

ORIGINAL

Transcript of Proceedings

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

NATIONAL INSTITUTES OF HEALTH

- - -

SECRETARY'S ADVISORY COMMITTEE

ON

AUTOMATED PERSONAL DATA SYSTEMS

Bethesda, Maryland

Friday, 19 May 1972

ACE - FEDERAL REPORTERS, INC.

Official Reporters

415 Second Street, N.E.
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PART 2

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ON

AUTOMATED PERSONAL DATA SYSTEMS

Fogarty International Center
Building #16 - Stone House
Bethesda, Maryland

Friday, 19 May 1972

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P R O C E E D I N G S

DR. GROMMERS: Can you hear me this morning?

(Laughter.)

I have been doing some thinking about why we seem to be having some kind of problem. It is a very action-oriented group and as I talked to each of you in small groups, everyone is ready to go.

I think most people are feeling a little anxious that we are not doing something that we have not yet organized in order to do something. I am trying to figure out why. I might just throw out for your thought about it, because you will see where it has led me, I think the problem lies in our identity as a committee and I was thinking about what kind of a committee were we.

We could have been either a task force of experts or a lay body with no information; and if we had been chosen as a task force, then our job might have been to each of us bring to the issues all the information that we have had in our past experience, develop a set of issues, develop a set of actions and make a report to the Secretary.

If we were constituted as a lay body with no information, we would obviously have to have a great deal more information than I have, at any rate, in order to come up with a set of issues and a set of policy recommendations.

I suggest we are in the middle, that some of us have

1 an expertise, we have been thinking about these processes and
2 problems for a long time in a narrow sense. Some of us have
3 been thinking about them in a broad sense. One of the prob-
4 lems we have in communicating with each other is we still do
5 not know each other well enough to know just where we sit.

6 I have had some experience teaching people who
7 know nothing about computers, doctors, how to use the MIT
8 Time Sharing System, and it has taken about three months before
9 they have really gotten a good feeling of how to use the com-
10 puter and what the potential is. I would guess that a number
11 of us who have no experience with computers, it would take
12 about three months to really understand what is the technical
13 problem that we are talking about.

14 As far as I am concerned, I do not know how long
15 it would take me to learn enough about the law and enough about,
16 for example, I just found out yesterday that because I applied
17 for an American Express Card, that I am in that credit rating
18 system. You guess that I should have known that, but I really
19 did not appreciate that. I suppose there are a lot of other
20 pieces of information of the same sort that I would be learning
21 as we proceed through this committee.

22 I would like to suggest that the way we act, and I
23 am throwing this out for your reaction, that we act as a lay
24 body, that we pretend that we do not have any information about
25 what the issues are, and that we use our expertise to develop

1 that set of information that we ought to have, and therefore,
2 we will act as a surrogate for the public and that we develop,
3 also, a list of the people whom we would like to have testify
4 to us or to the public in order to arrive at a set of all
5 the information necessary to make a decision and then form
6 the policy in terms of whatever that information turns out
7 to be; and that our final report could be something like --
8 did all of you see the Congressional Record, the -- Senator
9 Proxmire's insert of the televised program on credit reporting?

10 Did any of you see that?

11 This is a -- this is an excerpt from the Congressional
12 Record in 1969, which occurred apparently, about the time the
13 hearings on the credit -- Fair Credit Reporting Act was being
14 developed. We all have it. You all have it in your blue
15 folders.

16 One of the television programs presented a highly
17 dramatic presentation of what in fact, the issues were, a few
18 of the issues were. We could commission such a program to be
19 developed. I do not know how much this would cost. We could
20 get public response to this program in the form of mail, or
21 testimony, or letters, or committee, made up of the public
22 actually being on television, and in fact, responding to it.

23 Another suggestion might be that we could on the
24 basis of all the information we have assembled, get a debate
25 on television about the issues of having people such as Belli

1 or some other counsel, I do not know who, with a highly
2 responsive group of people on the other side who are looking
3 at some of these issues and then getting public reaction to
4 that, or have them present it in front of this panel.

5 I suggest we could use the most modern form of
6 communication that we have which is the television as our
7 method of presentation of the report of our recommendations
8 to the public as well as to the Secretary.

9 We could certainly prepare a document which summarizes
10 the conclusions.

11 DR. BURGESS: Conclusions of what?

12 DR. GROMMERS: The conclusions we have reached on
13 the basis of the information that has been made available to
14 us.

15 DR. BURGESS: I do not understand what the content
16 of these presentations will be. I mean, you know, are we
17 going to turn over to television producers, the job or laying
18 out the issues which I would suppose is our job?

19 DR. GROMMERS: No. No. If we decided to do this,
20 and it is not at all sure we would want to, we would only
21 turn over to television producers, the job of presentation.

22 DR. BURGESS: I just -- just to react, I do not --
23 you know, we all -- all we have talked about, you know, most
24 of yesterday afternoon and now the beginning, again this morning
25 are staging kinds of issues. It seems to me that, you know,

1 there are people here who want to do different things.

2 I think those people ought to be encouraged to go
3 do them and we ought to, you know -- we ought to develop --
4 you know, we have a little social history to this group. We
5 are getting to know each other and appreciate each other. I
6 think we ought to begin to develop an intellectual and exper-
7 ience history for the group where people who have experience
8 in services on the delivery side, people who have experience
9 on the technical side, people who have experience on other as-
10 pects of this issue ought to, you know, be preparing
11 documents and circulating those documents before meetings.

12 We ought to develop a -- I think out of that and
13 out of that circulation and subsequent discussion, we would
14 develop issues that are important. It seems to me we are
15 searching for gimmicks, you know, that are substitutes for our
16 doing the work that we are appointed to do. You know, I for
17 one, am not, you know, very interested in kind of being the,
18 you know, -- a mirror for letters from the public.

19 I mean, I think if anybody believes that these
20 issues have not been spelled out -- it seems to me, it is
21 quite clear that these issues have been spelled out in various
22 places. It does not take much imagination to know where to
23 go to get those issues.

24 DR. GROMMERS: Could you give me a list?

25 DR. BURGESS: We can start with Arthur Miller's book

1 on the one side, we can start with Sam Ervin's committee on
2 the other.

3 We can go to the people who have got serious problems
4 in the service delivery side with cost accounting, program
5 evaluation.

End #1

Start #2

6 These things are all documented and laid out. I
7 submit the problem is not at its base a problem with the com-
8 puter or a technical problem. It is really a value question
9 about the balance between, you know, social utility on the
10 one side and the social cost on the other.

11 I think that the utilities and costs have to be
12 laid out. We do not know what those utilities are and we
13 do not know what those costs are. I for one, would much rather
14 sit here and listen to people who have responsibilities for
15 delivering services or for evaluating programs, who are --
16 whose oxen are going to be gored by continuing the way we
17 are or not continuing the way we are, than spending a lot of
18 time receiving letters from people who are, you know, reactive
19 to a dramatic presentation.

20 DR. GROMMERS: What I am suggesting then is that you
21 should be allowed to do that. But there are other
22 people on the committee who do not feel that that is the way
23 to do so. There is not a consensus here.

24 What I am suggesting is a vehicle whereby you can
25 do that and other people can do the other thing that they are

1 interested in doing as well and that out of that, we get a
2 consensus.

3 I am not suggesting that we should be spending
4 six months designing a television show.

5 DR. BURGESS: I would suggest if there is going to
6 be a television show, there ought to be six months spent
7 designing it. The issues, you know, with respect to the costs
8 and benefits have, say, a common unique identifier to take the
9 central issue, that, you know, that we really do not know
10 very much about that.

11 We know what the issues are, but we could not know
12 what these substantive kinds of --

13 DR. GROMMERS: What -- would you confine your remarks
14 to the process rather than your opinions of what the issues
15 are. We will have plenty of time to talk about that. We
16 are just talking about the process. What other -- if you do
17 not -- if you prefer not to act as a lay body, and use your
18 expertise to determine where the sources of information are,
19 to which this group should react, what would you like to do?

20 Think about that and I will come back to you.

21 Mr. Gentile.

22 MR. GENTILE: Yes. I would like to respond to that
23 question even though it was not addressed to me. I do not
24 concur with the attitude you just expressed about the role of
25 the committee and I would like to offer an alternative. The

1 alternative is that each of us put ourselves in the position
2 of the Secretary of HEW and ask ourselves what it is that we
3 would do if we had that job, and I think we could recognize
4 that we would want to establish certain positions and policies
5 and be responsive to the Senator Ervin's committee, and help
6 manage the personal data systems that exist throughout states
7 as a result of the Department's activities.

8 And I would organize it in the way that would list
9 a number of issues and have committess which represent both
10 sides of the issues all on the one committee, develop and
11 exploit those ideas and develop a position paper that would
12 then be reported back to the group at large.

13 DR. GROMMERS: How would you go to the issues?

14 MR. GENTILE: For example, I will give you some
15 examples of issues; some will be more specific than others.

16 One thesis might be the exposure to the invasion of
17 personal privacy is real and in existence at this time--

18 DR. GROMMERS: Excuse me, Mr. Gentile. I would
19 rather not have you speak about those particular issues at
20 the moment. Just talk about process for a moment. How would
21 you get at which issues would be decided by this group, rather
22 than those that would be used?

23 MR. GENTILE: One alternative would be to form
24 four or five groups right now, with the charge to each group
25 that they isolate issues, and come back within an hour and

1 and propose issues to be addressed, and I think that there is
2 much being said about the lack of consensus in the group, and
3 I believe that there is a lack of consensus in the group.

4 However, I do not think it is as overwhelming as
5 some would lead us to believe. It might be well to take a
6 sample poll as to how the other people on the committee feel,
7 but I sense a certain degree of unrest, and I feel that a number
8 of people on the committee that I have spoken with are very
9 concerned to move ahead and to be somewhat specific, as specific
10 as we can be.

11 DR. GROMMERS: I would like to do what you are
12 suggesting. In fact, at a certain time of the day, today, I
13 would like, in fact, to break up into groups or however you
14 all want to organize yourselves.

15 MS. COX: We spent two days making lists of issues
16 last time. We spent a lot of time discussing issue and listing
17 them. A lot of different people listed issues.

18 DR. GROMMERS: Right. I also would like a list of
19 what kind of information is needed about those issues and I
20 think --

21 MS. COX: Would not the committee, the group then
22 get all that together and make a report on that?

23 DR. GROMMERS: They could, but I think you will find
24 you do not have agreement on what these issues are.

25 MS. COX: I do not know. Have we ever checked that?

1 DR. GROMMERS: No. That is what we will do. We
2 will go from there. I think it is a very valid way of starting.

3 MR. DOBBS: To the point of whether we should act
4 as a lay body which -- I presume we get, based on the assumption
5 that there is a lack of information, and I guess my impression
6 is that that maybe the case in terms of specifics.

7 There are some of us who are oriented toward tech-
8 nology and have a good deal of information there, but my
9 impression that -- to the contrary, rather than being uninformed,
10 this is a highly expert collection of people in, you know, some
11 fairly specific kind of areas and that a large number of them
12 have, in fact, come in contact with these issues and the
13 problems as vague and undefined as they may be in their par-
14 ticular area of expertise.

15 I guess, to me, at least, it is not clear to what
16 extent we have to get additional information, and input from
17 the viewpoint of really being a lay group. I think that
18 distorts reality. I do not think we are, at all.

19 DR. GROMMERS: We are not, but we could add to one.

20 MR. DOBBS: To what end? That, I guess, is what I
21 do not understand?

22 DR. GROMMERS: Collecting the body of information
23 together in one place that would be required to make a convincing
24 case for any policy that we would decide to recommend.

25 Professor Allen?

1 DR. ALLEN: I think that Arthur Miller, Gerald Davey,
2 Joe Weizenbaum; would find it hard to disregard what they know
3 about these issues among others in this room, and that to pre-
4 tend we are really a lay body on this would be -- we would not
5 be right in that, I believe.

6 MR. ARONOFF: But that does not mean that with all
7 your sophistication in a particular area, that you are not,
8 perhaps, lay -- in the kind of solutions that the Secretary
9 is looking for.

10 You are experts in the field of technology and the
11 fears that you are going -- next week -- to express to the
12 committee and convince us and persuade us in. But in terms of
13 starting from that base and then reaching out for the charter,
14 I think that maybe there is -- this would not be as expert a
15 committee, I would say, as a group of constitutional lawyers.

16 You, being one there, you would, perhaps, be expert
17 in that. In terms of solutions, we may -- the balance of the
18 group may be very much in the category of being lay. I think
19 what the Chairman was saying, was bring your expertise to this
20 group, to the lay people on the group then so we can understand
21 your fears.

22 I think that is what Joe wanted to do yesterday,
23 was to persuade some of the lay people in this group.

24 MR. DOBBS: I am not sure he wanted to persuade the
25 lay people, he may have wanted to persuade some of the experts.

1 Pat is an expert in what she does. She is associated with
2 a system that has all these characteristics. She does not,
3 I do not think, need additional expertise in the sense of
4 technological kind of arguments, you know what I mean?

5 She saw a computer yesterday, and she said, "You
6 see one, you have seen them all."

7 MR. ARONOFF: Then she went back to drinking, too.

8 (Laughter.)

9 DR. GROMMERS: Mr. Anglero?

10 MR. ANGLERO: Yes. I would say the way I look at
11 this, I feel it is not a problem of being a layman or being
12 expertise. In the place we are and with the problem we are
13 facing, we have to level in terms of the specific problems,
14 in terms -- the knowledge, and to be educated, so as to react
15 to it, really.

16 We have to understand that in some way, we are
17 almost expertise. If not, we would not be here, you know.
18 But I would say that even though we can be arguing here for
19 ten years or for six months and never getting to an agreement,
20 we have to develop a way to come into the basic role of solving
21 or recommending something.

22 I agree with the recommendation that we, some way,
23 try to define the issues that are behind the problem. That
24 really will help us to start moving. If we can not run, at
25 least, work. But move in a direction to go into recommendations

1 and after we have defined these issues, there could be, and
2 I recommend, that we all split today or whenever it is
3 convenient, in small groups and bring those issues to be
4 debated by the group and be adopted.

5 We have to have the basic issues to be clear of,
6 and then we develop a strategy of how to live with them, how
7 to answer these issues.

End #2

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1 DR. GROMMERS: Mr. De Weese?

2 MR. DE WEESE: It seems to me the best way to get to
3 the specific facts and issues that we are trying to get at would
4 be to concentrate on the specific data systems that are
5 operated by HEW.

6 I mean it seems to me that we have a case here where
7 we are the advisory committee to the Secretary who has under his
8 direct responsibility I think probably literally hundreds of
9 different data systems of which he doesn't know anything about
10 the security or privacy problems involved with each one.

11 DR. GROMMERS: I want to keep you on the issue.

12 We are talking about process. Then we are going to have
13 some presentations.

14 MR. DE WEESE: This is the process I am trying to get
15 at. I think we ought to isolate four or five different data
16 systems in HEW, ones that are planned for the future, ones that
17 are in operation today --

18 DR. GROMMERS: Who would do this?

19 MR. DE WEESE: This committee.

20 DR. GROMMERS: Who? Would you list five? Who would
21 list five data systems?

22 MR. DE WEESE: I think the one we talked about
23 yesterday, H.R. 1 --

24 DR. GROMMERS: No. I mean who would do it? Who
25 on the committee would make the choice?

1 MR. DE WEESE: I think we as a committee if we had
2 the facts before us could find five representative -- five or
3 six data systems.

4 DR. GROMMERS: Somebody has first to put the facts
5 before us.

6 MR. DE WEESE: I don't think the real problem is
7 finding the five systems.

8 DR. GROMMERS: I am just looking at process here.
9 What do we do tomorrow; what do we do this afternoon? How
10 do we actually arrive at something?

11 You are suggesting that as part of this process, one
12 of the outputs is a list of five systems that I gather what you
13 are saying is the whole committee speaks about together, as
14 opposed to breaking up into small groups.

15 MR. DE WEESE: I think it would be easier if you
16 divide into five small groups. There is the expertise to
17 analyze and tear apart any data system this agency develops.

18 If H.R. 1 is ever passed, I can see the Secretary
19 being asked to testify before a committee where a liberal
20 senator asks him, "Have you considered the privacy problems
21 involved with this computer data system?" What's he supposed
22 to say, "No, I don't know anything about it."? He says, "Do
23 you talk about a -- do you have an advisory -- "

24 DR. GROMMERS: You are not really speaking to the
25 point right now.

1 Miss Cross.

2 MR. DE WEESE: I am sorry.

3 MS. CROSS: As I look at this, it seems to me I would
4 support both the lay board and the expert board. We have both
5 an information overload and a lack of information.

6 It seems to me one of the problems is that our
7 information is not directed to the questions that have to be
8 answered.

9 As far as process, what I would like to propose is
10 that we identify, as a group, agree upon what the questions are
11 that have to be answered. Then bring our expertise to bear on
12 those questions instead of just listening to more information
13 about the problem in general because I feel a need for
14 directed information.

15 DR. GROMMERS: How would you propose we identify.
16 Mr. Gentile has suggested we identify by splitting up into
17 groups, presumably on a voluntary basis, and that during an
18 hour's discussion each group comes out with a set of issues.

19 Do you have an alternative to that method or do you
20 think that's a good method?

21 MS. CROSS: I think that's all right. It seems to
22 me what I would prefer at the moment is to get a group of
23 issues and simply vote on what are the five most important and
24 start at that point.

25 DR. GROMMERS: How would you get a group of issues?

1 Each person write down three?

2 MR. GENTILE: We have a group of issues.

3 MS. CROSS: Can we reach an agreement, then? If we
4 have a group of issues, we are not going to be any ahead to
5 break into groups and get more issues.

6 Maybe we need consensus on whether those issues are
7 acceptable.

8 DR. GROMMERS: I would like to remind people again
9 of a couple of comments that came out during the discussion,
10 Mr. Boyd's discussion, where Dr. Weizenbaum and Dr. Miller
11 pointed out that there were certain characteristics of very
12 large organizations, of very large data banks which -- and I
13 think Mr. Davey also pointed out that one of the things that
14 happens is that the system begins to act for the sake of the
15 system and not for the sake of the people.

16 I think there are a number of issues that are hidden
17 here and that people at MIT that I know of and people at
18 Harvard that I know of and I am sure other people as well, are
19 trying to study.

20 We are not really trying to design safeguards for
21 any system that now exists, but for a system that may be built
22 in the future which we really don't know what it's going to be
23 like.

24 There is a large body of data being gathered as to
25 what it might be like in the future. I don't know if any of

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End #3

#4

1 you have time to read Professor Weizenbaum's article which we
2 gave you a copy of, but it's how do you design a system for the
3 future when you don't know what it's going to be.

4 That is, in my opinion, one of the problems you are
5 all having here as a group. I don't know that you have as a
6 group really all of the information that it would enable you
7 to collect.

8 I would like to try Mr. Gentile's suggestion at a
9 later date, later hour today and see how we will do.

10 What we are going to do today is we have three
11 presentations that are possible to us.

12 MR. ANGLERO: I would like the group to consider the
13 possibility of meeting instead of two days at least three days.

14 Now, we are facing the pressure of a time at this
15 moment and I think, personally, that, for example, yesterday
16 it was a long journey, a long day. We cannot come here and
17 prepare even when we get all this material. I would recommend
18 that we can extend at least to a three-day meeting if it is
19 possible.

20 DR. GROMMERS: We will take up that later on in the
21 afternoon, how we are going to organize our future meetings,
22 when they are going to be.

23 What we have, we have three people who are here
24 available with some more information for us: Mr. McLean, who
25 can bring us information on the fair credit account; Mr.

1 White, who can give us some information on the ANSI standard;
2 and Mister -- I am sorry, I don't have the correct spelling
3 of everybody's name here - Mr. Turn, from Rand Corporation,
4 who can give us some information on one of the projects that is
5 looking into what some of the issues might be. For example,
6 is it possible to have a secure computer system.

7 Also, Dr. Rourke will come later on in the morning
8 and tell us more about the NIH need for an identifier in a
9 particular system.

10 I would like to suggest that we have the
11 presentations, each of them about 20 minutes apiece and 20
12 minutes of discussion on these presentations. That's four
13 hours of work and that we -- I guess we better make that
14 15 and 15; otherwise, we won't get done.

15 Before lunch we make a division into groups on any
16 basis that you all want to do so, on any voluntary basis. I
17 would like you to be thinking about and make a list for me
18 without your name on it of two things that you can give to me
19 after lunch:

20 One. One or more issues that you perceive to be
21 important; and what information would have to be available to
22 substantiate and to explain this issue, and what information
23 you might be lacking.

24 And a second thing is one proposal that you would
25 have for a change in the existing practice that you can think of.

1 I will go over these again. The second -- as an
2 example of the second, supposing you would say you would like
3 that there be a law that any time any record was made about you,
4 you got -- you, the individual, got a notification of this
5 record. In other words, you don't have to try to be -- to
6 write down all of the things that you right now as an expert
7 feel you would like to have happen as a result of legislation,
8 but I would like to see what the group in general is thinking
9 about, see whether we do have already, maybe, a basis for
10 policy recommendations and that we could spend the next six
11 months refining that rather than searching for it.

12 And after lunch we can start discussing some of these
13 things. We can discuss the results of the debates of the small
14 groups. We can -- I will put on the board or on a list of
15 paper the changes that people have -- the changes that people
16 have thought about and the issues people have thought about.
17 We can turn our discussion to those three things.

18 Mr. McLean, could we ask you to give us a
19 15-minute --

20 MR. MARTIN: This is Kenneth McLean, a professional
21 staff member of the Senate Committee on Banking and Currency
22 and one of the most expert people on Capitol Hill in the
23 problems that arise from the fair credit legislation and the
24 problems arising from that legislation.

25 MR. MC LEAN: I am very glad to be here today to talk

1 to you somewhat about the Fair Credit Reporting Act.

2 I know you have a very difficult and somewhat
3 elusive assignment. Perhaps my remarks won't add to your
4 attempts to clarify your responsibilities.

5 I work for the Senate Banking Committee, specifically
6 for Senator Proxmire on that committee, who has been interested
7 in a wide variety of issues in the consumer credit field.

8 It started out with Truth-in-Lending. In the course
9 of our work on Truth-in-Lending, we received numerous complaints
10 from consumers who had trouble getting credit and who had
11 trouble correcting their credit records with confidential credit
12 bureaus or credit reporting agencies.

13 Therefore, in 1968 the Senator became interested in
14 reform legislation in the credit reporting field. However,
15 when we got into the issue we soon found we were only touching
16 the tip of the iceberg and there was a vast, additional amount
17 of reporting going on that was not necessarily credit reporting.

18 For example, many organizations specialized in
19 insurance type reporting, reporting much of the same information
20 that credit bureaus gather, information on persons' financial
21 status, his credit capacity, his mode of living, his moral
22 character, et cetera; and many of these organizations also
23 branched out into the field of employment reporting.

24 So, we decided at the outset that if we were going to
25 do anything meaningful we really ought to cover the entire

1 range of reporting in data collection going on in these private
2 systems rather than strictly credit reporting.

3 There are basically two divisions of the industry in
4 the credit reporting or data collection field.

5 One would be -- could be termed reciprocal credit
6 bureau which maintains a relationship with local merchants and
7 local credit grantors and it basically is a repository of
8 credit-type information on a person's bill-paying capacity,
9 certain financial data about him, and also public record infor-
10 mation about arrests, convictions, judgments, divorces, law-
11 suits, et cetera.

12 The other branch of the industry might be termed
13 the investigative reporting segment. This branch concentrates
14 primarily for insurance reporting purposes or employment
15 reporting purposes and rather than merely receiving the more or
16 less factual information on a person's debt-payment capacity
17 from merchants, they actually go out and investigate. They
18 talk to neighbors, friends, associates, employers, about the
19 person and deal more in subjective-type information about the
20 person's character and moral qualities rather than objective-
21 type information.

22 We felt it was very important to cover both segments
23 of this industry.

24 The Retail Credit Company based in Atlanta,
25 Georgia is probably the largest investigative-type reporting

1 agency in the country. They have offices in about 3000
2 communities. They have dossiers on over 45 million people and
3 they do upwards of 30 million reports a year, perhaps 80 percent
4 in the insurance area and the rest divided between credit and
5 employment, a very big organization and a very vast data net-
6 work.

7 Very little of it, I might add, is computerized,
8 although they are looking into the possibility, but since their
9 investigative reports are often subjective and deal with
10 opinions, it presents certain problems to computerize this
11 information.

12 The Associated Credit Bureaus of America is a grade
13 association for most of the major credit bureaus in the country.
14 Collectively these credit bureaus have files on about
15 110 million people in the country and they do about 100 million
16 reports a year.

17 Some of them are beginning to computerize; some are
18 already computerized. The trade associations sell a contract
19 with a data processing firm to develop a nationwide system so
20 that the credit bureau in Panook, Iowa can connect up with the
21 credit bureau in Poughkeepsie, New York and the credit bureaus
22 can talk to one another and a person's credit record can be
23 transferred throughout the country.

24 The third firm has grown quite rapidly in the last
25 three years. It's based in California, the Credit Data

1 Corporation which is now a subsidiary of TRW. It started out
2 with a few million accounts with Bank of America and has
3 expanded nationwide so that it is now in several states.

4 During the hearings, they estimated within a few
5 years they expected to have files on between 40 and 50 million
6 people. I believe they are probably at the 15 to 20-million
7 figure now, although I haven't checked it recently.

8 When we worked on the legislation, designed the
9 legislation, we had three principal objectives in mind:

10 The first objective was accuracy. We wanted to be
11 sure these reports were as accurate as possible and the person
12 who was adversely affected by these reports had a chance to
13 challenge the accuracy, had full access to the information,
14 could make an input and would be confronted with the informa-
15 tion and be given a chance to give his side of the story.

16 The second objective was to assure the confiden-
17 tiality of the information once it's in the file, to be sure
18 that it is used for the purpose for which it is collected and
19 not indiscriminately sold to anyone who came in with the
20 purchase price.

21 The third objective was to assure the relevancy of
22 the information, that is to put some restrictions on the type
23 of information going into the file, to be sure that it is
24 reasonably related to the purposes at hand and does not
25 constitute an undue invasion of the individual's right to

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1 privacy.

2 If you talk to people in the credit collection --
3 credit reporting field, they have a general attitude that the
4 creditor, the insurance company, the employer has an unlimited
5 right to collect information on people. After all, it's the
6 person that is applying for credit; he's applying for insurance;
7 or he's applying for employment. He gives his implied consent
8 to be investigated and the employer or insurer, creditor has
9 an absolute right to get any information he thinks fit.

10 Obviously in our conflictive society there has to be
11 a balancing between the right of the person to collect infor-
12 mation and the right of the individual to be -- to remain
13 reasonably free in his privacy.

14 We achieved one of these objectives fairly well. One
15 I would say middling, and the third, very imperfectly.

16 As far as accuracy goes, we have given the
17 individuals a statutory right to have all of the information
18 in their credit file disclosed completely and accurately.

19 Whenever a person is turned down for insurance or
20 employment or credit because of an adverse credit report, the
21 person rejecting the applicant must indicate that it's on the
22 basis of a credit report, either wholly or partly, and give
23 the name and address of the credit reporting agency. This puts
24 the consumer on notice that there is an adverse report
25 circulating on him. He then has a right to go down to the

1 credit reporting agency and have the information in his file
2 disclosed to him.

