system, the Court interprets definitively a substantial and very significant part of a major federal statute governing the balance between the public's "right-to-know" and the privacy of the individual citizen.

In my view, the Court makes this case carry too much jurisprudential baggage. Consequently, the basic congressional intent to protect a reasonable balance between the availability of information in the custody of the government and the particular individual's right of privacy is undermined. In addition, district courts are burdened with a task Congress could not have intended for them.

(1) This case does not compel us to decide whether the summaries at issue here are "personnel files" or whether files so categorized are beyond the proviso of Exemption (6) that disclosure constitute "a clearly unwarranted invasion of personal privacy." Even assuming, *arguendo,* that the Government must show that the summaries are subject to the foregoing standard, it is quite

clear, in my view, that the material at issue here constitutes such an invasion, no matter what excision process is attempted by a federal judge.

The Court correctly notes that Congress, in enacting Exemption 6, intended to strike "a proper balance between the protection of the individual's right of privacy and the preservation of the public's right to Government information by excluding those kinds of files the disclosure of which might harm the individual." H. R. Rep. No. 1497, at 11. Having acknowledged the necessity of such a balance, however, the Court, in my view, blandly ignores and thereby frustrates the congressional intent by refusing to weigh, realistically, the grave consequences implicit in release of this particular information, in any form, againts the relatively inconsequential claim of "need" for the material alleged in the complaint.

The opinions of this Court have long recognized the opprobrium which both the civilian and the military segments of our society attribute to allegations of dishonor among commissioned officers of our Armed Forces. See, *e. g., Parker* v. *Levy,* 417 U. S. 733, 744 (1974), quoting *Orloff* v. *Willoughby,* 345 U. S. 83, 91 (1953). The stigma which our society imposes on the individual who has accepted such a position of trust [1] and abused it is not erasable, in any realistic sense, by the passage of time or even by subsequent exemplary conduct. The absence

[1] As the Court noted in *Orloff* v. *Willoughby,* 345 U. S. 83, 91: "The President's commission . . . recites that 'reposing special trust and confidence in the patriotism, valor, fidelity and abilities of the appointee. . . .' " An officer may be punitively dismissed (the equivalent of a dishonorable discharge) when found guilty of *any* offense by a general court-martial, regardless of the limitations placed on the punishment for the offense when committed by an enlisted personnel. Manual for Courts-Martial, United States 1969 (rev.), ¶ 126d. See generally *United States* v. *Goodwin,* 5 U. S. C. M. A. 647, 18 C. M. R. 271 (1955).

of the broken sword, the torn epaulets and the *Rogue's March* from our military ritual does not lessen the indelibility of the stigma. Significantly, cadets and midshipmen—"inchoate officers" [2]—have traditionally been held to the same high standards and subjected to the same stigma as commissioned officers when involved in matters with overtones of dishonor.[3] Indeed, the mode of punitive separation as the result of court-martial is the same for both officers and cadets—dismissal. *United States* v. *Ellman,* 9 U. S. C. M. A. 549, 26 C. M. R. 329 (1958). Moreover, as the Court of Appeals noted, it is unrealistic to conclude, in most cases, that a finding of "not guilty" or "discretion" exonerates the cadet in anything other than the purely technical and legal sense of the term.

Admittedly, the Court requires that, before release, these documents be subject to *in camera* inspection with power of excising parts. But, as the Court admits, any such attempt to "sanitize" these summaries would still leave the very distinct possibility that the individual would still be identifiable and thereby injured. In light of Congress' recent manifest concern in the Privacy Act of 1974, Pub. L. 93–579, 88 Stat. 1806, 5 U. S. C. § 552a, for "governmental respect for the privacy of citizens. . ." S. Rep. No. 93–1183, 93d Cong., 2d Sess. (1974), it is indeed difficult to attribute to Congress a willingness to subject an individual citizen to the risk of possible severe damage to his reputation simply to permit law students to invade individual privacy to prepare a law journal article. Its definition of a "clearly unwarranted invasion of personal privacy" as equated with "protect-

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[2] 7 Atty. Gen. 611 (1878).