3 Now, he does not have a right to a physical copy of
4 the report in writing and this is one of the problems in the
5 administration of the Act. The credit bureau lobby was warned
6 that if individuals got a written copy of their credit report,
7 they would simply take it and use it with other creditors to
8 obtain credit and therefore the revenues that the reporting
9 agency would otherwise derive would be bypassed.

10 So, they make an oral disclosure and in practice
11 it's -- it sometimes has been difficult to determine whether
12 the -- all of the information actually is being disclosed.

13 The individual has a right to enter his version of a
14 dispute in the case of a disagreement over the accuracy of an
15 item. The credit bureau is required to investigate the matter.
16 If it can't be reverified, it has to be deleted. If there
17 remains a dispute, the individual could put his version into
18 the file and this would have to be communicated on subsequent
19 reports.

20 The credit reporting agency also has a statutory
21 obligation to insure the confidentiality of the information and
22 to use it only for certain defined purposes: obtaining
23 insurance, employment or credit or for another legitimate
24 business purpose involving a specific transaction with the
25 consumer.

1 On that point the Federal Trade Commission has
2 recently ruled that credit reporting agencies cannot sell the
3 information in their files to market research firms who want to
4 develop mailing lists about all consumers with specific
5 characteristics. They have made this interpretation on the
6 grounds that there is no specific pending transaction with the
7 consumer which he is aware of and therefore the information in
8 the file cannot be released for this purpose.

9 As far as the objective of relevancy is concerned, I
10 believe the Act is sadly deficient. We started out with the
11 provision giving the FTC the power to write rules and
12 regulations defining what types of information could go into
13 the file with the general requirement that it be recently
14 related to the purpose and that it constitute an undue invasion
15 of the right to privacy.

16 This was eliminated from the bill and the only
17 remaining provision bearing on relevancy is a rather weak
18 disclosure requirement. Whenever someone orders an investigative
19 report on a consumer, he is required under the law to disclose
20 in advance that an investigative report is being run and to
21 describe in very general terms the nature and scope of that
22 investigative report.

23 Now, the theory behind disclosure, if the public
24 knew the extent to which they were being investigated,
25 particularly by the insurance reporting firms who go into great

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1 detail about a person's sex life, his housekeeping habits,
2 his associates, his general political or psychological attitudes,
3 ad inifinitum, the public would be so upset that insurance
4 companies would be forced to delete these obtrusive type ques-
5 tions from their questionnaires.

6 In practice, the disclosure has been so general
7 that consumers -- few consumers have availed themselves of the
8 disclosure that I don't believe the objective has been
9 achieved.

10 I have given you a very quick rundown of the act.
11 We do intend to hold some oversight hearings on the act next
12 year, to see how it is working. I have identified some of the
13 problems in the act, the lack of a written disclosure of a
14 credit report.

15 Also, we are concerned about the timing of the
16 so-called trigger device in the bill. An individual does not
17 learn of an adverse report under the law until he has actually
18 been turned down for either insurance, employment or credit.
19 In many cases, it may be too late to do anything about it,
20 particularly if he has applied for a job. He finds he has
21 lost the job, he goes down to the credit bureau, he gets the
22 report corrected, but in the meantime, someone else has the
23 job, so it really doesn't do him much good.

24 We are giving considerable thought to moving the
25 trigger device back and require that whenever an adverse

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1 report goes out of the system, a consumer be given a copy of
2 that adverse report. Then he is able to challenge the accuracy
3 or authenticity of the report with the actual decisionmaker
4 who is presumably about to act on the report.

5 The major problem there, of course, is defining what
6 is adverse information.

7 Credit reporting agencies take the argument that
8 they simply report facts, they make no evaluative judgments
9 on it, and that under certain circumstances, almost any
10 information could be considered adverse by someone.

11 However, I think these are largely conjectural
12 fears and that it would be possible to draft a statute and
13 administer regulations that would come up with a reasonable
14 definition of what is adverse information, and when the consumer
15 must be notified.

16 In conclusion, I would make two recommendations to
17 your association, your Advisory Committee. I am glad to
18 see that you are getting into this field. I would hope that
19 some of your recommendations might have a bearing on what we
20 are doing on Capitol Hill and that we might, perhaps, work
21 together on it.

22 First of all, I would give serious thought to
23 including the private data systems now in effect or underway
24 as well as public data systems. I think it would be somewhat
25 meaningless to have all these safeguards in the public sector

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1 of the economy when private credit reporting firms or consumer
2 reporting firms are doing the same thing with far fewer
3 safeguards.

4 Moreover, there is a substantial interchange between
5 these data systems. We found in our hearings that government
6 investigators frequently use the information in private data
7 collection banks and I suspect, although I haven't been able
8 to verify it, there is a reciprocal arrangement on the part
9 of private firms with the government collection agencies.

10 I think Arthur Miller, who is a member of your
11 Advisory Committee, testified during our hearings that there is
12 a buddy system that has sprung up on the part of investigative
13 firms. Investigators, regardless of their location in the
14 public or private sector, often cooperate with one another in
15 sharing information.

16 Therefore, I think it is important that your
17 recommendations go to the essential thrust of the problem and
18 not confine itself to a particular sector of the economy, or
19 to a particular sector of the government.

20 Obviously the Secretary of HEW can do something
21 specific about the data systems under his own control, but he
22 also is a very forceful individual, he enjoys a high degree of
23 respect within the Administration and with the Congress, and
24 I think his recommendations for other agencies or for legisla-
25 tion to control private data systems would carry great weight.

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1 Secondly, I think you should focus on the problem of
2 privacy in data collection systems rather than the particular
3 technological means for processing that data.

4 An individual can be just as damaged by a hand-
5 operated data collection system as he can by a computerized
6 system. In fact, we found in the private systems the worst
7 offenders were the insurance reporting firms which are largely
8 manual in their operation.

9 Some of these data systems are not computerized
10 now, but they perhaps lend themselves to computerization or
11 to advanced processing techniques. It seems to me the focus
12 ought to be not on the particular technology used, but on
13 the problem to the consumer and to the public involved in
14 personal data banks.

15 That ends my presentation. I would be very happy
16 to answer any questions you might have about the Fair Credit
17 Reporting Act.

18 MR. DOBBS: A couple of questions.

19 There are certain kinds of credit transactions in
20 which the consumer himself is charged directly for the credit
21 search.

22 MR. MC LEAN: That is right.

23 MR. DOBBS: Does he by virtue of that fact, have any
24 additional rights to direct report of that data?

25 MR. MC LEAN: No, no.

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1 The credit bureaus take the view that that is a
2 report to their client, and before the Fair Credit Reporting
3 Act, many credit bureaus would deny the consumer the right to
4 any type of disclosure.

5 MR. DOBBS: So, even though he is charged directly
6 for that service, he gets no -- no right accrues to him as
7 a result of that?

8 MR. MC LEAN: The concept of being charged for the
9 service is a little artificial. Whether he is charged
10 directly or indirectly, he is still paying for it.

11 Some creditors simply pack it on their finance
12 charge, or in the price of the merchandise.

13 One way or the other, he is paying for it.

14 MR. DOBBS: The second question is, in many instances
15 the establishment offering a product or service handles the
16 collection of the credit information in some direct fashion
17 like in a department store, for example, and/or some other
18 kinds of service. Then subsequently may, in fact, pass that
19 credit information on to yet a third person who collects the
20 money, agency?

21 MR. MC LEAN: Yes.

22 MR. DOBBS: Do the restrictions of the act now
23 cover both of these matters in the transaction?

24 MR. MC LEAN: Let me make sure I understand you.

25 A merchant is dealing with a specific customer, and

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1 the customer comes in and applies for credit. The merchant
2 collects the credit information himself, calls around town,
3 compiles a credit report.

4 MR. DOBBS: Subsequently, passes that credit
5 information on to yet another party.

6 MR. MC LEAN: Then he becomes a credit reporting
7 agency and he would be regulated as a credit reporting agency.

8 If he keeps it to himself, he is not regulated
9 under the act.

10 MR. GALLATI: Is there any pattern of sequencing
11 of these files, clarification?

12 In other words, are they all name, address, DOB,
13 and so on? Are they sequenced in order of Social Security
14 number, or is there no pattern?

15 Is there interface between the various agencies and
16 on what basis?

17 MR. MC LEAN: I am not entirely familiar with just
18 how they are operating in that respect, and I suggest you might
19 want to get someone from the industry to talk to you on that.

20 The few credit bureaus that I have seen have had
21 their -- were not mechanized and had the information filed
22 simply alphabetically.

23 MR. GALLATI: They do interchange among themselves?

24 MR. MC LEAN: Right.

25 I would assume they would be looking towards a

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numerical identification number such as the Social Security number as the universal means of identification.

DR. BURGESS: When you receive testimony on the relevancy issue, what is the -- did there appear to be good reasons for most data that were collected in the investigative reporting?

MR. MC LEAN: No, not at all.

In fact, some of the information seemed to be entirely frivolous. We had a representative from the life insurance industry before us, and we showed him the actual forms that were used by insurance reporting agencies, and we went down question by question, what is the relevancy of that?

One of the question was, how many bathrooms does the individual have in his house, and then, a follow up was; are the number of bathrooms adequate for the number of people?

We said, well, how was this related to mortality?

You mean statistics showing that people with fewer bathrooms die?

And, he, of course, admitted, no. He admitted himself the question was frivolous and he couldn't understand how it had gotten on the form.

One of the problems is, of course, that like all bureaucracies, they have an inclination to go -- insurance companies have an insatiable appetite for information. They don't want to pay too much for the information, so they have

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1 probably got the worst of all possible worlds, they have a
2 lot of information that is probably inaccurate, and not
3 very useful, and doesn't really help them out in their
4 underwriting decisions.

5 DR. BURGESS: Lots of times, any single item on a
6 questionnaire will be suspect out of the context of an index
7 that it is part of, or -- independent of a model that may be
8 an important element in.

9 Was there any indication that these people were
10 using sophisticated models to project these kinds of things?

11 MR. MC LEAN: None whatsoever.

12 We asked, for example, to relate -- for the
13 insurance companies to relate evidence on extra-marital
14 behavior to mortality and they had no such information.

15 They do, it seems to me, have a legitimate right
16 to collect information on alcoholism. That is, you know --
17 there are statistics on that to show alcoholics die more.

18 The advice given during the hearing was that if
19 someone was having an extra-marital affair and the other
20 husband finds out about it, he might shoot him. That is all.

21 DR. BURGESS: Might live longer, too.

22 MR. MC LEAN: Another justification was frightening.

23 The auto insurance industry also conducts a
24 complete investigation of anyone who applies for auto
25 insurance. Their questions are even more obtrusive than the

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1 life insurance people. They want to know who you associate with
2 what your attitudes, your manner of behavior, whether you are
3 a neat housekeeper.

4 We asked how is this related to driving ability
5 and the witness said, it really isn't, but we are insuring
6 these people against liability, so we may be compelled, some day,
7 to defend them in a legal action before a jury, and if they,
8 in any way, have some deviant behavior characteristics, they
9 wear pink shirts, or have long hair and a mustache, they
10 read Karl Marx --

11 (Laughter.)

12 MR. MC LEAN: On that basis, almost all of us in
13 the room would flunk.

14 This is their rationale. If you admit that
15 rationale, there is a certain spurious logic to it, there
16 is no limitation to what they can collect. They can look in
17 your library and see what books you read, what magazines you
18 subscribe to.

19 DR. BURGESS: I would like to ask just one more
20 question.

21 In the Office of Management and Budget, where
22 clearance is required for many kinds of survey instruments that
23 are used, has there been an evaluation of -- or are you -- I
24 imagine you would be involved in that.

MR. MC LEAN: I am not involved. I am familiar with

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1 the function.

2 Whenever a federal agency sends a questionnaire
3 out to the business community, that has nothing to do --

4 DR. BURGESS: What I wanted to ask was, have
5 any clearcut criteria of relevance or test of relevance, been
6 developed through that experience?

7 MR. MC LEAN: I could not really say.

8 I would imagine that is what the bureau does. They
9 ask the agency -- why do you need this information?

10 How will it help you in your assigned mission?

11 Is there some other way you can get it without
12 burdening the business community with more red tape?

13 MR. DAVEY: I would like to make a comment about
14 part of the credit bureau, or the industry.

15 I was with Credit Data Corporation. We felt during
16 the hearings and the like that mixing investigative reporting
17 with the other type of credit reporting was kind of a mistake
18 because it kind of broadened things out to such an extent that
19 the code of ethics which we were essentially operating under
20 and we were proposing to be adopted as standards, that
21 our -- some of the -- well, let me say that I think that there
22 was a lot of good that was obtained through the bill by
23 bringing attention to these things, particularly in the area
24 of investigative reporting.

25 But I think that it did tend to lower the standards

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1 that were being used in other parts of the industry.

2 MR. MC LEAN: I think you are right. I think our
3 initial objective was to occupy, so to speak. The trustee
4 at one time pursued an item of considering the problem of
5 credit reporting separately and insurance reporting and
6 employment reporting. We felt if we split the bill up in
7 three pieces, we would be lucky to get one out of the three.

8 Rightly or wrongly, our judgment was to get a
9 comprehensive statute, occupy as many fields as we can,
10 however perfectly, and then work on improving the act in
11 subsequent years.

12 I think you are right. The act is deficient in the
13 investigative reporting field and that needs to be straightened
14 out.

15 DR. ALLEN: On the privacy question for individuals,
16 that is the right to privacy versus the privilege of
17 organizations to collect any and all, and to freely transfer,
18 information, if we were to recommend to the Secretary a
19 definition of the word right of privacy, that for individuals
20 who provide information to a collector, that with that collec-
21 tion, there be an indication and notice of for what purpose
22 that was being collected, and that the individual should have
23 a right that it not be used for other purposes than that or
24 transmitted to others unless -- and then there might be a
25 set of conditions under which it could be done, that is

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1 obtaining the permission of the individual or a certain kind of
2 transmission if the information was aggregated so that
3 there was no possibility of tracing -- putting all of the
4 information together on that individual, or a residual
5 procedure whereby, perhaps to a privacy commission in instances
6 where it was for specified reasons impractical to get
7 all of the authorizations of the individuals who had provided
8 the information.

9 But a set of safeguards of this type.

10 Who would have difficulty living with that kind of
11 definition of right of privacy and for what reasons?

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1 MR. MC LEAN: Well, if you would apply that to the
2 insurance investigative reporting industry, and would require
3 advance disclosure and require advance permission of the
4 consumer along with taking the advance permission, there has
5 to be a very clear disclosure of what types of questions the
6 insurance company was going to ask, they take the view that
7 this would simply destroy their present system.

8 They are in the business of selling life insurance.
9 Life insurance is sold not bought, and after a two- or three-
10 hour harangue, trying to sell some guy life insurance, if you
11 say, "Well now, I have to get your permission to investigate
12 you, and here are all the questions we are going to ask; we
13 are going to ask about whether you have extra marital affairs,
14 and whether you are a good housekeeper," the guy would say,
15 "To hell with it; I do not want the insurance."

16 The position is that they want minimum disclosure
17 and no permission.

18 DR. ALLEN: I was trying to focus on where the
19 provider of the information was the provider, himself. He
20 was put on notice of the purpose for which that information was
21 to be used, and that that use was not to be extended without
22 his permission or alternatively.

23 MR. MC LEAN: I see what you mean. Yes. The more
24 you safeguard the confidentiality of information collected for
25 a specific purpose and prevent it from being used for other

1 purposes, the less the invasion of privacy problem becomes.

2 However, I can still see a problem. Even if you
3 had all these safeguards on confidentiality and you were going
4 to confine the information only to that purpose, there still
5 ought to be some limit as to the type of information of pros-
6 pective employers or insurance company, or collectors, can
7 collect.

8 He still does not have an unlimited right to coerce
9 the individual into revealing this information, particularly
10 if it is, you know, an employment situation. The individual
11 is anxious to get the job and the employer says, well now, I
12 am just going to keep this in my confidential files. I have
13 to know about this, this, this, and that.

14 The individual is really in an imperfect bargaining
15 situation. He is in no position to counter the claims of
16 his prospective employer. I think we have to go beyond that
17 and draw the line, difficult as it may be, of the right of the
18 employer to collect personal information and the right of the
19 employee to be free from undue invasion of his privacy.

20 MS. CROSS: Have You given any attention to the
21 kind of regulations that might be drawn up to prevent exchange
22 of information? I am thinking particularly of where it is in-
23 appropriate. Is there any way to stop private companies,
24 for instance, from merging files, whether you do it by tech-
25 nical means or handwritten files?

1 MR. MC LEAN: The merging of the files itself, is
2 not the problem. It is using them for different purposes.
3 For example, in credit, it does not particularly bother me
4 that a creditor in California can go to the credit bureau in
5 Maine, and find out your credit rating. If you're visiting in
6 California, that actually helps you. You are able to get
7 credit instantly through this network.

8 It is not so much the merger of the files, but con-
9 fining that information to that purpose to make sure it is not
10 used for other legitimate purposes.

11 MS. CROSS: That is exactly what I am interested in.

12 MR. MC LEAN: Now, the Act does say that. Our infor-
13 mation is imperfect as to how well it is being complied with,
14 but it does say, information collected for credit, insurance,
15 or employment purposes, can only be used for those purposes
16 and cannot be used for generalized market research.

17 The FTC has also held credit bulletins are illegal.
18 These are directories of everyone in town, showing their credit
19 rating. It is a great big telephone book and they hand it out
20 to individual merchants on Main Street. They keep it under
21 the counter and the kid that comes in Saturday, can find out
22 about everybody in town, whether they pay their bills, where
23 they have accounts. There is no privacy at all.

24 DR. GROOMERS: Did you find out that the general
25 public knows this is going on about them, that everybody who

1 applies for insurance --

2 MR. MC LEAN: No. No. No. In fact, we get letters
3 every day from people who profess shock and amazement about
4 these investigative reports. The insurance companies have
5 been almost reprehensible in the meager disclosure requirements
6 that are in the Act now. They leave the impression that the
7 investigation itself is required by the Fair Credit Reporting
8 Act, not to -- not the disclosure, but the investigation.

9 Every once in awhile, we get a letter saying, "How
10 come you are requiring these investigations? I think it is
11 terrible."

12 DR. GROMMERS: Do you think that if the public knew
13 that they were being investigated on extramarital affairs in
14 order to buy insurance that they might want to do something
15 about the privacy question?

16 MR. MC LEAN: Yes. That was the theory of disclosure.
17 They do not have to disclose a detailed list of all the questions
18 they are asking. They simply disclose, in a general way, we are
19 going to investigate your background and personal character-
20 istics and etc. To the average person, it is gobbledegook.

21 DR. GROMMERS: Did you get response that the public
22 might be willing to take action if they only knew what was
23 going on?

24 MR. MC LEAN: From the few people that have written
25 in, yes. I think it is -- can be readily predicted just from

1 human nature, human psychology that people do place a value
2 on their privacy. If they could see these questionnaires the
3 insurance companies actually use and go down the checklist of
4 all the questions that are asked, they would certainly put up
5 some very strong objections.

6 So, that is one approach, is the disclosure approach.
7 In other words, let the person know exactly what is being done,
8 what the questions are, who is going to ask the questions, of
9 whom they are going to be asked, and require him to give his
10 advance permission before the investigation can be run.

11 The other approach would be the regulatory approach,
12 having some governmental agency, if you will, define what kind
13 of information can be collected. That is the latter approach.

14 It is much more difficult and gets involved in very
15 tricky problems of free speech and governmental regulations.

16 DR. GROMMERS: One more question.

17 Senator Proxmire inserted in the Congressional Record,
18 the script from a television program --

19 MR. MC LEAN: "Judd for the Defense," right?

20 DR. GROMMERS: Have you any idea how that program
21 came to be written? Was it commissioned or was it gratuitous?

22 MR. MC LEAN: No. I called the producer for the
23 transcript. It was not commissioned. It was simply a topic of
24 interest at the time. I think Vance Packard had written about
25 the privacy invaders, and there were some initial hearings, I

1 think, by Congressman Gallagher of New Jersey, so it was
2 becoming a topic of interest. Some smart writer seized upon
3 this topic and wrote a very excellent script.

4 I might add, there was also a recent and similar
5 script on "The Bold Ones," which we also have the transcript
6 for. I am not sure we put that in the record.

7 MS. HARDAWAY: There was also much advertising by
8 NBC now that they had so many requests to show that again that
9 it would be shown during the summer months twice. They had
10 been flooded by requests. It is a two-part thing, two Sunday
11 nights.

12 MR. MC LEAN: I might put out before our hearings,
13 we got CBS interested in the question of confidentiality and
14 credit bureaus. Mike Wallace of CBS formed a completely fic-
15 titious, bogus company, got a letterhead printed up, and then
16 went to 20 credit bureaus in 20 different cities throughout
17 the country, and he picked names at random from the phone book
18 in those cities. Then he sent them a letter under his bogus
19 letterhead saying that his firm was thinking of extending so-
20 and-so credit and could he get a credit report.

21 Although he was not -- this bogus firm did not
22 exist, and wasnot a member of the credit bureau, and although
23 the credit bureau is supposed to determine the authenticity of
24 these requests, check on the validity of the person, he was able
25 to get reports in ten out of twenty cases.

1 DR. GROMMERS: Did he do anything with that
2 information?

3 MR. MC LEAN: On the contrary. CBS is being sued.
4 (Laughter.)

5 DR. GROMMERS: For what?

6 MR. MC LEAN: I am not sure what the charge is.
7 Probably libel and making false representations, and fraud. I
8 talked to the producer just about two, or three days ago, and
9 he was going on the witness stand. I think it is clearly one
10 of these harassment type suits, but the suit did result in their
11 taking part of the program off the air.

12 They had about three or four segments of the program.
13 They only ran the first two. But we did -- we got a copy
14 of the show and showed it during our committee hearings. It
15 had a tremendous impact on our committee. It showed just how
16 easy it was for anybody to get access to these credit files.

17 The show was really a little bit unfair in that it
18 was kind of a setup. They asked the executive director of the
19 trade association -- "Now some people say that anybody can go
20 into a credit bureau and get the files, is that true?"

21 He said, "No, it is absolutely false. We have
22 these procedures, we have these safeguards."

23 Then they would switch to Mike Wallace and he would
24 be coming in that we have a report from Dolphin, Alabama, and
25 here is one from Wichita. They would switch back and say, "Are

1 you sure no one can get these reports, absolutely sure?"

2 (Laughter.)

3 MR. MC LEAN: Is that it?

4 DR. GROMMERS: I guess.

5 MR. MC LEAN: Thank you very much.

6 I enjoyed being with you and I wish you success
7 in your very difficult assignment.

8 DR. GROMMERS: Would you like to have a coffee-break
9 now, or like to have another presentation?

10 MR. ARONOFF: Presentation.

11 MS. HARDAWAY: Break.

12 DR. GROMMERS: It is now ten minutes to eleven. We
13 might have a quick coffee-break if anyone wants coffee.

14 Otherwise, we would not break before lunch.

15 MR. DAVEY: This is about the only time we can break
16 before lunch.

17 DR. GROMMERS: Let us say, we will be back here in
18 about ten minutes.

19 (Recess.)

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- End #7

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1 DR. GROMMERS: Now we are going to have two more
2 presentations. The first is going to be the Rand Corpora-
3 tion presentation. When we are through with that, we can
4 have Dr. Rourke's presentation.

5 I will first call on Dr. Mario Leon Juncosa of Rand.

XXXX
6 DR. JUNCOSA: I would like to rather briefly
7 outline what we have been doing. We have a grant in exploratory
8 research on the technological and theoretical aspects of
9 privacy in computerized data banks. It is really a two-year
10 approved study that was approved for one year in terms of
11 budget. We just went through our grilling to find out if
12 we are going to go on to our second year.

13 Primarily the contributions we will be making will
14 be at the theoretical and at the systems level, so there is
15 some degree of extra work and extrapolation before we get
16 down to the point where one would have some results that
17 would be directly applicable or immediately applicable to
18 policymakers or to the people that are going to immediately
19 implement these things in a computer system.

20 You have to remember this is exploratory research.

21 Some of the goals of the project are sort of
22 scientific goals. One is interested in trying to formulate
23 a basis for a theory of information privacy and other goals
24 are to develop guidelines for designers of systems. We are
not spending a lot of time deciding whether something should

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1 or should not be in a data bank. We are not spending a lot
2 of time discussing the sociological questions involved in
3 data banks, although we recognize there are many, and we have
4 probably about as much time devoted to this kind of an
5 activity in both sessions that we have, but it is not part
6 of the formal investigation of the problems.

7 We divided our work into three pieces: the
8 systems studies, the theoretical studies, and the technological
9 studies, and then as a small effort besides that, doesn't fall
10 in these categories, and that is an updating of a previous
11 grand bibliography on privacy. This bibliography has gone
12 through one update, about 2000 issues or so, copies have been
13 requested over the past several years.

14 However, the bibliography brings one up only to
15 1969, and we are trying to get it up to the present time or
16 actually in to the early part of 1973, if we continue.

17 The systems studies are largely concerned with
18 taxonomy of the problem. There is a model of the data bank
19 system. This work has primarily been done by Mr. Rein Turn
20 who will give you more details on this kind of work. He is
21 the computer systems engineer.

22 The other people were mathematicians that have
23 to have interests in many different things, and it is hard
24 to say exactly what they are doing, when you come down to
the final design of a system. Nevertheless, in these systems

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1 studies one has the catalogue of data banks, the model data
2 bank system, catalogue of threats, and countermeasures.

3 The goals here are, of course, to begin to get
4 the requisites in order to make some trade-offs or at least
5 a formulation of trade-offs and methodology for trade-offs
6 in the technological studies.

7 The theoretical studies have very many parts to
8 them. One part, trying to answer or has actually answered
9 a highly theoretical question about whether or not there
10 exists uncrackable data banks, whatever that really means.

11 The problem arose in some work that Joe Coats
12 at the National Science Foundation had done earlier when he
13 was at Idaho, when he tried to formulate this logical ques-
14 tion. It does not include a situation of going in and
15 bribing somebody or physically breaking down the bank or some-
16 thing like that, but it is largely a question, you might say,
17 close to saying whether or not an incryption can be broken.

18 With some qualifications, there is no such a bank
19 that you can break all of these situations. There is a
20 qualification, and you cast the category in the symbolic
21 logic using the KRISH function theory.

22 It helps one when one tries to formulate some
23 theories as to -- in order to decide on his course of action
24 as to what he is going to do next. If he knows something
25 exists, he may try to find out. If he can prove it doesn't

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1 exist logically, then he doesn't spend any time looking for
2 it. It is the kind of thing mathematicians like to argue
3 about.

4 Another part of the theoretical studies has been
5 devoted to a formulation of models of conflict between a
6 would-be information controversy, a data bank intruder, and
7 the protector. It is not exactly at the level of classical
8 gain theory, but one does see a conflict model arising.
9 The conflict is based, of course, on the assumptions that it
10 would be information that he is going to get some return
11 from cracking the bank, had it been for one article or piece
12 of information or maybe a so-called mailing list of informa-
13 tion. In other words, information on very many people,
14 either by name or belonging to a certain set described by
15 certain characteristics he may have.

16 If he can get some value out of it, he is going
17 to invest some effort to get into it and he has got to have a
18 positive, an expected positive return or otherwise he is not
19 going to do this. That means that one has to have some kind
20 of a value function on information.

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1 Part of the theoretical studies next year would be
2 devoted to trying to formulate methodologies for empirically
3 determining the values of this information. A simple one might
4 be to say, "What do you value the information that you put in
5 your IRS Form in case somebody wanted to take it?"

6 Well, you know, everybody has his price. You know
7 the way the old joke goes. A simple way that has been proposed
8 by someone who has worked on this project as well, was to
9 suppose that each of you had the opportunity to check off a
10 box on your IRS Form. If there is a check there, you will
11 receive a reduction of a certain amount from the income tax
12 that you are going to pay.

13 There is not a check there, then the information---
14 well, you will get a reduction from the income tax that you
15 would pay, and the government would be able to sell a copy of
16 your IRS Form to anybody either for publication costs for
17 \$5, or something like that. But, if you do not check this,
18 then it has to be kept in the way it is right now, a level of
19 confidentiality and protection of it like we have at the
20 present time.

21 Now, the question is how much would you take, a
22 reduction, if you checked it. Some people might say \$50. Some
23 people might say \$2 thousand. This is a way of trying to
24 measure the value of this kind of information.

25 Well, we play these kinds of games to see if we can

1 get some ideas as to how to determine the functions that
2 would go into this conflict model of the protective intruder
3 interactions. The protector, of course, he has to consider that
4 he has some losses too, if he loses information.

5 He is looking right at the start. He has to put
6 effort and money into protection. If there is a loss, libel
7 suits, who knows what else, so there are even greater losses.
8 In the long run, the kind of thing that happens is that there
9 is a tendency for the invader to go up to a certain investment
10 level, to crack the bank; and the protector, likewise, in the
11 long run, will tend to a certain kind of investment level.

12 Once you have found what these levels are, and if
13 you know what kind of a function one has, measuring the infor-
14 mation loss given, that the invader puts in an amount, say "X,"
15 and the protector puts in an amount, say "Y," to protect that
16 information, loss can then be determined and it may, or may
17 not be above tolerable levels.

18 If it is at an intolerable level then you have some
19 policy that is going to tell you you had better start changing
20 this system.

21 Another theoretical study, highly theoretical study,
22 is aimed at trying to get measures of security and measures of
23 data utility. This study is motivated by the fact that there
24 are very many data banks in the government and elsewhere, the
25 private ones, that have information in them that are tagged to

1 individuals; name, social security number, who knows what.
2 And -- but there is an awful lot of useful data in these banks
3 that do not have to be -- there is useful data that is outside
4 the class of utility for which the bank has been set up. The
5 bank may have been set up for regulatory purposes, investiga-
6 tory purposes, and so on.

7 The kinds of information I am talking about does
8 not have to be tagged to the individual. It is useful, say,
9 for psychological studies, perhaps, maybe interested in formu-
10 lating government policy for certain kinds of groups, and you
11 do not have to have the individual's name. Now, if this infor-
12 mation is not immediately available, what you might think of
13 is going out and conducting some new surveys.

14 But in the aggregate of banks that exist, much of
15 this information can already be obtained. So now what one is
16 interested in doing is see if one can make a set of privacy
17 transformations, a name we kind of coined for this, which would
18 protect this individual's privacy.

19 If the transformation is one to one, you just code
20 the individual's name or some other thing, then that is one
21 kind of a privacy transformation and many people may not like
22 that because they feel then that it is reversible, if you can
23 crack that code.

24 If, on the other hand, you have a many faceted trans-
25 formation such as the thing one has in the output of the Bureau

1 of the Census where the data may be gathered individually but
2 then it is aggregated so you have information given in terms
3 of averages for small areas or small sets of people, but still
4 enough in there to protect the privacy through the anonymity
5 of numbers.

6 The -- numbers of people that have the same property,
7 for example, given the average salary or average income for
8 groups that are no less than say, 100, you happen to be in this
9 group, to a large extent it give you a fair degree of privacy
10 providing there are not other little problems such as, let us
11 say, another average which exists for almost all of those
12 people, so you can take one and subtract it from the other and
13 you are left with the average of only a couple of people, maybe
14 just two.

15 This is an inadvertent disclosure because two such
16 surveys exist.

17 Well, one is interested in trying to find out what
18 kinds of aggregations one can make and still protect this
19 privacy but make the aggregations such that they still have some
20 statistical utility, when one is done.

21 Here relatively esoteric, mathematical theory called
22 the Theory of Absalon Entrophy, due to a certain number of
23 Russians; Komman, Smirnhoff, Mishkin, seems to show some promise.
24 One can make a sort of analogue between some relatively abstract
25 mathematical concepts and the data bank.

1 The data in the bank is in the form of records and
2 a single record can be looked upon as a point in some abstract
3 in dimensional space. The different items in the record are
4 the different components in the point in this space. One has
5 to have some notion about distances between points and once
6 the distances between points, the function that finds the
7 distances between these points, not the kinds that you use
8 down in geometry classes, but much more abstract distance,
9 it enables you to calculate the so-called Absalon entropy,
10 and that is a measure of the uncertainty in the information.

11 The more uncertainty that you have, the more
12 entropy that you have, and the more the privacy is protected;
13 but also the less statistical utility one has. One would like
14 to get in a balance between this protection of privacy and
15 the statistical utility. Well, on the other hand, one has to
16 have some kind of a measure of the statistical quantities that
17 are derived from micro data, which is what you are going to take
18 as the most exact kinds of data that you can get, or the statis-
19 tical derivatives of that data, the most that you are going to
20 be able to get.

21 You would like to get the distance between that and
22 the statistical derivate, maybe they might be correlations,
23 they might be co-variances, they might be sampled distribution
24 functions. The ones that you would get from aggregated data.

25 In other words, if I want a large stream of data and I take

1 blocks of it and I take averages in those blocks, and I take
2 that kind of micro data and produce these other statistical
3 quantities, I am definitely going to get an approximation to
4 what I would have gotten in the more aggregate case and if the
5 approximation is too crude, the utility goes down.

6 We are trying to get a theory to balance one against
7 the other.

8 Going a little further, I should say in the systems
9 studies, maybe they could also be looked upon as theoretical
10 studies. We have tried to look at the question of centralized
11 data banks versus noncentralized data banks. Many people feel
12 that centralization of the data banks poses more of a threat
13 to privacy than to have it diffused in all these little data
14 banks around the country and in other places.

15 It is our feeling that this question is not clear
16 cut, at all, that in actuality, the centralized data banks,
17 given that the information is in data banks. That central-
18 ization, in the main, does not pose a greater threat than to
19 have it in noncentralized data banks, and the argument is a
20 rather long one.

21 I do not want to go into it here. Lots of it is
22 based on economic considerations. One has to consider what
23 the groups are that are being threatened. There are mass
24 threats, and then there are threats against individuals. Some-
25 times the individuals are very wealthy, and sometimes they are

1 down in the minority groups, minority and low income groups,
2 and the nature of the threats are very different. Also, the
3 nature of the costs that go into the invasion of a person's
4 privacy and the costs that go into the protection of a person's
5 privacy varies from group to group with the person's economic
6 status.

7 The argument that we have is largely based on
8 economic considerations. That is the main thing I want to
9 point out, and even though, for example, one might say, "Oh,
10 the small individual has little protection against "Big Brother
11 Government," or something like that; in some kind of an argu-
12 ment about centralized data banks, the big government has
13 practically infinite resources to pit against the poor individual
14 who might like to fight this system.

15 Nevertheless, it is very investigatable. When the
16 data bank is centralized, much more controls are going to be
17 put on the big bank than these smaller banks. This is part
18 of our argument. I do not want to go much further into details
19 unless there are further questions later on.

20 We also made a small incursion into some theoretical
21 questions into access control, password, generation, things
22 of this type. The systems studies are rather detailed and they
23 fall in a number of different categories. Dr. Rein Turn, who
24 spent most of his time on this, will now tell you about what he
25 has done in this area.

End #9

1 If there are questions after his presentation,
2 either me or Dr. Turn will be glad to answer them.

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1 DR. TURN: We promised our chairman we would have a
2 one-two punch, so I will delivery the second part of it.

3 I am an engineer, so I will talk in sort of simple
4 engineering language, and talk about what you call the systems
5 studies.

6 I have some pictures here. What I tried to do is
7 sort of derive a functional model of a data bank and personal
8 information data bank, what it might look like, and try to
9 identify what one might call the actors in it, persons or
10 agencies.

11 Here is what I came up with and naturally we were
12 concerned with the subject of this data, the people whose
13 records are collected in the data bank.

14 (Slide.)

15 The data bank is a block here. It will contain
16 the computerized files and computer system used to retrieve
17 this information and store it and so on.

18 Now the data itself is in the hands of a custodian
19 agency, maybe HEW, NIH. The data is gathered, perhaps directly
20 from the subject, if it is Census, by mail, or through some
21 other agency that acts as a collector.

22 Naturally, there should be users to this data and
23 they are sitting over here. Also in the picture is what I call
24 the controller, an agency or perhaps just legislature that
25 establishes this data bank and gives authority to the custodian

mm2

1 to collect and get the data and may actually require the
2 subject under the penalty of law, to produce it, perhaps like
3 Census was.

4 Society also enters the picture here because many
5 of these data bank systems really are established to produce
6 some benefits to the society in general and naturally, then the
7 subject, being a member of society, will also benefit.

8 But in doing this, the subject is giving up some
9 of his information about himself so the question of right
10 of privacy enters here and as far as that goes, the subject
11 is really against the whole rest of this data bank.

12 Actually, the subject is the only one in this case
13 of a personal information system who may suffer losses because
14 of some -- well, improper behavior of the rest of the data
15 bank, including the society. Society includes the public
16 and the news media and all that who may have different interests
17 in the subject's private life.

18 As far as the right of privacy is concerned, we
19 are not really studying that very much. Dr. Juncosa already
20 said we are more interested in the technical aspects of it.

21 I think that the treatment of right of privacy as
22 Westinghouse has done it, is a very useful one, mainly the
23 questions that you ask when you discuss the right of privacy
24 have to do with what data is collected about the subject, and
25 who is then allowed to be the user and for what purposes.

mm3

1 These are the questions to be asked when data is
2 requested for whatever program this data bank supports, and
3 maybe there is one place for one to start protecting this
4 right of privacy, really scrutinize whether or not the
5 particular item of information really is required, and how it can
6 be used for the purposes stated for this data bank system.

7 Now, in this little region that I labelled
8 confidentiality then are the data bank, the custodian.

9 This has to do with the confidentiality and the
10 protection that is promised to the subject by the collector
11 when he says, let's establish this data bank.

12 We will take special safeguards to make sure this
13 data is properly used and this -- maybe the legislators think
14 like private 13 for the Census Bureau that says the data
15 may not be released.

16 We also have a person or agency here called an
17 intruder, who is trying to get unauthorized access to this data
18 and some -- this intruder would be -- would launch deliberate
19 attempts to get into this system and by some subterfuge or
20 trying some way to bypass or circumvent or nullify the procedures
21 that are built in the data security procedures, then they are
22 mainly technical safeguards against this unauthorized attempt.

23 Now, any one of these actors here may become an
24 intruder, including the subject himself if the subject is a
25 criminal whose criminal history sitting in this data bank he

mm4

1 may be very much interested in having wiped out and maybe
2 launch something against the system.

3 Actually, our -- my interest has been a lot along
4 this data security part of it, namely what technical safeguards
5 you can implement to prevent this type of unauthorized attempt
6 to get to the data for various purposes, and like Dr. Juncosa
7 said, some of the purposes that we have considered -- we
8 have been thinking of rational intruders who have some
9 economic gain in trying to get in the data and various types of
10 these mailing lists, using now generic term, a mailing list
11 may be a commercially motivated thing or it might be a list
12 of mailing -- mailing bombs to specific types of individuals,
13 and one can utilize the capabilities of a computer to search
14 the data for a specific characteristic of those persons that
15 use -- this intruder may want to put on its list.

16 I am not ruling out then an intruder being also,
17 perhaps, the collector.

18 The collector may have some -- I mean the controller
19 or the custodian. There may be various reasons why they want
20 to bypass the disclosure rules.

21 I have a list -- a little list of threats against
22 this type of data bank system.

23 (Slide.)

24 Actually, it lists the sources of the threats.

25 These names one may challenge. Legislative threat, one can

mm5

1 challenge that.

2 (Laughter.)

3 Just as a law can be established to restrict a
4 disclosure of data, so can a law be passed through widening
5 the data that may be distributed.

6 What the reasons are for doing that, I am not
7 going to -- I am not analyzing that but sort of a change in
8 the general mood in the country might be one. As a matter
9 of fact, it is hard to tell what type of information may
10 become sensitive information. Is it national origin --
11 whatever -- occupation, or being a member of Rand Corporation?
12 Who knows. Various things like that.

13 Then at a lower level where we have the custodian
14 and the collector within the data bank system and the user
15 there is what I call -- should be in quotes, "an executive
16 threat" namely the custodian of the data bank may on his own,
17 perhaps, arrange for an exchange of data, kind of a quid pro quo
18 basis. I do this for you when you do that for me, or, perhaps
19 to build up a little credit of good will with other agencies.
20 There is a source of threat that may exist.

21 Then there is something called the subversive
22 threat. That might be a very real one. Namely, the personnel
23 of any element, I mean custodian or so on, are certainly open
24 for attempts to subvert them through blackmail or whatever; and
25 as far as case histories go, at this time in trying -- in

mm6

1 these unauthorized intrusions in computer systems, it has
2 always been the personnel of some computer facility that have,
3 on their own, for some financial gain or under some other
4 people's influence, tried to bypass all the protection that has
5 been built in.

6 So it is these kinds of threats that I guess
7 would be high on the list, really.

8 But then this intrusion here would be an unauthorized
9 attempt to go in, in some subversive way, from trying to
10 bypass the built-in schemes.

11 There is physical invasion and overt attack. There
12 have been such attacks around the Wisconsin computer, for
13 example, that was bombed. And certainly, the threat of a tape
14 theft might be the easiest way to get access to the data if
15 one wants to.

16 There are accidental malfunctions. The personnel
17 can release the data and violate the disclosure rules.

18 Lack of data integrity itself is also a threat.
19 This was discussed already in the context of the credit bureaus.

20 Certainly it is a threat to the privacy of the person,
21 or at least threatens his ability to operate in a society if
22 it is mislabelled into some category.

23 While these are the sources of threats, I don't have
24 a list -- I think you had a list here yourselves, of how they
25 really may affect a person.

mm7

1 So -- well, I will just show -- I attempted to
2 classify data bank systems from the point of view of providing
3 data security -- data security is mainly my interest.

4 The privacy part is much more difficult, the
5 confidentiality.

end 10 6 (Slide.)

start 11 7 It seems to me the data banks could fall into
8 these categories where these are really the boundaries of
9 this line. There is lots of gray inbetween all these
10 dimensions.

11 Publicly, government operated; private would be
12 something like a credit bureau. This refers to the type of
13 controller that you have, a group of persons who formed a
14 corporation and now control it and lay down the rules or is
15 it the legislature that applies it.

16 Then there is the purpose of the data bank in a way
17 addressing the question of whether or not the personal
18 identification is required at the output of this data bank.
19 A statistical data bank doesn't require it. The output is
20 aggregations.

21 A dossier type data bank requires it. It is used
22 for regulation or administration, or perhaps providing
23 intelligence for some operation that requires that the specific
24 individual be named and the information on the specific
25 individuals be acquired.

mm8

1 I am using the word dossier here free of all the
2 emotional connotations that it might have. It seems to me
3 it is a word that described the fact that there are personal
4 records kept in that data bank.

5 Then coming down the computer system, dedicated or
6 shared means there are other users in the case of shared data
7 bank on the same computer which makes breaching of the data
8 security safeguards easier. If it is dedicated, it is only
9 for the purpose of this data bank. There is less risk that
10 someone from outside could get in.

11 Centralized versus decentralized. I mean here in
12 the geographical sense. A decentralized data bank would
13 imply communication links hooking together this data
14 bank system. Those are vulnerable to wiretapping or whatever.
15 So it would be less -- it would be more difficult to provide
16 security in a decentralized system in my sense, than one
17 that is hooked together in a communication network.

18 The fact whether it is off line or on line refers
19 to whether or not a user can directly get to the data through
20 the terminal without some operator intervening.

21 So again, I don't know how much this classification
22 and my knowledge of data bank helps you in the determination of
23 a personal identifier, but perhaps it does illuminate a little
24 bit.

To complete this thing --

mm9

1 DR. BURGESS: The right-hand side, though, is
2 less secure.

3 DR. TURN: Yes.

4 I tried to arrange it that this would be the best
5 situation from a point of view of providing data, security, pub-
6 lic, so there would be a nice statute, perhaps, that is
7 statistical and it is only for the data bank and centralized
8 in the same vault. It is off line so the user can't get his
9 hands on it.

10 The other side would be the other extreme, the
11 hardest to provide data security.

12 This can probably be debated, but this is my
13 view of it.

14 (Slide.)

15 Now, to finish off I will show you a slide that
16 Dr. Willis WAre, who is a member of your committee here in
17 1967 produced and presented, and it shows the worst of all
18 possible environments that a computer system may encounter
19 from the point of data security.

20 It shows all the sources of threats and the types
21 of threats that may arise. I guess this is just to show you
22 that it could be very bad. It may not, again, have an impact
23 on your deliberations here, but pointing out that there is
24 not only wiretaps that could be on lines from terminals to
25 the switching center to the processor, but there may be radiation

mm10

1 that could be picked up.

2 All of this implies that there is someone that
3 really wants it and wants to make an investment large enough
4 to be able to pick up this type of radiation.

5 There are the users who may try to -- even an
6 authorized user trying to do some unauthorized processing
7 of the information or getting into someone else's data file.

8 So there are other things -- records that could
9 be attached, eavesdropping bugs that could pick up the
10 accoustical signal from the terminals. You name it. It is
11 a James Bond world, really.

12 Then there are all types of ways. The system
13 itself may fail, malfunctions sending one person's data on to
14 some other user's terminal and thereby violate the disclosure
15 rules.

16 There are the programmers who may have their own
17 goals rather than the goals of the data bank system and while
18 maybe not in a personal information data bank system, but
19 certainly in a commercial system where money is involved or
20 marketing plans, certain programmers may have their own ideas
21 how it should be distributed.

22 There are operators who have the opportunity to tam-
23 per with the protections and get into the same kinds of little
24 illicit activity.

25 The maintenance man can do things to hardware, the

1 programs themselves; not only are they prone to errors because
2 of their incompletely checked out -- which means that once again
3 they can distribute the data to some unknown places -- but they
4 can also be tampered with; and so there are the files that could
5 be stolen or copied.

6 Sometimes people say it's easy to walk out with a
7 reel of tape from some government agency. I don't know how true
8 that is. But that also implies you know what reel to take and
9 there are thousands of them in some places. One can go on
10 these fishing expeditions and see what you can get.

11 (Laughter.)

12 Well, so much of this environment of computer network
13 vulnerabilities and so much of what I meant to say. Dr.
14 Juncosa's and my talk was meant as a progress report to the
15 National Science Foundation and we didn't have this opportunity
16 we could talk to you too, or we would have tailored our talk a
17 little bit to match your interests.

18 DR. GROMMERS: Thank you, very much.

19 Dr. Rourke is only going to be with us until 12:30
20 so I would like to have -- will you be here later?

21 DR. TURN: Yes.

22 DR. GROMMERS: We would like to have a few questions.
23 Would you like to ask your question now?

24 DR. WEIZENBAUM: I was just going to remark,
25 especially on this last slide, you are talking about the

1 security of data systems.

2 What you are talking about there is the problem of
3 stealing information, unauthorized access to information by
4 various ways, by various means, many of which are described
5 there.

6 There is -- of course the other problem, that is of
7 aggregating records in some sense quite legitimately and putting
8 the agency in a position to, in effect, build a model of the
9 individual about whom these -- whose records these are in some
10 sense, such that something is revealed which would not be
11 revealed if these records were to be taken one at a time.

12 DR. TURN: That is right.

13 DR. WEIZENBAUM: Security in that sense has not
14 been discussed at all then.

15 DR. TURN: No.

16 DR. WEIZENBAUM: The question is when you talk about
17 security and safety and all that sort of thing, whether you
18 are restricting yourself to this aspect of it all, including
19 also the aspect he mentioned?

20 DR. JUNCOSA: I am talking about that aspect as well.

21 DR. TURN: We have been receiving some guidance from
22 our panel at the National Science Foundation to address these
23 types of questions some more.

24 DR. WEIZENBAUM: I suggest that there seems to be
25 an overlap between your work, the panel that you have just

1 mentioned the existence I didn't know of until a microsecond
2 ago, and what we are trying to do, and perhaps we ought to find
3 some way of making some connections here.

4 DR. TURN: I would be glad to help.

5 DR. WEIZENBAUM: Thank you.

6 MR. DOBBS: I was interested in the use of conflict
7 models and my interest comes just from the label in the sense
8 that you would like to think that in fact the goals of the
9 user and the system operator and the person from whom the
10 information is being collected are cooperative and not in
11 fact in conflict.

12 You know, I ask whether that in fact is considered
13 in your studies or not.

14 DR. JUNCOSA: In this model we are not looking at it
15 that way. The model is concerned with someone who is, you
16 know, inimical to the person who is the potential victim.

17 So, he is trying to get something from the bank.

18 MR. DOBBS: I guess the real question is is in any
19 way the technique that you are using applicable to the
20 situation where, in fact, there are cooperative players in the
21 game who may have incomplete information, you know, at the
22 system bounds, because it seems to me that, I hope, that's the
23 kind of thing we are really trying to address.

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1 DR. JUNCOSA: We have not looked at that. It is a
2 more sophisticated kind of problem. We may get to this later.

3 DR. GROMMERS: Are you here in Washington?

4 DR. TURN: No. Santa Monica, California.

5 DR. GROMMERS: I see.

6 DR. WEIZENBAUM: The question you asked is the
7 same question that bothered me. Put it in a practical perspec-
8 tive. You have a number of cooperating agencies.

9 DR. JUNCOSA: Yes.

10 DR. WEIZENBAUM: And you have a number of clients who
11 are going to cooperate because they are getting welfare checks or
12 their income tax is going to be reduced or they are going to
13 get health services.

14 Each of them is interested in cooperating and now
15 because of a failure of insight or whatever, this cooperation
16 results in the -- in some sense, the generation of information
17 out of raw material and building up a hierarchy of information
18 such that suddenly a picture emerges about the individuals
19 about whom information is collected which picture is then
20 recognized as being undesirable.

21 Such pictures ought not to exist in the hands of
22 the government. Since it is fundamentally the same question,
23 I think.

24 DR. JUNCOSA: It is certainly related. Perhaps,
25 we ought to get back into the argument about this later this

1 afternoon. I have the personal feeling there is a problem of
2 symmetry in the business of what is a threat. If you look
3 back about a hundred years or so ago, there was much less
4 privacy about an individual than there is today.

5 You lived in a small town and the data bank was
6 not automatized, but it was in the gossip and everything else
7 that was spread around. Everybody knew what everybody else
8 was worth. If they did not know that there was a bank balance
9 somewhere, they knew his farm was that big, and knew what it
10 produced.

11 Furthermore, they knew who was sleeping with whom
12 in town but that fellow who knew that also knew who else was
13 doing that.

14 Because of that he had a certain amount of symmetry
15 in the situation that he did not feel threatened in this
16 symmetry.

17 Now we have a situation where considerably less is
18 known about the individual but there is no symmetry. You do
19 not know what that fellow is going to do to you. A big com-
20 ponent of this thing is psychological.

21 DR. WEIZENBAUM: Also you should add in the earlier
22 situation, if the fellow felt himself threatened, he could run
23 away, go west, for example. In that ability, with modern
24 communication techniques and so on, and so forth, that ability
25 is now lost in society. There is no longer any place to hide.

1 DR. JUNCOSA: That is another feature. I do not
2 really want to get into this thing, as I said, because it
3 goes on for hours, and hours, and hours. You cannot paint the
4 thing black and white.

5 You are down to a situation where you consider what
6 are the risks, human people are being damaged in the system.
7 You cannot deny the fact that a piece of information, no matter
8 whether it is automatized, no matter where it is, is somehow
9 connectable to an invasion of the person's privacy. It is
10 foolish for anybody to believe that there is perfect privacy.

11 You are going to make some sort of compromise with
12 the real world, the best that you can. A good deal of it
13 requires a reformulation of your psychological attitudes.
14 There are different attitudes today than there were before.

15 MR. GALLATI: I was wondering in your data bank
16 model, you had the squiggly line confidentiality and included
17 the collector, data bank and custodian. You failed to extend
18 it to include the user.

19 We found this is one of the problems that we ran
20 into that we did not in the past thing, too much.

21 DR. TURN: Right. When the user gets that, he gets
22 the responsibility of adhering to these rules of disclosure.
23 He should be inside that.

24 MR. GENTILE: One quick question. You mentioned that
25 when you had Figure One up on the board, you had the data

1 bank, and then you had a wriggly line and the intruder. You
2 said, most of the activity was in that area called data
3 security.

4 DR. TURN: My personal interest has been in it, yes.

5 MR. GENTILE: I wonder if your report will contain
6 some constructive means of improving security, however, the
7 data bank is defined, whether they be in files --

8 DR. TURN: We hope our report will have a large
9 part having to do with this question. We are trying to, as
10 Dr. Juncosa said, trying to establish some of the measures
11 as to how much security you get for what technical feature that
12 you put in and look at the costs, how much will it cost you
13 and then have the model, like you mentioned, if you also know
14 about the value of the information.

15 Then one could have a rational security system
16 designed, say, technique developed.

17 MR. GENTILE: So then, if I grant that we will
18 never have absolute security or a fine Utopia, in your tech-
19 nical and expert opinion, do you feel that there are definite
20 measures that can be taken to improve data security over what
21 exists now?

22 DR. TURN: Definitely. Given the resources to do
23 it. But that is a security, as we define it, against unauthor-
24 ized intruders who try to dig their way into the data bank
25 to get something out.

1 The confidentiality part -- it is necessary, a pre-
2 requisite, to have data confidentiality, but the things that
3 have to do with laws and human problems may not necessarily be
4 involved by these techniques of data security, by the technical
5 solution.

6 DR. GROMMERS: For example, the problem that Joe
7 raised, is not necessarily being addressed by what they are
8 doing.

9 DR. TURN: Right.

10 DR. WEIZENBAUM: In this aspect of the work?

11 DR. GROMMERS: In this aspect.

12 MR. GENTILE: I might note I read somewhere like
13 over 75 percent of any breach in security was in the area that
14 Dr. Gallati researched, out in the user area. It was not
15 a physical assault, or someone stealing a tape from a data
16 center, but rather after the material was printed out, published,
17 what happens to it then.

18 This can be covered by administrative --

19 DR. TURN: Let me point out there are technical ways
20 of also making the users adhere to some of the disclosure
21 rules. In the case of statistical data banks, where you do not
22 release to the users anything but the aggregates, you auto-
23 matically apply disclosure requirements on the data you give
24 to the user.

25 He may still have some requirements to keep the data

1 for a specific purpose or use it for a specific purpose and so
2 on that he has, himself, adhered to not just passed it out to
3 anyone.