[3] Article 133, U. C. M. J., 10 U. S. C. § 933 states, for example, "any commissioned officer, *cadet, or midshipman* who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct." (Emphasis supplied.)

ing an individual's private affairs from *unnecessary* public scrutiny. . . ," S. Rep. No. 813, at 9 (emphasis applied), would otherwise be rendered meaningless.

(2) Moreover, excision would not only be ineffectual in accomplishing the legislative intent of protecting an individual's affairs from unnecessary public scrutiny, but it would place an intolerable burden upon a district court which, in my view, Congress never intended to inflict. Although the 1974 amendments to the Freedom of Information Act require that "[a]ny reasonably segregable portion of a record . . . ," 5 U. S. C. § 552 (b), otherwise exempt, be provided, there is nothing in the legislative history of the original Act or its amendments which would require a district court to construct, in effect, a new document. Yet, the excision process mandated here could only require such a sweeping reconstruction of the material that the end product would constitute an entirely new document. No provision of the Freedom of Information Act contemplates a federal district judge acting as a "re-write editor" of the original material.

If the Court's holding is indeed a fair reflection of congressional intent, we are confronted with a "split-personality" legislative reaction, by the conflict between a seeming passion for privacy and a comparable passion for needless invasions of privacy.

Accordingly, I would reverse the judgment of the Court of Appeals.

SUPREME COURT OF THE UNITED STATES

No. 74–489

Department of the Air Force et al., Petitioners, *v.* Michael T. Rose et al. | On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[April 21, 1976]

MR. JUSTICE BLACKMUN, dissenting.

We are here concerned with the Freedom of Information Act, 5 U. S. C. § 552, and with two of the exemptions provided by § 552 (b). The Court in the very recent past, has not hesitated consistently to provide force to the congressionally mandated exemptions. See *FAA Administrator* v. *Robertson,* 422 U. S. 255 (1975); *Renegotiation Board* v. *Grumman Aircraft Engineering Corp.,* 421 U. S. 168 (1975); *NLRB* v. *Sears, Roebuck & Co.,* 421 U. S. 132 (1975); *EPA* v. *Mink,* 410 U. S. 73 (1973). See also *Renegotiation Board* v. *Bannercraft Clothing Co.,* 415 U. S. 1 (1974). Today, I fear, the Court does just the opposite.

A. The Act's second exemption, § 552 (b)(2), extends to matters that are "related solely to the internal personnel rules and practices of an agency." There can be no doubt that the Department of the Air Force, including the faculty and staff who supervise cadets at the Air Force Academy, qualifies as an "agency," within the meaning of § 522 (b)(2), and the Court so recognizes. *Ante,* at 2. I would have thought, however, that matters that concern the established Honor Codes of our military academies, codes long in existence and part of our military society and tradition, see *Parker* v. *Levy,* 417 U. S. 733, 743, 744 (1974), and the disciplining of cadets as they

move along in their Government-supplied education, would clearly qualify as "internal personnel . . . practices" of that agency. By its very nature, this smacks of personnel and personnel problems and practices. It is the agency's internal business and not the public's, and, because it is, the exemption is, or should be, afforded. Thus, although the Court does not, I find great support in the language of the second exemption for the petitioners' position here. To me, it makes both obvious and common sense, and I would hold, as did the District Court, that the Act's second exemption applies to the case summaries respondent Rose so ardently desired, and removes them from his eager grasp.

I cannot accept the rationale of the Court of Appeals majority that the existence of a "substantial potential for public interest outside the Government," 495 F. 2d 261, 265 (1974), makes these case summaries any less related "solely" to internal personnel rules and practices. Surely, public interest, which is secondary and a by-product, does not measure "sole relationship," which is a primary concept. These summaries involve the discipline, fitness and training of cadets. They are administered and enforced on an academy-limited basis by the cadets themselves, and they exist wholly apart from the formal system of courts-martial and the Uniform Code of Military Justice.