4 DR. GROMMERS: I would like to switch over to Dr.
5 Rourke's presentation, right now but these gentlemen will be
6 here. When you split into your groups, if you would like to have
7 them come and speak with you about a particular point --

8 DR. ROURKE: Thank you very much.

9 I feel like I am packing off to something you have
10 already considered which was some of the groundwork. I under-
11 stand I was invited as someone laboring in the vineyard who
12 was not an expert in protection, but at least, to give you
13 some background on the benefit and some of the potential prob-
14 lems that I, as a physician, a physician computerman, who
15 is interested in data processing as a life's interest in the
16 medical environment, what sort of benefits and problems I
17 could see that was coming up.

18 Joe Naughton raised some questions yesterday that
19 we did not answer and I think in light of the short time that
20 I do have, are there questions remaining from yesterday?

21 Some of you promised to help me remember what they
22 were.

23 No questions remaining from yesterday?

24 I think medicine, if I can start within the hospital
25 in very mundane sort of terms, there is much that could be

1 learned and much that could be done for the benefit of the
2 patient if we could link data sources in multiple locations
3 in the hospital. Hospitals establish a common identifier
4 for the sojourn through the episode in the hospital, the patient
5 number.

6 Some institutions will use social security number,
7 most will use a unit record number that will relate to the
8 one hospitalization. A few will use a unit record number which
9 they maintain for that individual as long as he is at the
10 same hospital.

11 They use it to link the X-ray Department, the clin-
12 ical laboratories, the medical record department afterwards
13 in order to retrieve his data and in fact, here at NIH, we are
14 doing -- we assign the number. We have several automated
15 systems which we link by patient number.

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1 Does this problem or this desire come up in medicine
2 in general? Yes, it does.

3 There is a desire to link -- records for an individual
4 together even though the data has been collected at multiple
5 sites and in multiple locations.

6 In brief there is no way I know of in existence other
7 than some of the third party pairs that are now in the busi-
8 ness of putting together data that comes from multiple sources.

9 Let me go back to just one experience in Missouri to
10 show that some of this data is in fact needed. The regional
11 medical program came along and said we want to put money out
12 to the people to get health care. The state planners said we
13 have to know what the problems are. One of the things we have
14 to do is go out to the hospitals and find out what they are
15 seeing in our state so we can structure our programs to those
16 particular problems.

17 They set about, set up a data collection system,
18 were so successful they were collecting somewhere like 92 per-
19 cent of the discharge diagnoses for all the patients in the
20 state of Missouri who did not go to the metropolitan areas of
21 St. Louis and Kansas City.

22 That is a great deal larger data base than any state
23 I know of. They got it all together and had collected data
24 items which would be race, sex, age, discharge diagnosis, infor-
25 mation they thought would be useful. They went through and

2
1 counted up the number of hospitalizations in various counties
2 for various things and all of a sudden somebody said wait a
3 minute. This is fine, but we don't have any identifier of the
4 person involved and we can't find out whether we treated 20
5 older people for congestive heart failure and treated each one
6 once or whether we are looking at one person we treated 20 times.

7 One says we distributed care to the populous in a
8 fairly good fashion and the other one says we are losing and
9 that we are investing huge amount of resource in a very few
10 people.

11 I would submit that our problem of cross-populations
12 is to pick up records that originated in different places, dif-
13 ferent hospitals, different health care institutions, facilities,
14 and link them together to get a case profile of a given disease
15 entity.

16 A common identifier used in all locations would give
17 us that ability. If the common identifier was confidential to
18 the individual and his medical environment, there would be no
19 problem, but the common identifiers that we have will be common
20 to more than just his medical environment.

21 His identifier will become public information, any-
22 body can ask for it and get it. May I go back a little bit.

23 I went from Missouri which is a relatively trusting
24 area of the country, out in the country, you knew the guy at
25 the store, he'd extended credit to you.

3
1 He might call up the local credit bureau and say is
2 he bouncing checks, does he have an account at the local bank,
3 the bank says yes he's good for that much money. They extend
4 credit.

5 I went to California. In California they would not
6 extend credit unless I told them my social security number.

7 The common identifier, if we have one, will become a
8 public number, and if we are associating confidential and private
9 information. And we agree most medical information is private,
10 if we use the same identifier for the private interactions
11 that we do for the public interactions, we store the identifier
12 in both types of files. There is nothing I know of that will
13 keep those from being linked together in our present system.

14 I see that as a major area of concern that I would
15 think you would worry about.

16 Now, I would think that medicine is a system in
17 which the server, or the data collector, is alive with the
18 interests of the individual. We all think of our family doctor
19 as concerned of us first. He may or may not be. Nasty things
20 are said that he is interested in padding his own pocket.

21 In either case his interest is in preserving the
22 confidentiality and furthering the interests of the individual
23 because we all realize that if our patient doesn't trust us, he
24 will not tell us things. If he does not tell us what he carries
25 around in his head, we are helpless to treat him.

4
1 People have estimated how much information in treating
2 for a given disease, or at least teaching a person how to live
3 with this disease, how much comes from what the patient says
4 or how much comes from what you examine or the blood you draw.

5 It's heavily weighted on the side of what the patient
6 tells you. The physician needs this information from his
7 patient. It is in his interest to preserve the confidentiality.

8 I submit we have two types. We have those tight
9 communities where it's in the interests of the people who get
10 the information to protect it. And there are other communities
11 that are, as we have just talked about, antagonistic situations
12 where somebody wants to find something out about another person,
13 not for his benefit but for the individual who is finding it
14 out.

15 Between those two extremes there will be continual
16 problems if in fact one solution is attempted to be applied to
17 both.

18 Let me go back to a broad idea about data processing.
19 Those of us in research, those of us in national government,
20 those of us in any area look to computers or automated data
21 processing because it reduces the cost of collecting or pro-
22 cessing data.

23 In the past the major overhead has been in processing
24 and collecting. Computers allow you to collect it once and
25 process it many times for many purposes.

5
1 What we all really want to do is collect it once,
2 use those multiple files for good purposes, whatever the good
3 purposes are. It's a basic dichotomy that if we have enough
4 information so we can link those records, which is cost savings,
5 we also have the problem of -- I am sorry.

6 I lost thought in mid-sentence.

7 The benefit to come from automation is in fact in
8 reducing the costs and is in fact putting things together, it's
9 perceived that putting things together is something that is bad.

10 I suspect within the environments where you can
11 guarantee that people who put them together have the same
12 interests that the individual does, we won't have problems.

13 Where we have problems is in those areas where people
14 doing it are not perceived as having the same interests as the
15 individual.

16 Let me go through two examples that I have been
17 through recently in research studies and the problems that are
18 involved when you have protection of given data items.

19 Hepatitis -- we have all heard about the blood
20 banking problem where there has suddenly been an antigen dis-
21 covered that seems to tell us whether somebody has had hepatitis
22 or whether he can give hepatitis. What is totally unknown
23 about that disease is whether it's communicable between people
24 other than by blood contact.

25 In my particular situation we had the question whether

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1 hospital employees who are exposed to patients with hepatitis
2 have a higher incidence of the disease or whether they have a
3 higher incidence of catching some clinical disease, acquiring
4 the virus, and perhaps being a potential threat to other
5 patients within the hospital.

6 Now we would like to isolate it. We would like to
7 get two groups, one which is high risk for exposure to hepatitis
8 and we would like to make sure that no other factor interferes.

9 It has been said that age makes a difference as to
10 whether you have the disease or not. As you get older, more
11 people acquire it so maybe old people are a risk.

12 It has been said that socioeconomic area has some-
13 thing to do with area. It has been said that race has something
14 to do with it. The scientific question: Does exposure to
15 hepatitis increase your risk of getting it.

16 If that is true, does your having it increase the
17 risk of transmitting it to somebody else. Nobody knows. We
18 would like to set up the study where we match two populations,
19 where we had a male Caucasian age 35 who was in a high risk
20 hospital situation, blood contact situation. We would like to
21 find another one, same characteristics, Caucasian 35 years old
22 in a non-high risk population.

23 We found in personnel files around NIH we could get
24 age GS status. We couldn't get race. Race had been taken out
25 of the files. It's protected and can be used only for preparing

7
1 equal opportunity employment reports. I take no question of
2 whether that's a good thing or bad thing to do.

3 I only come back to the medical situation which is
4 the cost of the study to find a race matched population was a
5 great deal higher. We couldn't go find individuals and say you
6 have the right characteristics, please give.

7 We had to match by three of the four characteristics
8 we had and go out and make our own decision as to what the race
9 was.

10 We had to collect a lot more data before we could get
11 a population to use as a match group.

12 We needed to know the individual in order to do the
13 study or even to ask him to participate. We needed to be able
14 to trace from one place to another. I don't know the solution.

15 I am only saying this is one of the things we run up
16 against. If items are sequestered away and how tightly they are
17 sequestered. In this particular situation there was an advo-
18 cacy procedure in which you had to go to the equal opportunity
19 coordinator on campus. He had strong pressure groups on him
20 to keep that information hidden. That may or may not have
21 been of interest to the public who were a risk.

22 The problem is aligning advocacy or the protectors
23 with the individuals who are being protected.

24 The same problem would come up with sickle cell dis-
25 ease. We have had some instances where an individual health

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1 service, employee health service, specifically, had been
2 providing the testing for individuals as they came through the
3 employee health clinic.

4 All of those go into our central files in the hos-
5 pital because we have a central computer file for all that work.

6 Can that information be released for people who
7 wish to do research, wish to find patients. The cost of doing
8 it that way is very small if we could look into the central file
9 of information, send out questionnaires, ask people to partici-
10 pate in that study because we want to use that case or type of
11 cases to do research.

12 If we cannot use those central files, we have to pay
13 the cost of going out and finding them which is essentially
14 rescreening a new population. I don't know answers. I am only
15 presenting the kind of problems that I run into in a medical
16 research environment, in that the data exists, it has been
17 collected, it is automated.

18 If I am allowed to use it so as not to impinge on
19 somebody's private life, studies will occur because of the low
20 cost of finding cases.

21 If the cost of finding cases is high, the studies
22 will not occur and medical research will be slowed down. I have
23 one other thought and that is the universal identifier. It's
24 the technical one. I don't know whether this is the appropriate
25 place so I will say about two words: that is that any system

9 1 that relies on human transcription of some numeric identifier is
2 fallible to people miscopying.

10#13 3 There are systems available which will allow you to
4 detect some classes of miscopying, like check digits for those
5 of you who know what they are.

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2 If one is identified, I hope there would be some way
3 that we could validate the identifier when it is given to us so
4 that we could at least eliminate 85 percent of errors that occur
5 not because somebody wants to tell us the wrong number, but
6 simply because somebody copies it wrong.

7 All of our credit cards in our pockets have check
8 digits in them. The social security does not. Anyone who comes
9 in and says my number is -- and reads the number, I can't tell
10 whether it is or isn't.

11 That's a small aside, and it's up to you. Are there
12 questions? I have condensed or tried to skip rapidly through a
13 lot of the things that I wanted to say.

14 MR. DOBBS: One thing that confused me a little bit
15 in your discussion and the way in which you termed the need for
16 a common identifier in order to get at a case profile. It
17 seems to me that what you were saying, that you do, in fact,
18 have to have something which is stable from the view point of a
19 particular patient to track him through this environment.

20 I would argue that that requirement may be a totally
21 different one than the broader requirement of an identifier
22 which in fact has to be transferred out of that system context
23 you described to some other kind of context and that there are
24 a variety of ways of solving your particular problem.

25 Now, I would like to hear your answer to that.

DR. ROURKE: The problem I see is that most of our

dh 2 1 systems will require the patient to provide his identifier. If
2 he provides a constant identifier, -- he has to provide it at
3 multiple locations. However, you get it into this file where
4 you can link multiple episodes, so to speak, the problem is how
5 do you translate from one that is public data on the outside to
6 something else that is transferred the same way in all locations.

7 Does any one location know how to translate into it,
8 plus the translator can read any record in the system.

9 DR. WEIZENBAUM: May I suggest a solution to that
10 problem? I have exactly the same note here to ask.

11 You use the phrase, "common identifier used in all
12 locations." It's the "used in all locations" that I object to.
13 Let me take your -- If I may step to the blackboard, let me take
14 your Missouri case.

15 You have 20 people. Let's suppose there are only
16 4, just because chalk is expensive. Suppose you have 4 people
17 and there case numbers are 147, 391, 511, and 713. Those are
18 the cases that -- the case numbers as they come to you.

19 Now it turns out that the secret information -- we all
20 know that in fact, these 2 people, those 2 cases, are the same.
21 The fellow moved from one town to the other, and reentered the
22 hospital and had another such episode and so on.

23 MR. GENTILE: May I ask a question, how did you know
24 that?

25 DR. WEIZENBAUM: I'm playing God for the moment. I'm

dh 3. 1 I'm saying we know that.

2 But now those physicians are sent to some medical
3 researcher who is trying to determine what is going on here, and
4 his results are going to be disturbed to the extent that he does-
5 n't know that in fact here he is talking about the same indiv-
6 idual. Of course, the dates are associated with this. This
7 happens to be the first, this happens to be the second episode.
8 For the medical research purpose, that is an important date
9 that he needs to know.

10 What he is suggesting is that if a universal common
11 identifier used in all locations, and in particular in the lo-
12 cations of those various hospitals from which those data were
13 gathered, then, of course, it would be easy to aggregate this
14 and to make this discovery and consequently the medical research
15 would be more accurate than otherwise.

16 Suppose, however, -- let's just suppose that when a
17 patient enters this particular hospital, suppose those are 4
18 different hospitals, H1, H2, H3, and H4. When a person enters
19 the particular hospital, the hospital assigne a number to him,
20 in this case, 147, which just happens is the 147th such case
21 they have seen, and simply forget all the others.

22 At the same time it asks him for his universal ident-
23 ifier which may be his name, address, mother's maiden name, date
24 of birth, or it may be social security or whatever. Okay. It
25 asks him for that. What it does not is to translate this number

dh 4 1 together with -- let me change notations -- it now translates
2 this number, together with his universal identifying number, I
3 will write U_1 , it translates this pair to another data bank,
4 citing where else all together.

5 What this other bank does is to store the universal
6 identifying number, together with this -- with the 147, and in
7 fact which hospital it came from. It stores that.

8 Okay, simply for all the others. There is this data
9 bank in Kansas City, say, which has -- all it has is triplets
10 of numbers like this universal identifier, number assigned by
11 the hospital, and hospital number. That's all it has.

12 Now a medical researcher like you comes and says,
13 I have to have records like that. Okay, all of these hospitals
14 send you these numbers and now you appeal to this other data
15 bank, of course, and all you tell them is that I have got a
16 number 147 from H1, in other words, you give them this pair,
17 okay? .

18 And I have got -- in other words, you give them these
19 data, these pairs, okay? You say you would like to know whether
20 any of them are in fact the same individual.

21 Okay, this data bank which may very well be, so to
22 speak, in a numbered bank account in Switzerland -- I'm sugges-
23 ting that it should be protected against subpoena is what I'm
24 trying to say. This data bank now sends you simply a list --
25 in this particular instance it simply tells you while your 147

dh 5 1 U_1 and 511 U_3 are the same individuals -- that's what it tells
2 you. That satisfies your purpose.

3 The only possible objection to that is that this is
4 somewhat more expensive than the -- than storing the universal
5 identifier all over the place.

6 Okay, now the question that Dr. Juncosa and others
7 have raised, the question of balance between social utility,
8 expense, and so on. That question then has to be answered.

9 Of course, that question can be answered in general,
10 simply from this example. But you see there is a solution.

11 You think it's not practical?

12 DR. ROURKE: I don't think it's economical.

13 DR. WEIZENBAUM: When you say not practical, which
14 means not economic, which means you're making a judgement as to
15 the social utility of one thing against another thing and so on
16 and so forth.

17 Now that's a value judgement and you're entitled to
18 make your judgement. This committee has to make judgements of
19 this kind. It's terribly important to recognize that this is
20 not a question of the possibility of technological this and that
21 or that this is a question the answer to which could be computed
22 or rationally determined and so on and so forth.

23 In fact, there are value judgements involved here.
24 What I'm calling attention to is the existence of a solution
25 in the same sense that Dr. Juncosa, for example, called attention

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1 to the nonexistence of a perfect data bank.

2 DR. ROURKE: I entirely agree with you that the
3 choice is a sociological one of cost versus benefit or what's
4 it worth to you.

5 DR. WEIZENBAUM: Right. Let me rattle on for just a
6 moment. You know one can come up with very far-fetched examples.
7 This is not far-fetched, but one can come up with very far fetched
8 examples that young people or people who don't read the newspapers
9 might find incredible.

10 But people who are a little older and have longer mem-
11 ories know to be examples from reality. Now, we're talking about
12 medical research here. I can imagine, for example, a national
13 register of say, identical twins, associated with social security
14 number.

15 Okay. Now that's fine. You know, we have a benevo-
16 lent government here, and I don't fear -- I have no fears about
17 that.

18 Okay, but I think the Republic of Germany was a
19 benevolent government and supposedly they had computers. Suppose
20 medical doctors, people who took the Hippocratic Oath, at least,
21 cooperated at one point in experiments were identical people,
22 what they called racial, just in other words, were in fact
23 subjected to experiments which killed most of those twins.

24 Those twins had to be found. Now, they were difficult
25 to find and there were some good people who separated identical

dh 7 1 twins so they couldn't be identified and found, some hid them,
2 so on and so forth. There is a horrible chapter in the history
3 of the world that is withing menory in which I must say medical
4 doctors participated and so on and so forth.

5 The expected value, and the expected risk of the kinds
6 of things we are talking about here, those are very, very ser-
7 ious -- they're very serious because those expected values and
end 14 8 expected risks are sometimes very, very high.

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1 MR. GALLATT: I think I'm going back a little bit to
2 Guy's point, but I didn't see anything in your presentation that
3 required you to go outside the medical profession, and when we
4 talked about universal identifiers which might be universal for
5 purposes of the medical profession, but would still maintain the
6 confidentiality associated with the medical profession, and I
7 get a little disturbed when we get off on universal identifiers
8 when I feel you don't need it for the purpose described.

9 MR. DOBBS: You would be far better off than we are
10 because you would have the benefit of that data being incorpor-
11 ated as part of the medical record with the pretext that that
12 currently implies.

13 Nobody else has got that. Either from a legal or
14 professional point of view.

15 DR. ROURKE: I think that's one of the possibilities
16 that there is a private identifier for the individual and he
17 controls who gets it. No one can require it of him.

18 The Federal Government can't pay him on the basis of
19 it. The third party payers can't pay him on the basis of it.
20 It's a non-competitive number and used only in the private systems,
21 lawyers, preachers, physicians, whatever else.

22 Perhaps a public number which could be fairly severely
23 restricted on what could be required or could also be required.

24 MR. ARONOFF: Wouldn't you have to pick that up at
25 birth, though, to have it really valuable?

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1 DR. ROURKE: It would be a lot more valuable if it
2 was.

3 MR. ANGLERO: This analysis is supposed to be headed
4 toward a better society, supposedly. Can we have any indicators
5 that can tell us that through this investigation we are able,
6 or we have had -- we are having a better society than other
7 societies not having all this analysis and capability?

8 DR. ROURKE: Well, I don't know. I guess it's faith.

9 MR. DOBBS: You have to keep the faith, Juan.

10 DR. ROURKE: You really do. There is faith that you
11 can track the course of disease if it's in a population of
12 multiple time servers, that you can fail with -- you can inter-
13 upt the early course of the disease. We don't know how to handle
14 people who come into the office because we don't know what happens
15 to people like this. It's faith.

16 MR. ANGLERO: In terms of progress, we can take it,
17 but in terms of output, when we talk about family planning, for
18 example, we're not dealing with individuals as such. We have
19 to deal with a population growth, and if everything that we do to
20 have a family planning program, do not prevent or do not con-
21 trol growth of the population, increase of the population, after
22 all, what are we doing?

23 And if we start all those mechanisms, and we sophis-
24 ticate all of our techniques, supposedly because we are going
25 to improve the health, or some indicators show us that we're

dh 3 1 going that way, I ask if you have those indicators in terms of
2 our societies, anyplace.

3 DR. ROURKE: One doesn't have them.

4 MR. ANGLERO: This is a means. You can say the events
5 of the life of the individuals or some other indicators would
6 tell you this society is better than other societies.

7 DR. ROURKE: Well, you're asking output analysis,
8 assuming that across society, factors are controlled, like
9 genetics which we know is a big impact on how healthy you are or
10 what diseases you suffer from. But we have no tool to optimize
11 within our society, to look across -- let me take an example
12 that again we have probably all heard of and that is the Kaiser
13 business of multiphasic health screening.

14 Lots of people do it. There is no evidence that that
15 does anything to help the population stay healthier. There is
16 some preliminary evidence that it does keep those people with
17 known diseases healthier because they're getting a routine follow
18 up in an economic fashion.

19 But overall, if you were to offer it or adopt it as
20 a national policy, that this is the way we want to adopt health
21 care, we don't know if it's effective. Even in the Kaiser sys-
22 tem, we don't know how many other people go to other doctors to
23 get health care. We don't have a measure, nor do they, of how
24 much health care they're getting on the outside.

It's that population activity, what services they get.

dh 4

1 what methods have been applied that I'm looking for. Whether
2 this is a solution to the confidentiality problem or medical
3 identifier number number would be it, I don't know. I'm only
4 looking as a means to look across the population to find out
5 what services they get, what expenses they have.

6 MR. MC LEAN: Could I ask one rather practical ques-
7 tion on the reporting act as it relates to medical information?
8 Insurance investigating firms acquire, with other information,
9 a vast amount of medical information in connection with applica-
10 tions for life insurance.

11 The pact specifically excepts the disclosure of med-
12 ical information to the consumer when he walks into the office
13 of a reporting agency. This exemption was largely lobbied into
14 the Medical Force Bureau in Boston, which is one of the largest
15 collectors of repositories of medical information.

16 They argued that that only a qualified physician ought
17 to be releasing this information and that it would be even
18 appropriate for a recording agency to release it without the
19 proper medical interpretation. I would like to know your opin-
20 ion on that and your judgement as to whether that is a valid
21 exemption?

22 DR. ROURKE: May I ask, when you say "exemption,"
23 that says you may not require of an individual applicant, you
24 may not require from him a medical history, but you can require
25 of his physician a medical history?

dh 5 1 MR. MC LEAN: No. When the medical agency is dis-
2 closing the information, then their physician must disclose
3 everything except medical information to the person being re-
4 ported on.

5 DR. ROURKE: I 'm not sure I understand.

6 MR. MC LEAN: The individual looking in his own file.
7 In other words, if you walk into a reporting agency and say,
8 let me see my file, they will disclose everything, save the
9 medical information.

10 This is a specific exemption.

11 DR. ROURKE: I can be philosophical as to why I think
12 its a good idea in that I don't believe, in may cases, the in-
13 dividual is prepared to interpret it. I have cases in a clinical
14 center now who are here for treatment of suspected cancer. It
15 is my judgement they do not have the psychological equipment,
16 nor does the family have the emotional stability to handle the
17 problem if it's not a real problem.

18 I feel grave damage would be done if I handed them
19 the chart, and it says first rule out -- first diagnosis
20 rule out cancer, when I know it's a problem for the patient.
21 I will deal with that problem with that individual.

22 MR. MC LEAN: This was largely the argument that the
23 medical information bureau gave.

24 DR. ROURKE: Whether it's a spurious argument in your
case or not, I don't know. Did the data come from physicians,

dh 6 1 did it come from --

2 MR. MC LEAN: Yes. Physicians or hospital records.

3 DR. GROMMERS: I do think there are some doctors
4 that would disagree with Dr. Rourke. I think there are prob-
5 ably few.

6 DR. ROURKE: Many of my colleagues, and I guess I'm
7 -- I think I'm representative, there are a few of the younger
8 group who would not sit down and go over an entire case and
9 everything about it with their patient.

10 MR. MC LEAN: From the point of view, of being, of
11 the consumer, he has applied for insurance, been rejected, and
12 goes and tries to find out why. They say, we can't tell you,
13 it's medical information and is exempt.

14 DR. ROURKE: Are you telling me he doesn't have the
15 right to get an advocate and trying to go find that information?
16 If you're saying his physician cannot go and find out for him,
17 then I would agree it would be a bad thing.

18 MR. MC LEAN: He has no statutory right at the moment.
19 But that may be a possible procedure. In that case, I think it
20 would be a bad thing. That's a personal opinion, if the patient
21 or applicant for insurance -- he should be able to get someone
22 who can understand what was going on and that he could pick
23 that individual at his choosing, duly licensed and all that sort
24 of stuff.

25 Can an individual walk into legal situations and

dh 7 1 demand records? I'm ignorant. I really don't know. I suspect
2 what one does is get a lawyer and say, Charlie, I need to find
3 out. Go find out for me.

4 He knows how to get in and interpret the language on
5 the documents and say to the client, You violated this, and part
6 of the penalty was you lost some of your civil rights. That's
end 15 7 the law, and there is no way around it.

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1 DR. ALLEN: How high would you perceive the cost to
2 be if the secretary were to issue a regulation saying their
3 rights to privacy including your not using that information for
4 any other purpose than for which it was provided to you unless
5 either he gave permission subsequently to do that or by some
6 other means you secured authorization to do that?

7 Would that make it something that you as a researcher
8 would find it very difficult to live with?

9 DR. KOURKE: It's a two-way problem.

10 The amount of trouble it would take to go back to a
11 individual who had in the first case said no you can't have my
12 data and you discover he is the kind of case you really want.

13 If you know he is the right kind of case you have
14 probably already divulged what he didn't want divulged.

15 If I have sickle cell and there is an investigator
16 who wants to find people with sickle cell trait because he wants
17 10 cc of blood, if they pester me to get 10 cc of blood, I
18 would say my privacy has been violated, perhaps.

19 So by cutting it off completely that you would have
20 to get advance permission, you would close off the data source.
21 That is one alternative, one option.

22 DR. ALLEN: That might be the kind of situation where
23 there might be an advocacy proceeding as an alternative to
24 going to the individuals themselves and making an argument on
25 the merits of the research to be done, either to approach the

2 1 individuals or perhaps to authorize to proceed.

2 DR. ROURKE: There was a discussion last night over
3 dinner about what you could get people to do. The comment was
4 that it depended on education, what they would sign in when
5 they first came in.

6 If I walked in and they said we will distribute infor-
7 mation about your blood, we want 10 cc, we draw 10 cc and dis-
8 tribute it any way we want, I might well say no, what do you
9 want it for, I will give it to you for a given study, but I
10 won't give it to you for whatever because whatever is much to
11 broad for what I want.

12 Most of the people in this country don't realize
13 what that would mean, what the possible uses could be and might
14 well say yes.

15 As it is when I give my pint of blood I sign a state-
16 ment that says NIH may use it any way they see fit which includes
17 distributing to the research laboratories.

18 I don't say they can distribute it any way they want
19 and they can come back and pester me because they found inter-
20 esting things. But there is the dual problem that if they find
21 something dangerous to my health in that I am going to keel
22 over and I shouldn't take any one of the seven drugs. Then,
23 there is the question of whether or not the investigator is
24 immoral if he doesn't tell me.

25 I don't know the answers. But I think there is both

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1 needs: To be able to find answers for his benefit, for a con-
2 tinuing following along medical research investigation, and
3 there is also a need to protect him from making this relation
4 to an antagonistic individual whose interest is not the same
5 as the individual who has the knowledge, provided the informa-
6 tion or owns the information.

7 MR. ANGLERO: Is there any kind of number in Medicaid
8 or Medicare that would provide for some kind of, this kind of
9 linkage?

10 DR. ROURKE: I can't answer that. Is that the social
11 security number?

12 MS. GAYNOR: Medicare.

13 DR. ROURKE: Medicare is social security. Does
14 Medicaid require for you social security?

15 MS. GAYNOR: No.

16 DR. ROURKE: I am not sure now when somebody
17 asks for my social security number that I probably wouldn't
18 want to provide it.

19 My government has taken my social security which I
20 am not required to give anybody and assigned the same number to
21 me as a military identification number which is published in a
22 big book. Anybody can get that. That's public record. My
23 military number. They go to any other data source they have
24 access to, either deliberate or accidental or casual, and they
25 can find out anything else they want on me.

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1 MS. HARDAWAY: Do you object to that?

2 DR. ROURKE: I do. I object to people dunning me
3 with letters to buy products because I am in a given economic
4 bracket.

5 I don't want to be bugged.

6 DR. GROMMERS: I just want to illustrate what this
7 really points out in my own words. It's not really a question
8 of identifier or universal identifier, but universal identifier
9 easily accessible.

10 DR. ROURKE: I had no choice as to whether my social
11 security number, my tax number, was printed in a book and dis-
12 tributed to anybody who wanted to read it.

13 My government didn't give me a chance to say, "Guys,
14 I don't want that same number, I don't want to give away that
15 link."

16 Anybody who can pick up a copy of that, an insurance
17 salesman and can read what I make per year on the same book..

18 can transfer that into a credit system and sell it to anybody
19 in the country. It's not authorized but it's very neat and
20 concise.

21 I suspect in the California credit system they can
22 now link what I made from that source with any other place that
23 requires a social security number.

24 Given a social security number, if there is a hospital
25 or medical system that codes my medical data under a social

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1 security number, and there are some of them, the access to
2 information in that particular environment isn't protected
3 physically because hospitals are clubs.

4 Nobody inside the club will deliberately hurt anybody
5 who comes in as a patient, nobody will deliberately release in-
6 formation about them. But inside, it's public information; any
7 nurses' aid could read any chart they wanted to in the hospital
8 and find out anything they wanted to about it.

9 While you are a patient on a psychiatric ward, any-
10 body who is accredited to get in there can get in there.

11 DR. GROMMERS: All it takes is a white coat.

12 DR. ROURKE: Not even that. I have to tell a story.

13 Jordan Barish was a layman back six years ago.

14 At the time the medical staff pounded on the table and said,
15 "Mr. Barish, you have to have security. All these things that's
16 public information, anybody can go up and ask for data. You
17 have to have better security."

18 They went on for three hours. Everything they pro-
19 posed they found exceptions to one way or the other.

20 He finally said, "Gentlemen, gentlemen let's not
21 spend any more time. I will match whatever is the current
22 level of security in this institution to your satisfaction. If
23 I do that will you accept me?"

24 And they talked a little while and said, "Okay. If
25 we are the judges of whether you match it or not we will let

6
1 you do it."

2 He said, "Thanks, guys, we have been here three
3 hours. Can I go to the bathroom?"

4 He got up and walked down to the record room and said,
5 "Hello, Betsy."

6 Pulled one chart out of the rack, stuck it under his
7 arm, pulled out a card check, pulled it out, put three under his
8 arm, said, "Bye, Betsy, I will bring these back in five minutes."

9 He walked out, dropped them on the table, and said,
10 "Gentlemen, I will match anything that the current system pro-
11 vides."

12 We rely in medical institutions on the sociologic
13 structure to protect medical data. While the patient is there
14 visible in bed nobody will tell anything on the outside any-
15 thing.

16 Someone who knows how the system works can walk in
17 and find out anything. Once the physical record gets down to
18 the record room, it's fairly secure.

19 Our particular institution is very secure in that
20 Dr. Marston came over one day and asked for a record and the
21 girl at the front desk said, "Who are you?" He said, "I am
22 Dr. Marston," and pulled out his cards.

23 She walked over to the chart and looked to see who
24 she could give cards to.

25 She said, "You are not one of ours."

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1 A lot of it depends on the sociology around it, not
2 on the first security. But there are problems.

3 I have been building more computer systems, a clinical
4 center, as the hospital hasn't had a great many in the past.
5 I worked with some programmers.

6 I said, "Look, this is confidential information, it's
7 the name and the unit number and the discharge diagnosis. We
8 are building a file to help researchers find cases. This is
9 really pretty confidential information, be careful of it, lock
10 it in your desk. It's not security data, there aren't a hundred
11 spies out to get it. Be careful of it."

12 They didn't perceive how important it was. I walked
13 over and found a box of scrap paper going out to "Save the
14 Trees Campaign" with my listings, this tall.

15 It was an old listing. There was one character
16 left out of the diagnosis. It was miscoded. It wasn't
17 any good.

18 They threw it out the hall and it went down the street

19 Physicians, medical people realize how important
20 confidentiality is to them because they can't work without it.
21 I couldn't work if a patient didn't trust me.

22 The data processing people will never have the same
23 cultural interests in preserving the security of the data that
24 I do.

25 When we get into more and more publicly --

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1 MR. DOBBS: Wait. Wait. I can't let that pass.
2 The reason I can't let it pass is that you are very competent
3 as a supervisor. Dr. Naughton, yesterday, in terms of the data
4 center pointed out that he felt that his responsibility ended
5 as long as he provided the best possible services at the lowest
6 cost.

7 I would submit that as long as that endures, you are
8 right. As long as that is his value in terms of the profession
9 and the way in which he views it, you are absolutely right.

10 But it does not have to be that way. There are
11 some of us who think that we share that responsibility.

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1 DR. ROURKE: Ok.

2 MR DOBBS: I'm off the soap box.

3 DR. ROURKE: No. I would do my very best with Joe to
4 say, Joe, what you provide me isn't good enough and he says fine,
5 it will cost you another -- blank dollars. I say, Joe, I can
6 cure people for that amount. What kind of damage do I do to
7 them if I don't spend that amount? It comes down to what I'm
8 willing to pay for what am I going to get.

9 MR. DOBBS: It's not the money. Joe has the feeling
10 of that same sociological pressure that you as a physician,
11 caused you to feel that it the relationship between you and the
12 client is important and therefore you have to protect that con-
13 fidentialty.

14 He and all the rest of us who are involved in infor-
15 mation systems have to feel that same way. Those all, I'm say-
16 ing.

17 DR ROURKE: Okay. I wonder if we will accomplish it.

18 MR. DOBBS: I don't know. I think part of what you
19 have to do is believe that it's possible and to not let people
20 say that my responsibility, if they're involved in this kind of
21 system, which is predicted, ends at a certain point.

22 We are all responsible and we're all culpable.

23 DR. ROURKE: I would summarily agree. I think we have
24 changed gears, however, from the manual days in which the amount
25 of protectible information we would entrust to somebody who didn't

dh-2 1 understand was very small and in tiny pieces and we are now
2 handling the bucketsful with very little more sociologic instruc-
3 tion, teaching than we did before.

4 DR. WEIZENBAUM: Let me make a new couple of points
5 about this example that you just stated. I think it's useful
6 to stick to real examples as opposed to general philosophy.

7 In the first place -- I need your attention.

8 DR. ROURKE: I'm sorry.

9 DR. WEIZENBAUM: In the first place, there is a ques-
10 tion of how this stack of paper with all those names on it and
11 so forth and so on, got generated. You say it had an error in
12 it, and that's why it wound up on the floor.

13 This suggests to me that the program that produced
14 that generator had a bug in it. I suggest it's sloppy procedure
15 on Mr. Naughton's part, that's his responsibility, to debug pro-
16 grams with real and moreover sensitive data.

17 That's one point. Now, -- I will just leave that
18 there. No further comment on that. Now I ask you the following
19 question:

20 I would perhaps much rather ask Mr. Muchmore
21 who unfortunately isn't here. He is a banker dealing with
22 millions of dollars in a giant corporation and that sort of
23 thing. I wonder, had his board of directors had made a decision
24 to purchase or to sell some very large block of shares such that
25 that particular sale, or some other strategic business decision,

dh 3 1 such that that decision could affect, significantly affect the
2 market, whether he would in fact take a piece of paper with that
3 decision on it, okay, and hand it to a programmer and say please
4 put this in the system for me. In the clear, that is not en-
5 crypted in anyway, whatever. Okay?

6 And furthermore, whether that programmer knows he is
7 dealing with a financial institution, he knows that this is a
8 business decision, and so on and so forth. Chances are, he
9 won't do that. He might for example get a terminal in his own
10 office to do his own encrypting and take all sorts of safety
11 measures.

12 There are value judgements involved here, and I think
13 the example I have just cooked up makes it very clear that many
14 of us, that matters involving lots of money are much more im-
15 portant than matters that involve human lives, the dignity of
16 human individuals, and so on.

17 MS. HARDAWAY: Doctor, do you feel if I come in as a
18 welfare patient wherever I'm totally not able to pay for any
19 care, no matter large or small, do you feel that I have a right
20 as a dependent upon the government to protect myself against not
21 you, but the medical profession misusing me in any way, or if I
22 lost part of that privilege when I have become dependent totally
23 upon a government service to care for me?

24 DR. ROURKE: You're asking for a lot of my own cul-
25 tural feelings.

dh 4

1 MS. HARDAWAY: I realize that.

2 DR. ROURKE: We all came with advantages and disad-
3 vantages. If in fact through no fault of our own, we're in that
4 situation, I think its becoming our national purpose to provide
5 all the supports necessary for good health without restriction,
6 and I would submit that the sociological restriction that would
7 then put you in the data bank and disqualify you from holding
8 up your head at some future year might be bad.

9 I know the other side that, of course, this is the
10 fifth time around for some medical condition, that you didn't
11 take care of yourself and the government doesn't have a right
12 to be punitive at that point.

13 Well, the two are in conflict.

14 DR. GROMMERS: Particularly if the problem is an
15 illegitimate child, or 50 illegitimate children. It really
16 focuses on the question: Does the woman have the right to have
17 an illegitimate child paid for by the government?

18 DR. ROURKE: I don't know the answer. As a physician,
19 I would feel a lot better about it and be more effective, per-
20 sonally, for the individual if they had faith in me and their
21 were no requirements to report the personal business of the in-
22 dividual.

23 MS. HARDAWAY: Let me go one step further, if I have
24 had a baby, and am a welfare mother, totally dependent, and my
25 child has some birth illness that is serious but can possibly be

dh 5 1 cured with follow up treatment, do you feel that I have a right
2 to take that baby and go out of that hospital and be lost, or
3 do you feel because you have supplied my total care that you have
4 a right to require of me who depended upon government funding.

5 Do you have that right for the follow up to the child
6 or do you feel I have the right to take the baby and let it die,
7 in fact?

8 DR. ROURKE: Thank you.

9 MS HARDAWAY: I'm talking about here, if I'm depen-
10 dent upon the government for my financial care while I have been
11 under care.

12 DR. ROURKE: I think some of the solutions there are
13 -- some of the answers that we live by are built into other
14 structures, and the way I feel about it, the social welfare
15 dependent has mechanisms whereby they can take custody of that
16 child.

17 Do you have as a mother the right to go out and let
18 the child die or be deformed for life, or injured? I think
19 our society says no, but they're terribly careful about inter-
20 fering, on the other hand.

21 MS. HARDAWAY: I was speaking more about the fact that
22 my care was paid for by the government.

23 DR. ROURKE: I don't think that makes a great deal of
24 difference. You're saying if I'm taking care of you, and you're
25 the mother of an ill child who is in bad shape, do I, because I

dh 6 1 paid for your delivery --

2 MS. HARDAWAY: Even a legitimate child.

3 DR. ROURKE: A legitimate child. Do I have the right
4 to interfere with your education or treatment of that child?
5 We have mechanisms that say, in some cases, yes.

6 The mechanisms are not used very often, are not used
7 as far as some people would like to see them, but we don't use
8 them because we're afraid of the situation that occurred in
9 Germany. where does does the state have control over the child?

10 We are wrestling with it as an individual problem. I
11 have seen some places where I have gotten into it, and triggered
12 the legal mechanisms so the state will take over, the battered
13 child coming in beaten up by their parents, I have reported a
14 few of those.

15 MS. GAYNOR: But those aren't welfare, either, are
16 they?

17 DR. ROURKE: No.

18 MS. HARDAWAY: I'm speaking of a welfare mother where
19 I have been assigned a number.

20 DR. ROURKE: I think it's immaterial. But I think
21 as a national policy, we would like to know about all children
22 and all parents and be able to find out what the morbidity --
23 the mortality was of children under certain situations. I would
24 like to know that whether you're welfare or not.

25 But if I have collected from one person, those that

dh-7

1 would feel the state having paid for it now as special rates on
2 the child, will try to use the information. There will be
3 large forces in our society that will try and do it.

4 DR. GROMMERS: I think we want to thank Dr. Rourke
5 very much. He has to leave.

6 The Chair is going to respond to the pressure of the
7 group. I know you're all terribly anxious to split up into
8 groups. I would like to have you do so for a working session
9 for the next few hours.

10 Let's say, -- it's now 1 o'clock. Say until 2:30
11 you have lunch and can split up into any groups you like for
12 any basis.

13 I don't know quite how you're going to do that. I
14 would suggest Dr. Weizenbaum has suggested that he would be the
15 nucleus of a group. I believe Mr. Gentile would like to be the
16 nucleus of a group, anybody else who would like to do so, I would
17 like to have you form an informal group.

18 You can discuss whatever it is that you as a group
19 decided you would like to discuss and at 3 o'clock when we come
20 back, we will find out what those kinds of things are.

21 I would like us also to make 3 lists, and you can do
22 this out of the group or as individuals and the first list I
23 would like, one or more issues as grounds for recommendations to
24 the Secretary. This doesn't need to be exhaustive. I want to
25 get a sample of what kinds of issues you as a group feel you

dh 8 1 would like to address.

2 This is to be an anonymous listing unless you want
3 to put your name on it. The second list is a list of persons
4 or resources that you would see necessary to make a clear case
5 for the issue to a relay man, someone who knew nothing about it
6 whatsoever. In your test as an expert, yourselves, it is cert-
7 ainly appropriate to put this down in this case.

8 The third list is one or more changes that would in
9 fact be proposed by the Secretary. If you could devise right
10 now the list of policy changes that you would like the Secretary
11 to have as the basis for whatever action he takes, what one
12 thing would you like to see on it.

13 You can put several. It doesn't need to be exclusive
14 at all. We're not going to leave at what comes out of this
15 listing.

16 MR. DOBBS: Madam Chairman, may I suggest one thing
17 procedurally? I have a sneaking suspicion that around about
18 3 o'clock, or shortly thereafter, half of the people are going
19 to finally leave the room, trying to catch airplanes. Maybe
20 we ought to, if we possibly could, compress lunch to the mini-
21 mum amount of time and move up your 3 o'clock get together.

22 DR. GROMMERS: That's fine. How late was the meeting
23 scheduled for?

24 MR. MARTIN: 5. But it can stay over until tomorrow
25 as far as that goes.

dh 9

1 DR. WEIZENBAUM: Why don't we just have a show of
2 hands of people who could, just from a practical point of view,
3 stay over until tomorrow?

4 (Show of hands)

5 (Laughter)

6 DR. GROMMERS: How many people will be here after
7 3:00?

8 (Show of hands)

9 DR. GROMMERS: For the purpose of this, at any rate,
10 why don't we have luncheon meetings of those groups and get
11 together at 2:00. This is not going to be the definitive work
12 on what we're doing anyway.

13 MR. DAVEY: I will be happy to work with a group, too.

14 DR. GROMMERS: Anyone who right now knows that he
15 would -- that they have a particular point they would like some
16 group dynamics on, if you would raise your hands, we can iden-
17 tify you.

18 Mr. Davey, Professor Weizenbaum, Mr. Gentile, anyone
19 else who feels he has a position and would like a group to work
20 with?

21 MR. ANGLERO: I have a suggestion to make. I would
22 prefer to have a definite amount of groups, of subgroups, say
23 5 or 6.

24 DR. GROMMERS: We're going to do that later. This
25 is just for the purpose of getting some group dynamics going on

dh-10 1 these new points. They're not definitive groups, they may
2 never meet again. We're not ready to do what you said.

3 MR. ANGLERO: Okay. But I think if we can have --
4 even -- something we can do now, if we have 7 to stay --

5 DR. GROMMERS: I don't want to do that right now.

6 MR. ANGLERO: It's hot hard.

7 DR. GROMMERS: I don't want to do that right now.

8 Anyone is free to work by themselves without splitting into a
9 group. Why don't we split up now and meet back here at 2:00?

10 (Whereupon, at 1:05 p.m., the hearing was recessed,
end #17 11 to reconvene at 2:00 p.m., this same day.)

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AFTERNOON SESSION

(2:15 p.m.)

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2
3 MR. MARTIN: One point of procedure on which I would
4 like to get the pleasure, or -- of each member, no public
5 announcement has yet been made by the Department of the forma-
6 tion of this advisory committee. Such an announcement will
7 be made shortly, and customarily those announcements include a
8 brief resume of each member, perhaps 4 or 5 sentences, a sort
9 of key aid figure performing character statements of each of
10 you.

11 The information would be selected from the resumes
12 which were distributed to you last time with the indication
13 that this would be their ultimate possible use and which each of
14 you has reviewed and corrected and each of you has received a
15 copy of your own, and everyone else's resume.

16 We can go to greater or lesser lengths to increase
17 the extent of publication of the present release by leaning on
18 the Department's regional offices, who would make extra efforts,
19 over and above the effort that is made in Washington, just
20 issuing the release, to take the present release around to
21 local media in the region from each -- from which each of you
22 comes and, in effect, try to sell the release as a piece of
23 news pegged to the fact that such and such a person from that
24 local region has been appointed to the committee.

The consequence of that is that if the story plays

dh-2

1 with a little more prominence, then it might be apt to do so,
2 the play is apt to be geared to you as a person and secondly is
3 likely to give rise to interest in you by members of the local
4 press, be it newspaper press, or radio, whatever.

5 In other words, reports may come and want to talk to
6 you, interview you, take your picture. Anybody who would prefer
7 not to be exposed to that risk of additional notoriety may, by
8 indicating that that is his or her preference, avoid that risk,
9 and we will not display the regional office with the capacity to
10 increase your risk of notoriety.

11 So would any of you who would prefer not to run that
12 risk of notoriety, please raise your hand. I guess that's the
13 simplest way. If you're willing to take what the media do as
14 it comes, keep your hand down.

15 Any hands up?

16 MR. ANGLERO: Modification to that? You're talking
17 about getting it to the regional, regions to make it public,
18 also?

19 MR. MARTIN: Yes.

20 MR. ANGLERO: In my own case, it happened through
21 other ways, it became already public in Puerto Rico.

22 MR. MARTIN: There have been some announcements of
23 the individual appointments of some of you by reason of the
24 interest of perhaps Congressmen, Senators, Governors, anybody
25 who knows you're a member. I'm talking now about what the

dh-3

1 Department will do.

2 MR. ANGLERO: I agree in the case with the Department,
3 but to try to get it to -- for example, to get it to be made in
4 Puerto Rico, not to try to make that effort.

5 MR. MARTIN: You would prefer we did not make the
6 effort in your case?

7 MR. ANGLERO: To go to Puerto Rico, any department.
8 The department to make the announcement it has to make, okay.

9 MR. MARTIN: But nothing special about Puerto Rico?

10 MR. ANGLERO: Yes.

11 MR. MARTIN: All right. Fine.

12 Depending on how ingenious and how much effort our
13 department public education people muster for this, some are
14 quite ingenious and will note that you're a graduate from such
15 and such a university. They may go to the CYS alumni bulletin
16 or the college newspaper if they're still publishing in your
17 community, if you're a member of a faculty, and what you're
18 saying by not raising your hand is that you're willing to
19 court whatever effort is made by our PR people and whatever
20 effort is made by the press.

21 MS. GAYNOR: Count me low-keyed in whatever region.

22 MR. MARTIN: Florence Gaynor wants to be low profile
23 and Juan Anglero wants to be low profile in Puerto Rico.

24 DR. GROMMERS: If there are any other issues that
25 you're still working on -- Sasser is going to xerox for every-

dh-3 1 body -- if you can just give it to Jim Sasser, he is going to
2 zerox it so everybody can have a copy of it all.

3 MR. MARTIN: I have Florence Gaynor and Pat Lanphere
4 and Juan Anglero, low profile.

5 MR. DE WEESE: I would like to be high profile.

6 (Laughter)

7 MR. MARTIN: This may be academic because we cannot
8 assure what will happen, but we can try with more success to
9 assure a low profile than we can guarantee a high profile.

10 DR. BURGESS: It's getting close to November, isn't
11 it?

12 DR. GROMMERS: How many different groups were there,
13 about 4?

14 How many different groups were there? I wondered if
15 we were going to have reports from all of them.

16 Is everyone leaving at 3 o'clock? Is 3:30 all right?

17 MR. DAVEY: Let's start at 2:30 and keep on going.

18 (Discussion off the record.)

19 DR. GROMMERS: Anybody who has to leave before 3:30,
20 fine, but those of you who can stay until 3:30, we will on
21 principle of 3:30 as the time of breakup of the meeting.

22 MS. HARDAWAY: Will we choose a date for our next
23 meeting?

24 DR. GROMMERS: Yes. We have to organize that. Let
25 me outline a little bit what I have asked some people to do and

dh-4 1 what that has to do with those lists.

2 I have asked Dr. Weizenbaum and I will be asking Dr.
3 Allen and Arthur Miller to draft an outline of the chapters
4 that should go into the recommendations to the Secretary at
5 this stage. That is not our conclusion. But what it -- As a
6 first pass, what the possible indications of things that we
7 want to be covering shall be, I will be meeting with them in
8 Boston. We will get a draft outline prepared and sent out to
9 you all so that you can react to it, make any additions to it
10 that you wish, make any notations and reorganize it in any way.

11 At our next meeting, we will then modify it and vote
12 it into whatever form it will be finally and then over the next
13 3 months, we will divide up into groups to work on these chap-
14 ters that we all decided are the ones that we want to work on
15 and how we divide up depends on what those chapters turn out
16 to be.

17 Therefore, our next meeting ought to be 4 weeks from
18 now.

19 MR. GALLATI: Where?

20 (Discussion off the record.)

21 MR. DAVEY: Could we make that a Friday meeting?

22 MR. GALLATI: In Miami.

23 (Laughter)

24 DR. GROMMERS: What about everybody putting down the
25 dates that they're not available.

dh-5

1 MR. DAVEY: You better get out a list. We will never
2 arrive at it that way.

3 DR. GROMMERS: How do we arrive at it?

4 MS. LANPHERE: Set a date and everybody sticks up
5 their hand if they can come, like we did the last time.

6 (Discussion off the record.)

7 DR. GROMMERS: In general people might be able to do
8 it the 15th, 16th and 17th, or the weekend after that.

9 DR. WEIZENBAUM: May I make a suggestion? If it were
10 to be in Washington, and I have no idea what the feeling is, but
11 if it were to be in Washington, there is an apparently important
12 meeting that Arthur Miller called our attention to last time,
13 yesterday, on the 22nd and 23rd here in Washington that apparently
14 we should attend if we can or some such thing.

15 If we were to make it on the 19th, 20th, and 21st,
16 assumint it's a three day meeting, then we could -- those who
17 wanted to, and could stay for that other meeting could then stay.

18 MR. DAVEY: I would suggest one of those 3 days be on
19 a weekend.

20 MS. HARDAWAY: It would have to be for me.

21 DR. WEIZENBAUM: Then that knocks out that suggestion.

22 MR. ARONOFF: 15th, 16th, 17th?

23 (Discussion off the record.)

24 DR. GROMMERS: All right. We will come back to that.
25 We will just drop it for a moment.

dh-6

1 MS. GAYNOR: Are going to decide on a date now?

2 DR. GROMMERS: In about 15 minutes we are.

3 MS. GAYNOR: The only reason is I have to fix my
4 calendar. If I don't know in advance --

5 DR. GROMMERS: Are you leaving at 2:30?

6 MS. GAYNOT: 2:45.

7 DR. GROMMERS: Can we let you know tomorrow or some-
8 thing like that?

9 MS. GAYNOR: Yes, you can.

10 Is Mr. Baskir still here?

11 MR. MARTIN: No.

12 DR. GROMMERS: I would like to take -- limit each
13 person, the head of each of those 4 groups five minutes just to
14 present the material. Everybody will get a xerox copy of all
15 of the things that everybody wrote down, but let's have 4
16 presentations and then we can relate to all of it.

17 Who would like to begin?

18 MR. DAVEY: Can't without the notes.

19 MS. COX: They have the only copy.

20 DR. GROMMERS: All right could we ask Mr. White to
21 speak to us for --

22 MS. COX: Or bring in one as soon as it's ready.

23 DR. GROMMERS: I think they're probably not in the
24 building.

25 Could you speak to us, then, about form in a very

dh-7

1 brief manner while we are waiting?

2

MR. WHITE: Certainly.

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MR. WHITE: Briefly, I would like to cover the role of standards in this area of technology, and specifically talk about the program that has been forwarded for consideration as the American national standards.

I am the Associate Director of the Bureau of Standards.

And, essentially, the Bureau has a role of providing technological services to the public, to industry, and to other government agencies.

In this area of computer technology, we look at the industry primarily as a service industry, as such.

I want to simply draw your attention to the three documents that were provided to you yesterday, and rather than attempt to cover all of the material that's contained in that document, to simply point out some of the pages and paragraphs that I think will be of particular interest to you.

In the development of standards, we are concerned with standards at three levels, essentially:

The international standards which are developed by the International Standards Organization.

And, there is information starting on Page 95 relating to that activity.

The American national standards, and the information is contained, starting on Page 63, about those activities.

bc 2

1 Within the Federal Government, the Bureau of
2 Standards, by legislation, has responsibility for making
3 recommendations to the President relating to the establishment
4 of uniform standards in the area of computers and information
5 processing, and this was promulgated through the Public
6 Law 89306.

7 And, this bill -- also known as the Brooks Bill --
8 is identified on Page 15 of that publication, and the require-
9 ments of our standards program are listed on Page 46 of the
10 document.

11 Specifically, the standards that we are concerned
12 with, as it relates to this committee, are the standards that
13 are used to facilitate information interchange among various
14 data processing activities.

15 There is a task group of American National Standards
16 Institute, of which I happen to be the Chairman, that is the
17 responsible party for defining standard codes and representations
18 for the interchange of data.

19 This committee is X3L8, and some of the standards
20 we are involved with are standard codes for geographic places,
21 standard identities for organizations, individuals, accounts,
22 standard representation of dates and times, and standard
23 representation of units of measurements of packaging.

24 The proposed standard that we are referring to,
25 essentially, is contained in that reprint of June, 1970, which

bc 3

1 is again one of the publications that was provided to you.