B. The Act's sixth exemption, § 522 (b)(6), is equally supportive for the petitioners here and for the result opposite to that the Court reaches today. This exemption applies to matters that are "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Once again, we have a specific reference to "personnel . . . files," and what I have said above applies equally here. But, in addition, the sixth exemption covers "similar files

the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The added restrictive phrase applies not to "personnel," and surely not to "medical files," but only to "similar files." See *Robles* v. *Environmental Protection Agency,* 484 F. 2d 843, 845–846 (CA4 1973). The emphasis is on personnel files and on medical files and on "similar" files to the extent that privacy invasion of the latter would be unwarranted. The exemption as to personnel files and as to medical files is clear and unembellished. It is almost inconceivable to me that the Court is willing today to attach the qualification phrase to medical files and thereby open to the public what has been recognized as almost the essence of ultimate privacy. The law's long established physician-patient privilege establishes this. Anyone who has had even minimal contact with the practice of medicine surely cannot agree with this extension by judicial construction and with the reasoning of another Court of Appeals in *Ackerly* v. *Ley,* 137 U. S. App. D. C. 133, 136–137, n. 3; 420 F. 2d 1336, 1339–1340, n. 3 (1969), referred to and seemingly approved by the Court. *Ante,* at 19–20.

If, then, these case summaries are something less than "personnel files," a proposition I do not accept, they surely are "similar" to personnel files and, when invaded, afford an instance of a "clearly unwarranted invasion of personal privacy." It is hard to imagine something any more personal. It seems to me that the Court is blinding itself to realities when it concludes, as it does, that Rose's demands do not result in invasions of the personal privacy of the cadets concerned. And I do not regard it as any less unwarranted just because there are court-ordered redaction, a most impractical solution, and judicial rationalization that because the case summaries were posted "on 40 squadron bulletin boards throughout

the Academy," *ante,* at 1, and copies distributed to faculty and administration officials, the invasion is not an invasion at all. The "publication" is restricted to the academy grounds and to the private, not public, portions of those facilities. It is disseminated to the corps alone and to faculty and administration, and is a part of the Academy's general pedagogical and disciplinary purpose and program. To be sure, "40" may appear to some to be a large number, but the Academy's "family" and the area confinement are what are important. And the Court's reasoning must apply, awkwardly it seems to me, to 20 or 10 or five or two posting places, or, indeed, to only one.

I should add that I see little assistance for the Court in the legislative history. As is so often the case, that history cuts both ways and is particularly confusing here. The Court's struggle with it, *ante,* at 9–16, so demonstrates.

Finally, I note the Court's candid recognition of the personal risks involved. *Ante,* at 27–28. Today's decision, of course, now makes those risks a reality for the cadet, "particularly one who has remained in the military," and the risks are imposed upon the individual in return for a most questionable benefit to the public and personal benefit to respondent Rose. So often the pendulum swings too far.

I fear that the Court today strikes a severe blow to the Honor Codes, to the system under which they operate, and to the former cadets concerned. It is sad to see these old institutions mortally wounded and passing away and individuals placed in jeopardy and embarrassment for lesser incidents long past.

I would reverse the judgment of the Court of Appeals.

SUPREME COURT OF THE UNITED STATES

No. 74-489

Department of the Air Force et al., Petitioners, v. Michael T. Rose et al. | On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[April 21, 1976]

MR. JUSTICE REHNQUIST, dissenting.

Although this case requires our consideration of a claim of a right to "privacy," it arises in quite a different context than some of our other recent decisions such as *Paul* v. *Davis*, — U. S. —, decided ..... In that case custodians of public records chose to disseminate them, and one of the subjects of the record claimed that the Fourteenth Amendment to the United States Constitution prohibited the custodian from doing so. Here the custodian of the records, petitioner Department of the Air Force, has chosen *not* to disseminate the records, and his decision to that effect is being challenged by a citizen under the Freedom of Information Act. That Act, as both the Court's opinion and the dissenting opinion of the CHIEF JUSTICE point out, requires the federal courts to balance the claim of right of access to the information against any consequent "clearly unwarranted invasion of personal privacy." For the reasons stated in Part II of the dissenting opinion of the CHIEF JUSTICE, I agree that the Act did not contemplate virtual reconstruction of records under the guise of excision of a segregable part of the record. I therefore agree with THE CHIEF JUSTICE and MR. JUSTICE BLACKMUN that, in the absence of such redaction, the sixth exemption of the Act is applicable and the judgment of the Court of Appeals should be reversed.