2 In the development of this standard, this started
3 back in 1967 by a -- one of our task groups, X3L84 and
4 Sheila Smythe, a member of your committee, was chairman of
5 that task group.

6 Through about three years of deliberation by the
7 task group, the program was approved by the Technical Committee
8 and was finally submitted for a final ballot by ANSI,
9 but, before taking this ballot, it was decided to get a
10 position from the Federal Government, particularly the
11 Office of Management and Budget, and second, as -- was to
12 refer it to Senator Ervin's committee for a comment from the
13 Congress.

14 As a result, after these referrals, it was
15 determined that even though this standard that was developed
16 primarily to serve the needs of the data processing community
17 by promoting more effective and economic use of our ADP
18 resources, that because of the social complications involved,
19 and it raised a whole lot of questions of data interchange and
20 the aspect of privacy, the ANSI Committee has deferred final
21 action on the consideration of this American national standards
22 pending, essentially, the recommendation that would be coming
23 from the Secretary of HEW.

24 Now, as far as the standard itself is concerned,
25 and this was allowed to in some of the discussions previously

bc 4

1 in the last couple of days, there is a need, whether it be
2 automated or manually to collect and post to the right
3 records information about individuals.

4 The presence of a universal identifier, whether it
5 be a social security number or any other number allows for
6 that effective collection. Part of the problems that we are
7 seeing as it relates to credit files is that without the
8 absence of a number or only using a number alone, information
9 collected about one individual is by error posted to another
10 individual's file; so again this points up the benefits of a
11 standard identifier.

12 On the other aspect, the disadvantages of a universal
13 identifier, it provides, let's say, the linking of various
14 data bases and we recognize that this linking can either be
15 an advantage or a disadvantage; and, here again, I am pointing
16 to essentially one major aspect which I think you will address
17 and that is the aspect of authorized versus unauthorized
18 disclosure of information.

19 The other aspect that I wanted to mention about our
20 technology, and this was mentioned in the session yesterday,
21 is that there are essentially two types of individuals
22 involved on your panel:

23 Those who are in the computer industry and those
24 of you who are concerned from the use of the information
25 systems.

bc 5

1 The major aspect that I wanted to address as it
2 relates to our technology in the computer industry is that
3 we are not able to do anything that -- as far as processing is
4 concerned, that you could not do by manual means.

5 We essentially have the capability through
6 automation to do it faster and more consistently; and,
7 essentially, that consistency, we have made an error in our
8 programers, that is going to be consistently repeated as well
9 as the correct programers.

10 Another aspect of our technology that makes it
11 more difficult is the form of the representation of our data
12 in essentially that when you are familiar with working with
13 manual forms, you can look at the form; you can see smudges
14 and mistakes on the forms. When we convert the data from a
15 manual sense into a machine sensible form, you can no longer
16 examine it essentially with your eyesight; and that takes on
17 a, say, an aura that surrounds the whole computer technology.

18 Another major aspect -- and this is -- we see every
19 day -- is the belief that all data coming out of a computer
20 is, in fact, true. Because of the, say, the magnitude of the
21 machines and the cost and the technology involved, in many
22 cases we see people pick up data coming out of a computer and
23 accepting it as fact.

24 In many cases, the data should be evaluated just as
25 if it were on a manual form.

bc 6

1 In summary, I would like to essentially close with
2 this:

3 The problem as we see it from the technology point
4 of view is not a technical problem. The problem of invasion
5 of privacy and the exchange of information essentially was a
6 problem long before we had the computer technology; and,
7 essentially, it is the technologist that has caused the focus
8 on the problem as you are seeing it today. It was mentioned
9 in some of the talks earlier that there is just as much
10 misuse of information in a manual system as there is in
11 automated systems, and I hope that some of the recommendations
12 that you make are not addressed as an attack on the technology
13 involved, but viewing it from the standpoint of disclosure of
14 information, whether it be in a manual or automated form.

15 Another aspect of this is that the problem you are
16 addressing is not essentially an HEW problem. It is not
17 related to the welfare system alone as was described
18 yesterday. This is a problem of national magnitude and
19 essentially this committee hopefully will address it from that
20 point, and not only say from the data systems of the Depart-
21 ment, HEW. There is the problem of the use of information in
22 the private sector; there is the problem of the use of
23 information among other government agencies, and the exchange
24 of information among government agencies in the public and
25 hopefully, you will address it, say, from that viewpoint and

bc 7

1 not only from the viewpoint of the Secretary of HEW.

2 MR. DOBBS: I wanted to ask just one question:

3 If it were not for the ANSI standard relying for
4 its numeric part on the social security number, would ANSI,
5 in fact, be in the position that it's in?

6 That is to say, if it were some other number,
7 other than that, you would have said this is going to be the
8 standard for those people who want to interchange, would you
9 then not be free to move in principal, at least?

10 MR. WHITE: No. Because the problem is essentially
11 hid. Regardless of whether it is the social security number
12 as a universal identifier, the only reasons that this
13 committee happens to be under HEW was because the social
14 security number was the one identified as the number in the
15 identification system.

16 For example, in Sweden, and in other countries in
17 Europe, they use what we call a generated number. It is made
18 up -- it is the date of birth, place, sex, and then a serial
19 number within that to identify an individual.

20 I think the problem is not -- is not that of which
21 number, it's a matter of the universal number that is used for
22 purposes of identification; and, another important aspect of
23 this standard is that it tries to stress that neither name or
24 number alone should be used singularly as a means for identifi-
25 cation. That both name and number together can only be used

bc 8

1 as a means of identification, and as was mentioned by
2 Doctor Rourke this morning, it -- his problem was in people
3 making errors in recording that number and then trying to
4 post information to a file based upon that number alone.

5 The standard qualifies that and says, if you
6 do that you are not in accordance with the standard, that for
7 the posting and filing information, it should be based upon
8 essentially two attributes: The name and the number, and not
9 just one alone.

10 MR. GALLATI: Both of which can be fabricated so
11 readily it's not even humorous. This whole system is based
12 upon your thought of the accuracy of posting of the data.

13 Yet, I can go in with any kind of a number, any
14 kind of a name, and get data posted to Guy's file which will
15 embarrass the hell out of him. The whole system is ridiculously
16 ununiversally identified.

17 I say again, the only way you are going to do it
18 is with fingerprinting. There is no other way to make sure you
19 are posting to the right number.

20 MR. WHITE: The system is based upon a cooperative
21 environment and the type of interchange that is common today.

22 MR. GALLATI: Cooperative compulsion.

23 MR. WHITE: There is nothing in the name or number
24 that says the holder of that is in fact the person involved.

25 Essentially, what you are addressing is a matter of

bc 9

1 verification and not identification.

2 MR. GALLATI: You don't have identification if you
3 don't have verification. Okay?

4 MR. WHITE: You don't have the reliability.

5 MR. GALLATI: Then the whole system falls?

6 MR. DOBBS: I guess to follow up slightly, I was
7 asking the question about the use of the SSN versus something
8 else to see whether it was the SSN that had ANSI in its
9 particular holding pattern.

10 The next question I would ask is that I think as
11 practical people, we accept the fact that there are some
12 files which in fact are already linked, that there are in
13 fact going to be some more that are going to be linked for
14 good reasons.

15 I suspect practical people have reached that
16 conclusion.

17 Now then, is it not the case that from the view-
18 point of the standard that you have suggested, which says that
19 if in fact you want a common identifier and if you want to
20 interchange information, that this is what you should use,
21 could be separated from the kind of discussion that we are
22 having in terms of whether or not the information in a file
23 ought to be shared and/or linked?

24 MR. WHITE: That's right.

25 There are essentially two issues. One, it was

bc 10

1 prompted by the issue of having a standard identifier and the
2 consequences and the consequences with essentially the
3 unauthorized exchange of information.

4 MR. DOBBS: Assume somebody authorized it. The
5 information could in fact be exchanged.

6 MR. WHITE: Also, from a practical matter, if we
7 didn't have a standard identifier, we would still be able to
8 link files. Those linkings, from that standpoint may not be
9 as desirable because you are disclosing more information
10 about the individual to disclose that linking than you are
11 when you are only disclosing the social security number which
12 has no significance.

13 MR. DOBBS: What I am trying to pin down then, the
14 heart of the problem that you are describing is the appropriate
15 mechanisms for authorizing information transfer? Okay.

16 You have suggested the number doesn't really mean
17 that much.

18 I agree with you.

19 You have also suggested that it may, in fact, be a
20 poor way to cross link if you really want to do the job right.

21 MR. WHITE: If you want positive identity, it's not
22 going to solve the problem.

23 MR. DOBBS: It's the key issue of how you authorize
24 and who you might authorize, that such information ought to
be transferred, linked or shared? There are no mechanisms for

bc 11

1 that?

2 MR. WHITE: In other countries, they issue
3 identification cards.

4 Essentially, we haven't gotten to that in the
5 United States.

6 Your identification card has a photograph and it
7 has your standard identifier. It hasn't got to the point
8 where you have fingerprints associated with it.

9 MR. GALLATI: Some countries have.

10 DR. GROMMERS: I think we have to thank Mr. White
11 and go on to a presentation of the views while we are waiting
12 for the zerox to come back. Nobody can do that yet.

13 DR. WEIZENBAUM: Yes. I can.

14 MR. WHITE: I would like to mention that Sheila
15 will be available to you and she certainly can provide you
16 with some of the criteria that led to the development of
17 this standard, why we selected the social security number, and
18 some of the technical aspects of the standard.

19 I would make myself available, on call to the
20 committee anytime you want to get into the management or
21 administrative aspects of standards.

22 DR. GROMMERS: Thank you veyr much.

23 DR. WEIZENBAUM: May I add one comment?

24 I think it is just terribly important to be
25 iconoclastic when there are images to be smashed, especially

bc 12

1 if the images are dangerous.

2 You asserted we can't do anything with computers
3 that we couldn't have done without.

4 That is patently not so and ought not to be
5 believed. It is dangerous to believe that.

6 For example, let's take the centralization of
7 banking and financial activities we are experiencing today.

8 Take the operation of the stock market. If it
9 weren't for computers, I am not suggesting there would be no
10 stock market, no Wall Street, but it would in fact be very,
11 very different because it would have to be modularized,
12 decentralized, so on and so forth.

13 There are things we can do without computers. The
14 strategy we get by using computers have an impact on society
15 generally.

16 I think it's terribly important to understand
17 that.

18 It's not just a question of well, you could do it
19 manually but it's more efficient to do it with computers.

20 There are lots of consequences.

21 MR. WHITE: The point I was trying to make was
22 addressing it toward the welfare system is that you can do
23 the same job if you filled the room with 500,000 clerks.

24 DR. WEIZENBAUM: But you can't do that. It's no
25 longer the same job and it's questionable whether you can do

bc 13

1 that.

2 There are lots of things, and I can give you a list
3 of examples: Air traffic control... Even if we had all the
4 airplanes we had, and we wouldn't have them if we didn't have
5 computers, but suppose we had them, we couldn't have the
6 present air traffic system that we have if it weren't for
7 computers; space flight.

8 There are an enormous number of things we do in one
9 way or do at all because we have computers. Some are good,
10 some are bad.

11 In any case, they all have social consequences and
12 it's dangerous to believe that it doesn't make any difference
13 whether you do it with computers or otherwise.

14 Okay, now if I may give you the presentation of
15 what went on in our group, I must preface that by saying it is
16 totally unauthorized by other members of the group, and also
17 we didn't issue membership cards so it is not clear to me
18 what the membership is.

19 As I understood the short conversation we had over
20 lunch --

21 MR. ARONOFF: Would you identify the members of
22 your group.

23 MS. COX: No, sir.

24 DR. WEIZENBAUM: Everyone who considers himself a
25 member of the group hold up their hand.

bc 14

1 (Show of hands)

2 MR. GALLATI: They invaded our privacy.

3 DR. WEIZENBAUM: I might say Larry Baskir sat in
4 on the discussion so he was a member of the group ex officio.

5 DR. GROMMERS: Just one thing. Mr. Baskir will
6 make a presentation to those of you who are still able to
7 stay after 3:30.

8 DR. WEIZENBAUM: Okay. Totally unauthorized reports
9 subject to refutation and argument by other members.

10 As I understood, what we were talking about was
11 fundamentally three things: One was the nature of the tradeoff
12 between economy, efficiency on the one hand and maintenance
13 of social values, dignity, human individuality and the other
14 thing on the other hand.

15 We simply agreed and gave some examples that there
16 are some reasonably deep issues here we should explore.

17 Secondly, differential considerations that are
18 applied when data systems are being considered for the poor
19 and otherwise defenseless and opposed to the considerations
20 that may be applied when one is thinking of data systems that
21 apply to the not poor and not otherwise defenseless. That
22 ought to be explicated as well:

23 Finally, explication of the -- we feel that one of
24 our tasks ought to be the tasks ought to be the explication of
25 of complex assumptions underlying policy positions presently

bc 15

1 advocated or discussed and that we ought to present critiques
2 of those assumptions and perhaps present alternative
3 assumptions that could be made.

4 We spent only 30 or so minutes with one another
5 and I am willing to listen to amendments, refutations or
6 whatever from -- or criticism from the other people who were
7 there.

8 DR. GROMMERS: Should we have --

9 MR. ARONOFF: I am against.

10 Would you repeat the third one, please?

11 DR. WEIZENBAUM: I said, it fast. Don't blame
12 yourself.

13 We said -- I said, we felt one of our tasks should
14 be the explication of complex assumptions underlying policy
15 positions presently advocated or discussed with respect to
16 data banks and that we should make critiques of those
17 assumptions and possibly present alternative assumptions that
18 could be made.

19 DR. GROMMERS: Do you want to give an example?

20 MR. DOBBS: The figure we had yesterday is a kind
21 of example.

22 DR. WEIZENBAUM: We discussed examples. Mr. Boyd
23 in discussing HR 1, yesterday, gave evidence to those who were
24 willing to perceive that of -- very complicated assumptions
25 that underly the policy recommendations that he was in fact

bc 16

1 making.

2 I am sorry, I can't think -- we came up with some
3 examples at the time at lunch but I can't recall them at the
4 moment.

5 You know, those are -- whatever those assumptions
6 were that he made, both technical and social, so to speak,
7 were by no means the only assumptions that could have been
8 made and should certainly be made explicit and possibly
9 criticized and perhaps alternatives.

10 MR. GALLATI: One of the assumptions, gentlemen,
11 was the fact we have a problem, a real criminal element we
12 are dealing with here, and we have to surveil everything they
13 do.

14 MR. DOBBS: A polite assumption is that in fact the
15 cheating population and system performance should be maximized
16 to deal with that. We ought to try to make those things
17 explicit if they exist and bring them out in the light of
18 day.

19 DR. WEIZENBAUM: That's right.

20 One of the optimization criteria of the HR 1
21 system should be the discovery and punishment or at least
22 recover from "cheaters."

23 This is worth an enormous amount of money to do
24 that.

25 MR. GALLATI: And privacy risk.

bc 17

1 DR. WEIZENBAUM: Right.

2 DR. GROMMERS: Could we have a presentation of the
3 other positions and then we will talk about them altogether.

4 MR. GENTILE: Okay.

5 Our group simple did not have much time as we would
6 like to take, but we did come up with three or four issues
7 that we would like to propose.

8 Number 1, are there some -- and we put them all --
9 we phrased them all in a question format rather than a particu-
10 lar statement that we could attack or defend for information
11 that we thought might be misinterpreted if we took the latter
12 approach.

13 Members of our group, raise your hands.

14 (Show of hands.)

15 MR. GENTILE: Number 1, are there some immediate
16 steps that the Secretary of HEW should take to control the
17 use of the social security account number and we thought for
18 information we would want to investigate such things as the
19 Secretary's regulator powers, possibly directives that have
20 been completed in various State Governments through their
21 Govenors or legislators, and other Federal agencies.

22 Issue No. 2, is the use of the social security
23 account number currently so widespread that it is in fact
24 approaching or is at that point where it is more feasible to
25 controle its use rather than discontinue its use and the

bc 18

1 supportive information we would seek for that issue is a
2 survey we would like to conduct of the various States, 50
3 States, to accumulate information on the extent of the use of
4 the social security account number in the data filed in State
5 Governments and these files include such things as personal
6 health records, vital statistics, birth and death, Medicaid,
7 Welfare, Social Service programs, law enforcement systems,
8 correctional institutional inmates, mental health patients,
9 drivers license, owners of motor vehicles and so on.

10 We have 19 categories in which personal data are
11 collected in each State.

12 We would like to get the number of records in
13 those files and whether or not the social security account
14 number is used as a whole or as an added data element and
15 we would like to ask other questions concerning the use of those
16 files and the number.

17 Issue No. 3 was, should the Government -- or should
18 government regulatory policies be developed to improve
19 measures taken to protect individual policy?

20 The kinds of things we would like to review are
21 currently implemented regulations, not only in the Department
22 of HEW but other federal agencies, the approach for regulation
23 that was taking -- taken in other industries, for example,
24 through the FCC, FTC, ITT.

25 We have addressed a fourth issue, but did not come

bc 19

1 to agreement on it because we were running out of time. That
2 was is it possible to interlink data files in a controlled
3 environment for the public interest provided certain criteria
4 are met.

5 As I say, we didn't get too far on that and many
6 other issues were mentioned, but we just didn't have time to
7 put them all in writing.

8 If there are any comments -- I don't mean to imply
9 we even had time to get a full consensus of this, but I think
10 that was the sense of the small group that met.

11 MR. DOBBS: Didn't the task force do such a survey?

12 Didn't they do a State survey?

13 MR. GENTILE: I am not aware of it, if they did.

14 It was not in their report.

15 DR. GROMMERS: Anyone else have anything to comment
16 from that group?

17 If not, would someone like to present another
18 group?

19 MR. DAVEY: All right.

20 There were about six people in our group. Do you
21 want to raise your hands?

22 (Show of hands)

23 MR. DAVEY: Okay.

24 DR. GROMMERS: Would you raise them long enough
25 so I can write them down.

bc 20

1 MR. DAVEY: I think I have it listed here.

2 DR. GROMMERS: We made a number of points here.

3 The first one is do we need safeguards for personal
4 data banks?

5 Do we need a common identifier?

6 What is the degree of use or misuse of the social
7 security number?

8 Should there be links established among various
9 automated files?

10 What are the cost implications of No. 3?

11 That is, what are the cost complications of having
12 various automated files, and I will amplify this in just a
13 moment.

14 What is the need to exchange -- this is in both
15 the public and private sectors -- personal identifiable data or
16 information?

17 Where and to what degree do the dangers lie within
18 each personal data system?

19 What groups, social economic, ethnic, etc., are
20 exposed more to invasion of privacy, invasion of personal
21 privacy; and, then finally the working draft of issues and
22 programs, this thing that was prepared at the last meeting,
23 which is giving more emphasis to programs than issues should
24 also be included in this list.

25 We did spend a lot of time, and I think that that can

bc 21

1 be reformulated in the form of issues rather than in the form
2 of a program.

3 I think that that list is still a valid list and
4 one which we discussed at some length, felt this should be
5 included here.

6 Then, going over to the second list of persons or
7 resources required we felt that it would be nice to have a list
8 of public and private potential users and this refers to the
9 social security number; and, then this next one is the -- make
10 a study of the cost implications.

11 I have been giving some thought to this, and I
12 think that a couple of students over the summer, we could come
13 up with some rather -- not precise data, but I think we could
14 certainly come within 25 or 50 per cent of what various types
15 of systems cost and the costs of gathering the data, the costs
16 of exchanging data, what the implications of common identifiers
17 are, and the like.

18 I think this would be a worthwhile study to do.

19 I would be happy to work on this if it makes
20 sense.

21 Then, the third source would be a list of agencies
22 served by other agencies. This question of -- I know this is
23 a broad one, but we are talking -- we were talking yesterday
24 with Gerald Boyd, and this new thing -- it was clear there
25 were a number of agencies that were interchanging information.

bc 22

1 It would be worthwhile to have a list of such
2 agencies and the interaction they have with each other.

3 Then, finally, we were not able to come up with any
4 kind of recommendations as to the precise things that should
5 be done other than to put them in the form of a question and
6 these -- we came up with:

7 One, should the social security number be restricted
8 to the public sector;

9 And, two, if a need for a common identifier exists.
10 Who or what agency will administer it?

11 We don't know what the answers are, but these we
12 feel are certainly questions that should be answered.

13 That completes our -- that group.

14 DR. GROMMERS: Is there another group?

15 This is essentially all?

16 You all have a copy -- I think we are expecting a
17 couple of copies. You will get them before we leave.

18 The Chair will intertain comments about these posi-
19 tions, and we could discuss that.

20 I would also like to suggest that those of you who
21 can and feel so inclined could work on these same principles
22 and make more detailed outlines, add to them, and if you will,
23 send them to David, I think that would be the best.

24 MR. DAVEY: May I make a comment?

25 DR. GROMMERS: Sure.

bc 23

1 MR. DAVEY: At least from those we heard, I didn't
2 hear anything that was inconsistent with those of the other
3 groups. As a matter of fact, I was amazed at the similarity
4 of the points that were brought up.

5 I think one of the fears we had earlier about being
6 a great difference, I think that it is surprisingly similar.

7 DR. GROMMERS: I would like to see all those ideas
8 developed.

9 You obviously weren't meeting in committee for the
10 chance of coming up with definitive ideas.

11 If you will individually, or in such groups as you
12 wish to make in the interim, elaborate on this and send them
13 to David, we can get them to the group that is going to be
14 drafting the draft programs.

15 Already we can start reacting to some of these
16 ideas before the next meeting and get them possibly all
17 organized together.

18 DR. BURGESS: Could you tell us more about the
19 draft program?

20 DR. GROMMERS: Well, you know there is to be a
21 program to Richardson, the recommendations to -- of this
22 committee -- a report.

23 DR. BURGESS: I do understand that.

24 But, I was talking about the program to be drafted
25 in the interim period.

bc 24

1 DR. GROMMERS: I have asked two lawyers and a
2 computer political scientist --

3 DR. WEIZENBAUM: I gave that up. I give that up,
4 the political science part.

5 DR. GROMMERS: At any rate, to make a draft of
6 chapters, not of conclusions. That is, to draft a first cut
7 at what ideas should be included, no matter how the conclusions
8 are phrased, whether they are pro or con, in order to have
9 something for the group to react to at the next meeting.

10 The group in its full session, or possibly in smaller
11 groups which will then react to that, and will add to it,
12 will modify that in any way they wish.

13 Chapters then will definitely be decided on, and we
14 will divide up this committee into subcommittees to work on
15 these chapters.

16 This is simply something for us to react to.

17 And, I hope by the mechanism of having you all put
18 in your own ideas on paper, and send them through David to the
19 group, any of you who have ideas and wish to see them entered
20 into this report, we will see that this does get done.

21 Would you all like to talk at all about it --

22 MR. ARONOFF: Are you in a position yet to decide
23 on the next meeting?

24 DR. GROMMERS: How does the 15th, 16th, and 17th
25 suit you?

bc 25

1 MS. COX: How many can't come?

2 DR. GROMMERS: How many cannot come?

3 MS. KLEEMAN: I am raising my hand for Pat Lanphere.

4 DR. GROMMERS: Cannot come?

5 MS. KLEEMAN Cannot come.

6 DR. GROMMERS: Is that two hands that cannot?

7 MS. KANE: There is a chance Arthur Miller may not
8 be able to come. I am not real definite. There is a
9 possibility.

10 MR. DAVEY: Is it any better for the 22nd, 23rd,
11 and 24th?

12 DR. WEIZENBAUM: Oh, no. He certainly can't come
13 on the 22nd and 23rd.

14 He told us that.

15 DR. GROMMERS: The next time then will be the first
16 week in July, but I do think we would like to have Professor
17 Miller here.

18 MS. KANE: He can come for part of the time. There
19 is a chance on the 17th that I think he has to be elsewhere.

20 I could let you know on Monday.

21 DR. GROMMERS: How about 5, 6, and 7 of July?

22 MR. DAVEY: 5, 6, And 7 of July? Those are a
23 holiday weekend.

24 MR. MARTIN: When is the 4th of July celebrated
this year? Is that one of those Monday holidays?

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1 MS. HARDAWAY: Will we be coming here, Madam
2 Chairman?

3 DR. GROMMERS: Yes.

4 DR. WEIZENBAUM: Hawaii loses again.

5 DR. GROMMERS: Okay. That's the 15, 16, and 17.
6 Will 9:00 o'clock on the 15th to 3:00 o'clock on
7 Saturday --

8 MR. DAVEY: Would it also be possible to have
9 some evenings which are not completely filled up with activities?

10 DR. GROMMERS: Yes. I think we will plan to have
11 the work during the 9:00 to 5:00 and time for thinking in the
12 evening. You are not thinking of frivolous activities like
13 theater?

14 MR. DAVEY: Heaven forbid. Gracious me.

15 DR. GROMMERS: You are thinking of a chance for sub-
16 groups to get together?

17 MR. DAVEY: I have to admit I wouldn't abhor the
18 possibility of going and doing something besides working.

19 (Discussion off the record.)

20 DR. GROMMERS: Well, we have to get something out.

21 MR. DAVEY: I agree with that. But looking at
22 yesterday as an example and also last time as an example, I
23 think there were a lot of us starting to really run down by
24 6:00 or 6:30. On any kind of a formal basis -- I think on an
25 informal basis, it's just fine.

1 DR. GROMMERS: We will try to have the sessions
2 ending at 5:30. And then in evening, what we will be doing,
3 as you remember, what we will be doing is reacting to the
4 chapter structure, adding, subtracting, hopefully we will
5 get some group activity on chapter development which could
6 happen in the evening.

7 MR. DAVEY: Very good.

8 DR. WEIZENBAUM: You are saying the place will
9 be available in the evening, if somebody wants to escape and
10 go to the theater, he does this on his own conscience?

11 DR. GROMMERS: Yes.

12 (Laughter.)

13 MR. ARONOFF: Would you be able to -- did I under-
14 stand you correctly, the group that is going to be working
15 on the outline will meet in Boston and then after that's
16 drafted, will you try to get it within enough time that we
17 can really think about your outline? We are finally at the
18 place where people wanted to be.

19 DR. GROMMERS: We will try to get the outline to
20 you a week before the meeting, that is the outline, so that
21 you can have thought about it and added to it. We would like
22 to have your inputs before that time.

23 MR. ARONOFF: Beyond that you really ought to be
24 able in the morning session of the week that we come back,
25 decided upon the outline?

1 DR. GROMMERS: I should think so, if everybody has
2 looked at it and reacted to it, and added to it.

3 MR. ARONOFF: Thereafter you are still, in effect,
4 going to be talking about presentations, is that right?

5 DR. GROMMERS: Maybe. Maybe working. Maybe actually
6 going into groups and dividing up according to chapters.
7 That would be the idea. Having working sessions.

8 MR. ARONOFF: I still would not mind hearing the
9 presentation from the technology group that held up the meet-
10 ing a while yesterday, but validly so, if they would be in a
11 position to make it as one of the inputs to the -- god, there
12 I go, using that word. You got me. I am finally a captive.

13 DR. GROMMERS: I think we will plan to have our
14 presentations. Just right at the moment I don't know what
15 they are, and I would be very open to suggestions.

16 MR. ARONOFF: I would like to hear the presentation
17 from Professor Weizenbaum and the group that was going to work
18 on that presentation.

19 MS. HARDAWAY: Also, is there a possibility that
20 we can hear from IBM according to the \$40 million that they
21 have allotted on the privacy situation so that we can know
22 what their thinking is, what led them to do this, what they
23 are looking for?

24 DR. GROMMERS: What I was hoping to get in number
25 two was who you wanted to make presentations.

1 MS. HARDAWAY: That's just what I said, the
2 proper representative from IBM.

3 DR. GROMMERS: Is that on your list?

4 MS. HARDAWAY: Yes.

5 DR. GROMMERS: What I am going to do is go through
6 that list --

7 MS. HARDAWAY: I am not sure it is on the list, but
8 I would like to add it.

9 MR. DAVEY: We all add it.

10 DR. GROMMERS: Be sure you do add things like that,
11 and also write to use if you think of that, or call us.

12 MR. DAVEY: Another thing that would be very helpful,
13 I would like to hear Bob Gallati talk about the New York state
14 information system. I think that's really a model, in many
15 respects.

16 MR. GALLATI: Thank you, Gerry.

17 MR. ARONOFF: And the fingerprinting that you are
18 anticipating.

19 MR. GALLATI: Get those prints.

20 MR. DAVEY: I think that that represents another
21 kind of data file which we have not been exposed to, where
22 you don't have a population which is cooperative.

23 DR. GROMMERS: Actually I don't really see -- for
24 example, here under persons or resources, it says description
25 to the extent to which personal data has been collected.

1 That's not a specific person you want to hear from. Maybe
2 it wasn't clear.

3 MR. DAVEY: From our standpoint we are looking more
4 at resources.

5 MR. IMPARA: That was my comment, and I don't know
6 who would be able to provide that. To the best of my knowledge,
7 OMB is conducting a study which might have that information
8 available.

9 DR. GROMMERS: Okay.

10 Any other people that you all would like to hear
11 from that you may not be thinking of right now, but that
12 when you go home, if you will work on these kinds of lists
13 and send them to us, then we can take what steps are necessary,
14 hopefully to get these people for you.

15 MR. DAVEY: I think as we move into a private
16 sector, that it makes sense to get people who represent the
17 private sector.

18 DR. GROMMERS: Let me say if I don't hear from you
19 all as to specific people or topics, it won't be done by next
20 time.

21 MR. DAVEY: I don't know that it necessarily needs
22 to be done by next time.

23 DR. GROMMERS: Probably. Though we may find we
24 may not meet at a monthly interval. It falls out on what we
25 do over the next month. We may meet only in groups in the next

1 couple of months to write the chapters. The groups may wish
2 to have people come to them, and we can arrange that, too.
3 But we have to know who you want to hear from.

4 MR. GALLATI: In my suggestions, I use the term
5 rather than indicating individuals, the term staff study,
6 staff review, staff report. Am I perhaps being unrealistic
7 in expecting that we have that kind of staff support to do
8 studies and reviews and reports on specific areas?

9 For example, I think we do have to know exactly
10 what legislation exists today in terms of what is -- what has
11 been passed and signed and so on, but also legislation which is
12 in gestation, has been introduced and has not been passed
13 in reference to these matters.

14 We don't have, to my knowledge, any access to that
15 at this time.

16 DR. GROMMERS: Is that in here?

17 MR. GALLATI: I made that suggestion. I said
18 staff review.

19 MR. IMPARA: If it was not in yours, it is in mine.

20 MR. ARONOFF: This isn't complete yet, is it?

21 MR. IMPARA: Yes, it is complete.

22 MS. HARDAWAY: We can certainly add to it, can't
23 we?

24 DR. GROMMERS: You can add to it. I just wondered
25 if I had it already.

1 MR. GALLATI: Do we have that kind of staff
2 support?

3 MR. MARTIN: I can't answer that question in the
4 air, Bob. One thing that I would -- I would ask each of
5 you to do ^{who} proposes some substantial survey activity, gathering
6 of information. John Gentile's question about the use of the
7 Social Security number in state government data processing
8 activities, I would suggest that you ask yourself the question
9 and then answer it for our benefit, and for the benefit of
10 those who will be dragooned one way or the other, or whatever,
11 to do the work, what difference will it make to you to have
12 that information? I think a method which a group like this
13 is apt to get into, unless somebody challenges it not to
14 get into it, is to think of all sorts of things it wants to
15 know, but have no idea of how it would make life any different
16 for you if you knew that information; and an effort to kind
17 of push you through that process was the outline on the
18 identifier issue.

19 Unfortunately, that whole presentation, because
20 of Sheila's illness and so on, didn't occur the way we had
21 hoped to have it occur.

22 But if you look at the ABA survey of the use of the
23 Social Security number which was made a few years ago, it
24 seems to me that it doesn't help you at all to address the
25 issues, and we have talked at previous times. Maybe it would

1 be nice to know who is using the Social Security number,
2 why would it be useful to know that.

3 The reason I say that, I don't think -- I have got
4 to be careful as I interact with program people or consultants
5 that we don't end up asking them to do a lot of work which
6 reflected nothing more than someone's sense of inability to
7 focus on what they were really trying to decide and we can
8 set all sorts of work going that will be fruitless.

9 MR. GENTILE: I agree. I am one of the states
10 that would be receiving such a questionnaire. I share your
11 concern. I promise this: Before I send out a questionnaire,
12 I will clear it with a one-page questionnaire.

13 MR. MARTIN: John, I don't care what you do in
14 Illinois. I am just answering Bob's question. The kind of
15 work we get done for the committee depends on your
16 specifying what it is that you want. I urge you to think
17 carefully about why you want it. Make some assumption of
18 what it would be like if you had it.

19 MR. IMPARA: Excuse me. David, may I make a
20 point? It may be a question.

21 If you were to do a questionnaire for the purpose
22 of obtaining information for this committee, and you told
23 David about it, that might put David in the extreme hot
24 water with the office of management and budget. If you want
25 to do a questionnaire for your own purposes which might add

1 to your body of knowledge about the workings of this committee,
2 then that may or may not be --

3 MR. GENTILE: Well, I think, Jim, that the
4 questionnaire could go out under the auspices of another
5 organization, not HEW, but I also feel that there might be
6 some questions to be answered from this survey that might be
7 able to be modified and serve more than one purpose, maybe
8 some other group might have a need for information that is
9 slightly modified.

10 Further, and even more importantly, is that you
11 might be aware of some other survey that has already been taken
12 that has this data.

13 MR. IMPARA: All I am suggesting on David's behalf
14 is that OMB clearance takes about six weeks. Be very careful
15 about any letter you send to him relative to any kind of
16 questionnaire or survey so you don't get him in a bind because
17 of ignorance of certain federal policies.

18 MR. MARTIN: Let me give an example of the kind
19 of reasoning you might go through. Jim Impara, at the
20 last meeting, as a result of our last meeting, went back to
21 Florida and discovered that certain information is being
22 collected about high school students and put in the file and
23 is accessible and blah, blah, blah. This surprised him.

24 Having learned that about Florida, you might all
25 decide and you might have decided it without knowing that it

1 is true in Florida, analytically that the kinds of data Jim
2 has found is being collected and put in files about students
3 in Florida ought not to be there, and you could arrive at a
4 judgment on the basis of analysis and thought that you wished
5 to recommend that data systems of public schools in America
6 be constrained not to include such information in files about
7 high school students.

8 You don't have to know whether this is being done
9 or not or whether it is being done in most states or from
10 most high school students to arrive at that conclusion.

11 Not uncommonly, what someone would do when they
12 think about the question, they don't want to think about it
13 and make a decision or arrive at a conclusion without knowing
14 what is practice. You can make an assumption about what
15 practice is and say in some they do and some they don't.
16 Maybe it is 80-40, 70-30, whatever you want.

17 Then you say that's what I found, after exhaustive
18 survey, thousands of dollars, months of effort, that's what I
19 found. How do I feel now? Would I feel differently if I
20 had verified that survey? If you conclude that it doesn't
21 affect your conclusion and maybe you would be prepared to
22 reach the conclusion without going through the expense and
23 delay of getting the information.

24 On the other hand, as with respect to the use of
25 the Social Security number, for instance, this committee might

1 arrive analytically at the proposition that you want to take
2 a strong stand against the use of the Social Security number
3 as a use of a universal identifier. But you say to yourselves
4 that we don't know how realistic that proposal is, how much
5 political flack is that going to generate, how much resistance
6 is it going to generate. That might leave you to say we
7 don't know, what reliance is being placed on it, what will it
8 cost to try to prohibit it, and from that infer how much
9 resistance there will be and how you might overcome that
10 resistance. There might be good reasons for conducting the
11 survey.

12 I am not trying to prejudice what conclusions you
13 reach, but I think it is important to have some sense of why
14 you want the data other than you didn't think it through,
15 which I think is very easy for all of us to do.

16 The first thing is to collect data, but not know
17 why to be doing it. That costs money and time, and I have
18 got to be careful about that.

19 Larry, this meeting has been sort of a happening.
20 We are very, very fortunate in having with us Lawrence Baskir,
21 who is the counsel for Senator Ervin's Senate subcommittee
22 on constitutional rights, and Larry has been laboring in the
23 vineyard of the enterprises of that subcommittee for some time.
24 He came today in part to get a sense of what we are up to.
25 Obviously he and his fellow staff members and the Senator and

1 that subcommittee are very interested in the existence and
2 the work of this subcommittee.

3 Larry, I think it might be helpful, although I
4 realize it is sort of catching you off guard, if you would be
5 willing to informally, you know, but on the record here, for
6 the benefit of those present so we can Xerox that record and
7 share it with those who have left, and were absent at this
8 meeting, to give a little account of what the Ervin committee
9 has been up to, and where it is trying to get, what sort of
10 legislative aims you may have, anything you feel that would
11 be useful for the committee to know about this very important
12 force in this general subject matter area with which we are
13 concerned.

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end 23

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1 MR. BASKIR: The Subcommittee is a subcommittee of
2 the U. S. Judiciary Subcommittee. It is a subcommittee dealing
3 with a variety of problems, all having to do with individual
4 liberties.

5 Basically, our jurisdiction is the area encompassed
6 by the Bill of Rights, and we do a lot of things in addition
7 to the kinds of subject matter in the area of privacy, criminal
8 law, separation of Church and State, a variety of things that
9 you all have nothing to do with in this committee.

10 We came into the area of privacy and computer some-
11 what gladly. One of the areas we were concerned about was
12 the rights of federal employees. As we were doing work on
13 their legal and administrative rights as to what happens to
14 them on the job and outside the job, we came to discover
15 that the government asks an extraordinary amount of information
16 about their employees.

17 There is some reason for some of these things.
18 There is a lot of cases where there is no reason for a lot of
19 these inquiries, and so the very first thing that we did in
20 terms of our privacy study, which has now grown quite a bit,
21 was to first make an inquiry and then to draft some legislation.

22 That legislation is probably seven years old, now.
23 It goes back to the beginning of reported time, so far as we
24 are concerned. The legislation was very simple; we tried to
25 block out certain areas of inquiry by the government of its

1 employees that we thought there was no justification for. One
2 thing we discovered was, which I think has continuing validity,
3 that there is almost nothing that you can ask of a person that
4 you can come back, and say, there is no reason to ask that;
5 and this was in the area of employment. You want to find out
6 about their financial background. They will say, "Conflict of
7 Interest." You want to find out about their social background,
8 their sexual activities, a variety of things. There will
9 always be a reason that the question should be asked, and when
10 you take a look at the legislation as it has finally come down
11 to the point where it has passed the Senate now, three times,
12 there are a few areas, but very few, in which we could persuade
13 the Senate that the government should not ask its employees.

14 The Bill is now over in the House and there are
15 many, many more qualifications on those prohibitions.

16 I think the lesson we have learned is that you cannot
17 make an arbitrary decision that this class of information
18 should never be collected from an individual; and indeed, it
19 is very difficult also, to say, that not only in the abstract
20 you cannot ask it, but that this kind of government interest,
21 be it criminal law, be it health, be it education, be it person-
22 nel, does not need X kind of information.

23 I do not say that all information can be thoroughly
24 justified. What I do say is that the people who are working
25 in that area will almost always be able to give you a reason

1 for wanting the information; and so in the area of pure privacy,
2 it is very difficult to make those determinations, especially
3 if it is a give-and-take -- it is a political situation where
4 you have to persuade people to give up something and there are
5 forces back and forth, because the argument that, let us say,
6 the administrators of a program can make or the researchers,
7 in favor of getting X information, is always going to be much
8 more powerful than the argument you can use not to collect it.

9 We moved from the area of collection of information
10 on government employees to the general collection by government
11 of information about individual citizens. We have come nowhere
12 near even beginning to draft legislation to try to control
13 that and that exists irrespective of computers. The introduction
14 of computers and the increase of the government's ability to
15 collect information and use it give an entirely new dimension
16 and a much greater impetus to our inquiry because the govern-
17 ment of course, has been collecting information from the begin-
18 nings of time, and as somebody mentioned here today, we have
19 in a sense, come to learn how to deal one way or the other with
20 the government's collecting information.

21 Our fear is the area of computers will change the
22 balance so much that there would not be the kind of tacit or
23 informal or underground, or whatever kinds of controls now exist
24 to balance government and individuals.

25 We have had a series of hearings most recently, about

1 a year ago, which consisted primarily of a general survey of
2 the area of collection of data and privacy. We have two volumes
3 printed already. The first is the testimony and the second
4 has to do with criminal justice and political information,
5 basically, the army and the Department of Justice.

6 A third volume which will reprint a number of responses
7 to surveys, we have sent out to all government agencies
8 presumably will tell us the kinds of data systems that govern-
9 ment agencies have on people outside the government, what
10 kinds of controls they have on them. We hope eventually to
11 publish that, but it tends to go out of date, even before we
12 get it.

13 I will say that we have seen another aspect in the
14 area of data collection which I think, might be very important
15 for you all. That is that we can kind of divide roughly govern-
16 ment data systems into what I generally call, benign systems,
17 and, malignant systems. There are some government collection
18 systems which collect information to do things bad to the
19 people, criminal law, political data systems and the like,
20 which strike at very familiar rights that we have, the right
21 of political freedoms, criminal law.

22 When we deal with those in a sense we are dealing
23 in an area that certainly, as lawyers, and certainly in making
24 political judgments where the interests at stake are very
familiar to us, and we can -- and we have a system that is

1 already set up, outlined in the Bill of Rights. They are part
2 of our entire heritage. We can easily see the danger that
3 collection or use of certain kinds of information in these
4 areas will have to individual citizen's rights. We do not even
5 often call them privacy rights. We call them political rights,
6 rights of criminal and due process and the like.

7 The other area is the area that HEW deals with that
8 are in a sense, what I call benign. They are the giving of
9 services to individuals. The collection of information ought
10 to do that in a better way. There we find it is extremely
11 hard to formulate what the interest is that we call privacy.

12 We even find it difficult to formulate the dangers
13 we want to avoid. We can say, obviously we want to avoid
14 error, we want to avoid mistake, but what is the real human
15 interest involved in not collecting so much data? That is
16 very difficult.

17 It is very difficult to try to verbalize and is
18 much more difficult when you try to start making choices.
19 We find there are almost always other interests on the other
20 side. it may be fishy, it may be catching welfare cheaters,
21 it may be something else. But the government interest on the
22 other side is always much, much more powerful. This puts it at
23 a very great disadvantage in trying to strike balances.

24 The most that you can do is to come up with some
25 rhetoric on the interests of privacy, the interests of human

1 man. It is difficult to verbalize this thing and difficult
2 to make choices when trying to express it which does not mean
3 that it is not important. We all think it is important and
4 it may be important in very practical ways. some people from
5 the National Science Foundation came in the other day talking
6 about research data and confidentiality. They have a very
7 strong interest in confidentiality in a practical way and that
8 is, they would not get cooperation.

9 They would not get cooperation from people because
10 they cannot guarantee confidentiality. Their research is then
11 no good. That is the kind you can explain to somebody and then
12 make a balance judgment and even force certain kinds of privacy
13 or confidentiality.

14 Unless you can find something like that, the balance
15 is extremely difficult and we have had very little -- as I
16 say, we have had very little success in trying to do something
17 about these other areas in the benign data collection.

18 We are at the point now, where I think, we certainly
19 recognize the kinds of issues that are involved and I think we
20 have a pretty good idea of the state of the art, if you will,
21 how far these developments are moving.

22 A real problem now is trying to devise some practical
23 methods for the interests of privacy and confidentiality and
24 security and get them locked into these systems, as they are
25 beginning to grow, because the systems grow irrespective of

1 what these systems are. Once they grow, it is almost impossible
2 to impose these controls on them.

3 What I think we would like to see, are some very
4 practical suggestions as to what a data system in health or
5 data system in HEW , what do you think ought to be done, what
6 would you put in if you were in a government agency in terms
7 of regulations, and what should go in the statute rather than
8 doing more research.

9 Not that all of it has been done, by any means, but
10 I think we are all familiar with the kinds of problems and the
11 time is getting very close to come up with practical solutions
12 in terms of rules and regulations in this area.

13 I would be glad to answer any questions.

14 MS. HARDAWAY: In the beginning, you stated that you
15 started out to get rid of several questions that were asked of
16 the employees by the Federal Government. Can you give me an
17 example of those questions?

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1 MR. BASKIR: Yes. Personal information having to
2 do with sexual attitudes, financial information, and information
3 with respect to region. I think of all of those, the one that
4 comes the closest in terms of being able to make a straight
5 prohibition, there is no information at all that is necessary
6 on region. That fell through when we talked to the security
7 organizations who felt they had to have that information in
8 order to assign personnel in terms of national security assign-
9 ments.

10 MS. HARDAWAY: Are there any questions such as
11 what state have you registered to vote in, what precinct,
12 et cetera?

13 MR. BASKIR: I can't recall specifically whether
14 those are asked of government employees. Those kinds of
15 questions are asked by the government of citizens all the time
16 for all sorts of reasons. What we have found is that as
17 Dave was talking with respect to you all, maybe if this
18 Committee comes to the conclusion it is not going to get more
19 information but make value judgments, even based on the
20 little information, one of the things you might suggest would
21 be that the government doesn't need all the information it is
22 collecting, that it is kind of information collection crazy and
23 that more information doesn't necessarily result in better
24 decisions.

25 There is a tremendous desire in government to

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1 collect information on the theory that the more you have, the
2 better your decision is. This is an almost irresistible
3 drive within government and computers of course justified this
4 thing tremendously.

5 MZ. HARDAWAY: You know Will Rogers said fortunately
6 we do not get all the government that we pay for.

7 MR. BASKIR: Yes. I am afraid of computers because
8 it might make the government more efficient.

9 There is a real point there. Bob and I had a meeting
10 in New York a few months ago. I can't remember what we discussed
11 but one of the things that came up with -- was with respect
12 to the enforcement of traffic tickets in the New York system.
13 There is a lot of slack in government and that is what makes
14 government and society livable, that is the government
15 doesn't do everything that it wants to do and when you really
16 enforce traffic tickets you come to an intolerable situation.

17 MZ. HARDAWAY: In the area of privacy and from
18 your knowledge of working on this as long as you have, and if
19 you can get away from federal and down to state where I
20 think probably 90 percent of the states ask on their employment
21 applications are you registered, what county, what precincts, et
22 cetera, would you feel that the asking of that question
23 would violate the privacy of an individual or do you feel
24 how that information is used would be the point where the
25 privacy would be invaded?

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1 MR. BASKIR: Let me say that kind of information has
2 to be asked by government for certain purposes. It certainly
3 has to be asked by government with respect to voting
4 information. You have to know where a person is registered
5 and what his registration is.

6 MZ. HARDAWAY: I am talking about on an application
7 for employment, now.

8 MR. BASKIR: Right. There is no reason to put it
9 on an application for employment. One very important thing
10 that I think we have seen is that tacit controls on the
11 collection of information that may have existed to some extent
12 in the past with a function of your ability to use the informa-
13 tion or store it even and there was no real necessity to ask,
14 for instance, a question like that, of just anybody in the
15 world just because you have more things important that you
16 had to know.

17 Now of course those constraints are dropping off
18 with computers that enable you to get the information plus
19 you can justify the space of the computer by collecting more.

20 Another thing is to replace the old constraints
21 of time and usefulness which are now gone with computers with
22 artificial rules.

23 MZ. HARDAWAY: In some ways the states would challenge
24 you on whether or not those are necessary questions. I think
25 most states feel an obligation to employ their own -- people

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1 that are living within their state and who have an interest
2 in that state government, and I believe that is the purpose
3 for asking that question, are you residing in our state,
4 are you registered to vote, do you intend to, you know, live
5 here and support this state that you are attending and that
6 you are taking your earnings from.

7 MR. BASKIR: There is no question that you could
8 give a very legitimate reason for almost every piece of
9 information asked by government. Indeed when you get into
10 administering programs if you can't think of something definite,
11 you can say we want to find out whether that information is
12 pertinent. So we are collecting to see if it is pertinent.
13 That is what we ran into in the very small area of government
14 employee privacy. That is that the government or collector
15 will always have a very persuasive reason to collect a piece
16 of information.

17 MR. MC LEAN: Larry, the situation is largely
18 analogous to the area of classification of government infor-
19 mation. There is no power to avoid over classification so when
20 in doubt the typical bureaucrats classifies. If he under-
21 classifies, he gets penalized.

22 MR. BASKIR: You never know, of course, when a
23 piece of information might become useful. Three days from
24 now when somebody says why don't we find out, or what about
25 this.

1 MR. GALLATI: The same rules apply to purging.
2 They say gee whiz, remember this case 10 years ago; we
3 couldn't have solved this case if we didn't have this
4 information.

5 DR. GROMMERS: What are you doing about legislation
6 at this time?

7 MR. BASKIR: Well, we have pretty much reached a
8 dead end. We have found one data bank that had absolutely
9 no justification for and that may be the only one in the world.
10 That was the Army political system. We even have difficulty
11 drafting legislation with respect to making that prohibition,
12 the tacit political prohibition that has been created. The
13 Army will begin to tell you we do have a reason to collect up
14 to here. Well, how do you draw the line? We have great
15 difficulty in drafting it much less getting it enacted.

16 With respect to other kinds of systems, let's say
17 criminal systems where we can see very clearly the danger
18 point in there, the pressures on those systems to create them
19 and the other elements of them are very, very great. We
20 indeed haven't even come to the drafting point of that. We
21 are pretty much at the point where I think Senator Ervin has
22 decided the talents within the subcommittee staff and the
23 problem is so large we can't begin to do any drafting of
24 legislation within our own community.

25 DR. GROMMERS: Like where?

1 MR. BASKIR: Where? I am not sure at this point.
2 As a matter of fact we have just discussed it in the last day
3 or two and somewhat this morning.

4 I would think that whatever we would do in terms of
5 creating a group would build upon the kind of thing that
6 this Committee would do even if this Committee only restricted
7 itself to things within the department that the secretary
8 could do himself as models because there are very few models
9 running around even with respect to individual systems.

10 MR. ANGLERO: I think you got into a very critical
11 point when you said that one of our recommendations could
12 be not to have so much information and to have a sense of
13 information and to have an idea of the information that is
14 gathered, we need to know a list of other systems that
15 operate. We have to know exactly the -- not the thematics
16 of the machinery, but how the systems operate and how would
17 they be designed to be used in terms of policy making because
18 we can gather and gather more information and never come
19 up with anything; and I suspect that a lot of that is in the
20 system. So I can identify not because of the system but
21 because of the way they work that there is not a common way
22 to do it, there is not a system. There is not a rationale,
23 and even if the information could be gathered on a data
24 basis, could be gathered on an individual basis to come here
25 to Washington. I know that and I think you know all that.

1 Myself, on the state level, and let's call it a state, it
2 is Puerto Rico, I regret, to gather information at the state
3 level is not needed on an individual basis because really I
4 would do nothing in terms of the individual. That would not
5 help me or us to improve services or to provide services for
6 decision making. For evaluation that could be a great thing,
7 but there should be some kind of rationale, some kind of system
8 design behind it and not having been able to see in any of
9 these presentations that we have had here, the rationale,
10 the systems that comes, not as such in the private sector, not
11 even here, in terms of health, education, and welfare; and
12 whenever we talk about this, we talk about procedures, we
13 talk about processes. I have nothing and I would like for
14 someone to tell me why the information is gathered and the
15 use being given to that information because that is the only
16 way I think or one of the few ways that we will be able to
17 determine the kind of information to be gathered and where
18 should it be kept.

19 MR. BASKIR: One of the things that we came for
20 that doesn't get us very far is a determination we would
21 like to build into the question in process, a limitation
22 structure, some requirement of justifying why a piece of infor-
23 mation is requested; and there is no such system now anywhere.
24 It is all internally devised within the group that decides it
25 needs information and there are limitations, budgetary, how

1 long the form. It has to go through the Bureau of Budget.
2 But there is no outside force asking the question what do you
3 need this information for. When we have done it, we have
4 done it in a form -- I can't recall the form number -- personal
5 health information. I know the services use it very much. They
6 had a medical history. You checked a box. Form 69, that is
7 right..

8 All sorts of information. Finally we started to
9 ask questions about that, nobody could say what this
10 information was used for or why it had to be gathered. We
11 came pretty far towards eliminating that questionnaire. But
12 the numbers of years, the amount of work that went into
13 eliminating that one questionnaire couldn't be done on a
14 general basis.

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15 MS. HARDAWAY: Do you suggest a regulatory board?
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1 MR. BASKIR: One thing-- Arthur Miller proposed
2 once and Senator Ervin was very interested in, was some
3 independent system that whatever rules were imposed upon
4 government information collection systems, this would
5 administer those rules. If some organization were to say
6 we want to computerize, we want to collect this kind of data
7 for this kind of program, they would have to go and at least
8 say that they have these rules for security, these rules for
9 privacy, these rules for confidentiality and get an okay
10 from the regulatory system.

11 MR. WHITE: This is a licensing in a sense?

12 MR. BASKIR: Not only for the government, but for
13 the private sector. A much smaller area, and in some
14 respects easier. You would only have to propose that idea
15 as beneficial as it would be to come up with all the diffi-
16 culties involved in that, not the least difficulty is that
17 regulatory systems always are captured by the -- well, the
18 industry in a private area, by the constituency they are
19 supposed to regulate.

20 MS. HARDAWAY: And many times they are politically
21 manipulated, according to how they come about.

22 DR. GROMMERS: Mr. Baskir, have you had some
23 conversation which I am not aware, what is the problem? Is
24 it that there is a lack of constitutional basis for the
privacy of the individual or is it that nobody has tested it in

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1 the courts, tested the fourteenth and first in the courts?

2 MR. BASKIR: You are now talking about the social
3 welfare as opposed to criminal and political systems?

4 DR. GROMMERS: Yes.

5 MR. BASKIR: Arthur Miller could go into it much
6 further. The law just has not been developed to the point
7 where we understand this thing called privacy. There is no
8 structure that helps you make judgments when you have to make
9 a decision with respect to somebody's privacy.

10 DR. GROMMERS: There is fourteen and there is
11 first amendments and the Constitution does guarantee a right
12 to liberty. Is it possible a series of test cases would have
13 to be developed?

14 MR. BASKIR: Senator Ervin's approach to this is
15 that the first amendment, primarily, and also the requirement
16 of due process, gives you a constitutional structure to make
17 these decisions, and I think it does. But there is no --
18 in having said that, as you are starting principle, you don't
19 have enough experience and we have no experience, let me put
20 it that way, and what little experience we have is all nega-
21 tive, that gives you the little subsidiary rules to actually
22 make real decisions.

23 When you come down to it, nobody is going to protect
24 you if a government agency for a legitimate reason collects
25 your religion and then gives it to somebody else.

1 DR. GROMMERS: Why not? Is there a lack of law?

2 MR. BASKIR: Yes. Put quite simply, there is a
3 lack of law. Also the kinds of injury we are talking about
4 is not an injury which so far as law is concerned, which
5 we know how to manipulate and make decisions about it. If
6 somebody is improperly thrown into jail because information
7 was collected wrongfully about him, you know, a search, a
8 search warrant, we know what to do about that. A person
9 has been deprived of his liberty.

10 DR. GROMMERS: Suppose a person loses his job?

11 MR. BASKIR: Yes. If you can prove it.
12 Unfortunately when you come down to violations of privacy,
13 the kinds of information, kinds of programs that HEW deals
14 with, benign systems, it is hard to find the injury. What is
15 the injury? If you find the injury, how do you know what
16 caused it?

17 MR. GALLATI: You have to get back to property.
18 The whole law is based on the concept of property. When you
19 try to define your injury based upon a violation of privacy,
20 it has to be translatable into some form of property, a job,
21 some damage that has occurred to you in most cases. This is
22 where you get into the whole ball of wax that our law is
23 based on property.

24 MR. BASKIR: It has to be fundable into dollars.

25 This is the only thing the law recognizes in terms of invasion

1 of privacy. Someone's feelings that his psyche has been
2 injured because someone told something about him that they
3 shouldn't have, that is not translatable into any kind of
4 legal consequence.

5 MR. MARTIN: I am wondering what kind of interaction,
6 if any, there has been within the Congress among three that
7 I can think of sources of initiative in this area that are
8 conceptually related. We had a presentation earlier today
9 from Ken McLean on the credit reporting account and some
10 process has been created there without any root in property
11 right. I don't think it is essential that damage, monetary
12 damage, be accountable to arrive at the point where you decide
13 we need some process through which the forces of opinion
14 and attitude and feeling can operate to change things.

15 MR. GALLATI: It is a very good statement, Dave,
16 except I would like to call your attention to the fact that
17 the basis for activity, the tremendous activity in the
18 federal reporting act was that there were people who were
19 being injured propertywise.

20 MR. BASKIR: It did have a property base. You got
21 your credit card and continued to be billed for things
22 that never had been bought.

23 MR. MC LEAN: The biggest area was the question
24 of relevancy, determining what information goes into the file.
25 That is where the law is most deficient and that is where

1 we had the biggest problem convincing senators and members
2 of Congress that there ought to be some reasonable restrictions
3 on the kinds of information that could be collected. It is
4 just not a recognized tort concept.

5 MR. MARTIN: Let me pursue this a little bit
6 further. There is also the Post Office and Civil Service
7 Committee, I believe, which has also been trying to get at
8 what kinds of information is appropriate to ask government
9 employees.

10 MR. BASKIR: That's the flip side of our bill.

11 MR. MARTIN: And there is your committee. And
12 there may be others. Now what sort of interaction goes on
13 among these separate sources of initiative? Why, for example,
14 is there not pending legislation that applies the process
15 which has been developed for the credit reporting field in
16 other areas where exactly the same -- let's -- formulation
17 of a right of access to what's in a file could be created by
18 legislative prescription.

19 MR. BASKIR: The answer may be the squeaky wheel,
20 in a sense, a tremendous groundswell of public objection to
21 the abuse of computer systems in the area of credit cards,
22 for instance.

23 Of course, the public concern goes beyond the scope
24 of that bill. A simple concern in the area of, let's say,
25 government versus individual liberties -- I say except for a

1 few areas like spying, surveillance kind of thing, which
2 people react to very easily, it tends to taper off in other
3 areas. The counter interest, catching spies, whatever you
4 want to say, dealing with riots, catching criminals, is very,
5 very strong. That means that trying to strike a balance
6 becomes very, very difficult. Trying to get the momentum
7 where people are prepared to strike a balance is even difficult
8 for us.

9 And the Post Office, Civil Service Commission,
10 in a sense, is a very good example. The privacy bill Senator
11 Ervin developed for government employees had its toughest
12 fight only with its application to the CIA. Then when we had
13 a vote on the issue, 90 to 4, 90 senators against only 4,
14 because Senator Ervin had managed to persuade the Senate as
15 to the importance of these areas of privacy for government
16 employees.

17 In the House, it goes to the Civil Service
18 Commission which is very responsive to the needs of government
19 personnel and management. That bill has been over there three
20 times without any but the slightest kind of movement. They
21 are very fractious and they find location in the Senate
22 with privacy very strong in our subcommittee, and therefore
23 the government management interests is very strong in the
24 House committee.

MR. MARTIN: This committee has a very difficult

1 strategic dilemma. Much of the discussion which goes on,
2 has gone on in this committee, has been in terms of broad
3 principles, general statements about the desirability of
4 people being able to get into their record and make sure that
5 it is accurate and so on.

6 Yet, given from what you have said, that there is
7 no capacity within the Congress for conceptual infection
8 across the jurisdiction of committees, that you don't --
9 unless you have interest group pressures at work that move
10 committees, this committee needs, it seems to me, to take
11 account of what the -- the map of Congress is, particularly
12 if it is going to recommend anything in the way of legislation.

13 My own view, based at this juncture, which is a
14 long way from the end of the road, is that it doesn't repay
15 us to think about these issues in general terms, that we are
16 probably going to have to think about them in particular
17 areas of application of data systems such as the health area
18 because maybe there is a chance then of moving the committees
19 of the Congress that write health legislation or in education,
20 because maybe there is a chance of moving the committees of
21 Congress that write educational legislation as our one
22 precedent. One committee was able to move in the area of
23 credit and steal a little from other committees and include
24 insurance and employment, and I am wondering whether we
25 need --

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1 MR. BASKIR: That is a problem we faced and have not
2 yet resolved. That is whether to go at this, specific problem
3 by specific problem; or try to seek a general approach to it.

4 MR. MARTIN: I think the committee needs help and
5 any insights you and Ken, and others can offer --

6 MR. BASKIR: There are a number of equal arguments
7 on whether to go into the particular or into the general.

8 MR. MARTIN: It needs advice on how to develop a
9 sense of strategy and package its insights and recommendations
10 so as to maximize the likelihood they can catch a breeze,
11 legislatively; if one of the aims turns out to be to catch a
12 legislative breeze.

13 MR. BASKIR: I can see two things I would like out
14 of this committee's results and they are opposites, both things.
15 Because the need is great on both sides of it. I think, for
16 instance, if the committee came up with specific things that
17 the Secretary could do with respect to the organization of
18 the systems under his control, such that he might have sniping
19 from outside the Department, but basically that all would be
20 within his control to impose without answering to anybody else.

21 MR. MARTIN: And create a model situation?

22 MR. BASKIR: That is right. That would be extremely
23 valuable. It is nice to have a model somewhere.

24 On the other hand, if it is only particular, it
25 may be fine for HEW and have no application to any other place

1 in the government and may not advance us in general. Obviously,
2 it would, because we would have 40 percent of the government
3 systems covered by these regulations. We would be 40 percent
4 along the way.

5 I would also like to see something that the committee
6 does which would advance, and stimulate, and be a voice, let
7 us say, from Secretary Richardson, as to what government ought
8 to do as government in general.

9 In other words, I think the committee ought to come
10 down very hard in terms of recommending privacy, recommendations
11 on behalf of privacy as a general issue, as well as come up
12 with specifics that Richardson would find directly applicable
13 in his own shop.

14 The need is there for both.

15 MR. MC LEAN: I would concur very strongly with
16 what Larry just said. I think one way of managing that would
17 be go divide up the recommendations in terms of the areas in
18 which data banks are located, perhaps, starting with HEW as
19 one major system, and then, perhaps, looking at other govern-
20 mental data systems, and agencies, such as Internal Revenue.
21 Bureau of the Census, etc.

22 A third chapter, looking at the private sector,
23 private reporting firms. Perhaps third would be looking at
24 welfare data systems. Then there would be looking at data
25 systems compiled by corporations for their own purpose. If the

1 corporation is large enough, it has a significant effect upon
2 the welfare and well-being of their employees. so this would
3 be -- it seems to me, a very convenient way of managing the
4 work of the committee, and then trying to develop a conceptual
5 framework to analyze all of these various data systems in
6 terms of the information that goes in, what kind of informations
7 go in, what kinds of safeguards should there be, what kinds of
8 mechanisms and procedures should the affected people have to
9 gain access, to gain recourse, channel the information.

10 It may be that you need different answers or differ-
11 ent approaches, different specific solutions depending upon
12 the kinds of system you are talking about. I think you could
13 probably develop a conceptual framework that would serve to
14 analyze all data systems and then perhaps apply different
15 solutions to each particular data system.

16 DR. GROMMERS: Let me push you a little harder on
17 that, Ken. I take it you are just tossing out a possible
18 organization into chapters?

19 MR. MC LEAN: Right.

20 MR. MARTIN: One thing which Nancy Kleeman and
21 others of us in the Department and I have been trying to do
22 over the last several weeks, is to conceptualize a little about
23 this and let us just take your suggestion, not to take it
24 apart, but to show you the difficulties.

25 A chapter on HEW, a chapter on State and Local

1 Government.

2 Okay. HEW is not a monolithic single system,
3 it is "H," at least two sets of "Es," several "Hs," several
4 sets of "Ws," and then it is several things that are hard to
5 label easily.

6 "H," "E," and "W"; you might say, okay, if HEW
7 is not the right answer, make it HE and W.

8 MR. MC LEAN: Or subchapters.

9 MR. MARTIN: Okay. HEW interacts with state and
10 local government and it does that in a variety of ways. Some
11 is along the H line and along the E line and along the W line
12 and some, much less, is in terms of relationships with general
13 purpose government; the Governors office or the Mayor's office,
14 and the task of conceptualizing what might be a rational way
15 for HEW to exercise authority by administrative action within
16 its existing authority, to cause effects within H, E, and
17 W, and state and local government do not necessarily marry
18 comfortably with how it should be organized to relate to the
19 Congress.

20 If we lack authority in some ways and need to get
21 legislation --

22 MR. MC LEAN: I do not think you need to organize
23 your report in terms of what administrative actions could be
24 taken by HEW, what administrative actions could be taken by
25 other agencies, what administrative actions could be taken by

1 Congress or various state and local governments. I would
2 organize it around the different types of data packages and
3 then in the conclusions and recommendations, on each type of
4 data package, list the specific actions which could be taken
5 by these various groups.

6 MR. MARTIN: By whatever actors need to act?

7 MR. MC LEAN: some might have to depend on the
8 Congress, some might have to be referred back to state and local
9 governments. It seems to me, it is the data bank itself, and
10 its peculiar requirements that ought to be the first division
11 into your undertaking.

12 DR. GROMMERS: Could someone answer the question;
13 it is not clear to me why there is a right to collect data,
14 why there is a right to not give it?

15 MR. MC LEAN: Bargain power.

16 MR. BASKIR: I think that is the simplest answer.

17 MR. MC LEAN: The person on whom the data is collected
18 is usually applying for a benefit.

19 DR. GROMMERS: Is that not coercion?

20 MR. MC LEAN: Yes.

21 DR. GROMMERS: Is that not against the law?

22 MR. BASKIR: No. But -- you want to get welfare,
23 you have to fill out the form. You want insurance, you have
24 to fill out the form.

25 MR. GALLATI: We, on this committee had to fill out

1 a lot of forms.

2 MR. MARTIN: It does not have to involve coercion.

3 MS. HARDAWAY: It is a matter of your choice. If
4 you want the insurance, you have the choice.

5 MR. MARTIN: If the government, for example, has
6 authority to do something in relation to people and in turn
7 that authority is constrained in such a way that it is limited
8 authority to do something with respect to some people, now it
9 has to be able by a process of information-collection to deter-
10 mine whether or not the particular some people for whom it is
11 going to act, are the people with whom it has authority to
12 act; for example, programs for the blind.

13 You have to find out whether the people are blind
14 or not. If they are not blind, they are not eligible to be
15 beneficiaries and if they are blind, they are; and if you
16 do not find out so that you can do for the blind what you have
17 been authorized, or directed to do, and only for them; but
18 operate in such a way as to confer the benefit on just anybody,
19 the General Accounting Office will come around after awhile
20 and say, "You have aided other than the blind." Or, "You have
21 exceeded your authority, you have been a bad government agency."

22 Part of the need for information is to be sure that
23 as the government acts, it acts only within the limit of the
24 authority which has been given to it, else it will do what
25 it pleases.

1 DR. GROMMERS: I can, right away, think of a way
2 of insuring that only the blind get that benefit without any
3 record being kept, without any data being apssed.

4 Just, for example, have a very bright light shine
5 in these peoples' eyes.

6 MS. HARDAWAY: But there are times when you do not
7 see that person that is blind.

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End #27

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1 DR. GROMMERS: All I am saying is that it is -- it
2 should be the fact that it is useful that should make it legal
3 to have information. It is useful to do lots of things that
4 are not legal.

5 MR. MC LEAN: That is a good example you gave where
6 you have a simple requirement where you are blind or not blind.
7 In many other cases the government acts as an employer.

8 MR. MARTIN: Take the poverty program. HEW has a
9 number of programs in which the benefit which it is seeking to
10 confer, the money which it is spending, is limited to intended
11 benefit for a particular population defined as "poor" by what-
12 ever definition in the statute may be.

13 The deviation in the statute may be sufficiently
14 imprecise to make it necessary in order, conscientiously, to
15 constrain the behavior of government to an execution of the
16 authority no less and no more than the Congress has conferred,
17 to get quite a lot of information.

18 MR. MC LEAN: That is a little more complicated, but
19 still fairly objective.

20 I was thinking of the case where the government is
21 acting as an employer in its charge of carrying out its mission
22 and hiring people to perform that mission.

23 For example, the Federal Housing Administration
24 insures the home mortgage. 25 percent of them go through either
25 FHA or VA. They run a credit report on insurance applicants and

sw2 1 and they are gathering the same type of seemingly marginal and
2 other related information on FHA applicants that insurance
3 companies are gathering.

4 MR. MARTIN: Take employment for a minute now. I
5 would suggest, without wanting to be a defender of all the
6 blanks in the federal employment application form, I would
7 suggest that most of the information which is obtained for
8 purposes of federal employment arises from Congressional action.

9 It is Congress which has, for example, voted a
10 preference to veterans. I can't see much relevance in knowing
11 a lot about someone's military career of X years ago incident
12 to his employment as an employee of the government. But if he
13 has a certain characteristic, namely he is a veteran, then he
14 is entitled to something that Congress said he should have.

15 So, the only way you can tell that you create that
16 preference for that class of persons, per the will of the
17 Congress, is to find out which of all the people that you are
18 dealing with are entitled by Congressional edict to be given a
19 certain treatment and so it goes, case after case.

20 MR. MC LEAN: That is not at issue.

21 But what about the background investigations that are
22 conducted by the Civil Service Commission or by the FBI or by
23 the other investigative agencies of government on a prospective
24 employee's employment application. They go into his background,
25 the meetings he may have attended while he was in college, what

sw3 1 his political views were, what his associates were.

2 These are the far more serious questions that occur.

3 MR. MARTIN: I sat in -- I think there is something
4 the Congress could do there. The Congress could provide the
5 same kind of access to the record which you all have provided
6 in the credit reporting field.

7 Tony Mondello, the counsel of the Civil Service
8 Commission, will come up and fight hard against your doing that
9 on the ground that it will burden enormously the personnel
10 function of government to enable employees to have this right
11 of access.

12 MR. MC LEAN: It is more than access It is the
13 right of asking the questions in the first place.

14 MR. MARTIN: This is why I am asking for help. That
15 is the product of a tacit if not a legislated arrangement
16 between the Post Office and Civil Service Committees or key
17 figures over the years and the Civil Service Commission.

18 I suspect that nearly every information gathering
19 practice that you could find with respect to Civil Service
20 employees of the government has come to pass because in part of
21 some kind of interaction with the Congress which may or may not
22 be revealed in the U.S. code.

23 I am not going to again say that there are probably
24 some managers who feel that certain information if useful.
25 Maybe there has been a creep in information gathering from

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1 employees for the decision making process of management and
2 government that is born purely out of the incitement of this
3 kind of behavior of the business schools of America or
4 wherever personnel officers are trained, but I think the
5 Congress is much more guilty of having induced the behavior by
6 the executive than the discussion you and Larry have engaged
7 in here would suggest you acknowledge that it has.

8 MR. BASKIR: Let me --

9 MR. MC LEAN: I would vigorously disagree with that
10 I don't think, with all due respect to the marvelous House
11 hearings Mr. Ervin has held and others have held, I don't
12 think the average person of Congress is really all that aware
13 of the types of information gathering activities that are
14 taking place.

15 MR. MARTIN: Average member; no, particular commit-
16 tee or subcommittee that wants reports, most of the reports
17 that are prepared in the executive branch are prepared to meet
18 the appetite of some Congressman or subcommittee.

19 MR. BASKIR: A number of the things we say depends
20 on the direction we look at.

21 Certainly in Congress we have the feeling that most
22 of the stuff that goes on in the world has nothing to do with
23 what we say or don't say, you being where you probably see the
24 exact opposite.

25 MR. MARTIN: I have been in your shoes before. Now

sw5

1 we are in new shoes.

2 This committee has come in as a surrogate for the
3 public, and weigh all the perceptions it gets, some from the
4 executive, legislative, some from experts, and so on, and try
5 to come up with some proposed actions that will move the ball
6 in some direction that most people agree is a good direction for
7 it to move.

8 MR. BASKIR: Let me say with respect to government
9 employment that to be sure the things that Ken mentioned about
10 political reliability, if you want to call it that, that is in
11 large measure either required explicitly or implicitly by
12 Congress.

13 There is a considerable amount that goes on beyond
14 that that the administrators of that system decide they need.

15 MR. MARTIN: Amen.

16 MR. BASKIR: With which, of course, Congress has
17 nothing to do.

18 And then on top of that, certainly the employment
19 area in government, merely the principle that you use the man-
20 power that you have as best you can moves you to ask all sorts
21 of things in terms of placement and everything else that nobody
22 outside of those, the personnel area, have any idea about in
23 terms of validity or importance and even within the personnel
24 area, if you really ask them, does the collection of this kind
25 of information result in better decisions, when you press them

sw6 1 after a couple of hours they will say nobody has ever studied
2 whether or not the information we have collected in terms of
3 background and education, everything else, and the decisions
4 made on the basis of that information ends up being better or
5 worse.

6 Much of the information is never validated. It
7 doesn't have any impact.

8 All of that is being done outside of the power of
9 Congress.

10 MR. MARTIN: That is the fruit of the power on
11 Congress, not the executive. It is the fruit of the power on
12 Congress of the Civil Service employee lobby which is trying
13 to impact on the Civil Service Commission and through it on the
14 personnel functions of government agencies to run a merit
15 system of classified employment service, and the poor personnel
16 people have very little to do really.

17 They are a staff function, and anybody that thinks
18 that the personnel function in government agencies is a strong
19 condition of decision making by line managers is just off his
20 rocker.

21 So, you have an enormous information system here
22 that has been built, I submit, by demands placed implicitly and
23 explicitly by the Congress on the Civil Service Commission
24 through the Civil Service Commission on the rest of the federal
25 executive branch to keep a mirage of a person's going to satisfy

sw7

1 the power structure of the Civil Service employee lobby.

2 Now, how do you break that?

3 MR. BASKIR: Well, one thing you do is ask them
4 explicitly why you are asking that question.

5 MR. MARTIN: As you said, they will have a good
6 answer for you.

7 The real answer will be because that is the way the
8 forces that impinge on our behavior want it, in this instance,
9 the Post Office and Civil Service Committees and whatever
10 gallery it is playing to.

11 Even though, in reality, if people are frank, it
12 isn't having any effect. There is a -- an example, you know.
13 I don't know whose interest was being served by this, but up
14 to a few years ago, we lawyers got a very simple little degree
15 as we came out of law school called an LLB degree, a Bachelor
16 of Laws Degree.

17 Okay. What the forces lead that -- forces that lead
18 to your being able to turn in your LLB to get a Doctorate
19 Jurisprudence, a JD, but now many LLB's are turning in and
20 getting a JD degree and run around to the Civil Service
21 classification process and say I have a doctorate. That is
22 worth two or three steps in grade or a higher grade level.

23 MR. BASKIR: That is why the change.

24 MR. MARTIN: We have an information system that takes
25 account of the difference between an LLB degree and a JD degree

sw8 1 and some other kinds of degree which, I say, is part of a
2 classified system of Civil Service which has been mandated by
3 the Congress and these are some of the effects. it leads to.

4 So, if things aren't right in this business, every-
5 body has got a very big share in why they are the way they are
6 and therefore a very big share of trying to undo it and here
7 is a committee which I think has an enormous opportunity to at
8 least shine daylight in some areas and even perhaps put some
9 initiative behind some proposals for change insofar as
10 those initiatives are going to be legislative initiatives.

11 I feel personally and I suspect most of the
12 members of the committee must feel equally if not more so,
13 terribly much in the dark about how do you play the Congressional
e 28 14 piano.

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1 MR. MC LEAN: If I could just comment on that for
2 a moment, I think you have to consider these factors, of
3 course, but there also is a danger in overemphasizing the
4 politics of the issue and underemphasizing the substantive
5 nature of the issue. It seems to me your job is to work
6 primarily on the substantive nature, thinking about the
7 politics. But that is really our problem. Let us work -- in
8 the final analysis, worry about the politics of it and you
9 worry about the rationale and the justification for doing
10 something.

11 It seems to me you can get all bogged down in whether
12 or not it ought to go to this committee or that committee,
13 this senator, that senator, and in the end those types of
14 considerations could be self-defeating.

15 MR. MARTIN: I wouldn't suggest we should take the
16 initiative in that. All I am, I guess, making a plea for is
17 that you, having been exposed to this dimension of the
18 difficulty of our problem, that you keep thinking about it
19 and maybe consult with like-minded friends on other staffs
20 of other committees so that at some point in time when this
21 Committee has the lock on the presentation, if you have any
22 sort of wisdom to offer about what will make things move through
23 the system better, rather than worse, those insights can be
24 taken account of when the packaging job is finally done.

25

I agree with you entirely. We have got to

1 concentrate on substance but how it is packaged can make a
2 big difference.

3 MR. BASKIR: I think one of the great things this
4 Committee could concentrate, assuming it got the blessing of
5 the secretary, is that here you have a national figure, the
6 Secretary of HEW, saying all these impractical things, like
7 there ought to be privacy. That gives an extraordinary
8 amount of push, political push, if you want to say it, no
9 matter what he says, no matter how impractical it might be.

10 MR. MARTIN: Might create a climate for change?

11 MR. BASKIR: That is right. The Committee is not
12 merely a victim of political pressures but is an actor in the
13 process and that if this Committee came up with a clear
14 statement in terms of privacy and all these rules that ought
15 to be, the actual implementation of those laws will be quite
16 a bit.

17 MR. MARTIN: The secretary is not unaware of his
18 role, not so much personally as secretary to do this. In
19 fact, he did it. How many people have noticed it, I don't
20 know, in the area of women's rights and opportunities. He
21 created in the department a women's action program. He
22 caused it to generate a fairly hefty report with over a hundred
23 recommendations whose implementation he has now mandated.
24 And he sought to get as much publicity and attention for the
25 fact that he did it in part to legitimize the issue, legitimize

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1 the concern about it, and make more people take it seriously.
2 I think that is what you are suggesting that he could do
3 here, that by giving it the visibility and the attention and --
4 that a cabinet officer's concern about it would give it, to
5 raise the level of attention for it and change the climate
6 of opportunity for change.

7 DR. GROMMERS: What you are speaking about though is
8 a right to privacy even though there are no dollars involved
9 because if there are dollars involved that has already been
10 established?

11 MR. BASKIR: Right. One way the law gets created is
12 that there is an interest, a value that becomes more and more
13 recognized so that people then decide, well, here is a value
14 we ought to protect. Statutes are passed that way. Somebody
15 has an idea something ought to be and then the legislative
16 process, in the end, may be nothing more than the locking in
17 of place of something which people have generally decided
18 ought to be and it was the end of one stage of a process.

19 If you have groups like this and other groups
20 being to enforce and speak on behalf of this right to privacy,
21 you would then give it much more substance and it gets further
22 along the line of being a recognized right.

23 DR. GROMMERS: Has there been any discussion about
24 data about one's self being an extension of one's self?

25 MR. BASKIR: There are considerable theories running

1 around. Arthur Miller is very familiar with these and
2 Arthur Weston. One of them is the right to control information
3 about yourself, if you would accept that, it has great
4 implications, legally and administratively which means that
5 you couldn't do anything about information about me that
6 I gave you unless I approved which would be a great change
7 now over -- Ken's experience is that information is the
8 product of the people who collect it, has nothing to do with
9 the people. There is a property value in information such
10 that you, yourself, have no right to the information about you.

11 MR. MC LEAN: They think they know the information
12 and sell it as they see fit.

13 MR. BASKIR: In terms of economic and legal
14 reality, they own the information.

15 DR. GROMMERS: Isn't this largely present in
16 health, which is the only field I am really familiar with?
17 There are a growing number of people who feel records aren't
18 necessary and it is a very tenuous position to hold because
19 for years people have been keeping health records?

20 MR. BASKIR: Every once in a while somebody will
21 say there is no value in information. Then they will not push
22 it very far because it is questioning the unquestionable.
23 But I personally think that with all the data being collected,
24 I don't know the results -- I think you suggested before, in
25 the earlier discussion, what does it mean in terms of health

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1 benefits to have all of this information being collected.
2 Not only may it not improve the product, but it may detract from
3 the product to have all this information.

4 First, because there is so much noise, the important
5 data is missed, and second, because decisions may be made
6 based upon a flamboyant piece of data which is really
7 irrelevant but just as eye catching. You find this all the
8 time.

9 DR. GROMMERS: Is this common law? Is this the way
10 common law --

11 MR. BASKIR: This has very little to do with law.

12 DR. GROMMERS: Just because it has always been
13 done that way and nobody has realized what was being done up
14 to now and computer systems have now made it a little more
15 apparent what is being done?

16 MR. BASKIR: Yes. You try to collect the law on
17 what is a public record. You can't do that. When you do,
18 they have relevance to the real world of 1970 because they were
19 passed in 1870, passed in a climate in which information had a
20 considerable amount of difference about what was public and
21 not public.

22 If the stuff that was public -- if the information
23 now which is legally permitted to be public were really as
24 public as those statutes say literally, we would be in a terrible
25 situation. The real danger is that with computer it really will

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1 be public.

2 MR. GALLATI: Freedom of information is going to
3 get very free?

End #29 4 MR. BASKIR: Yes.

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1 DR. GROMMERS: What would happen if we came out with
2 a recommendation that all information about a person had to be
3 paid for by the people who got it and --

4 MR. GALLATI: It is a property right, that informa-
5 tion about yourself is a property right.

6 DR. GROMMERS: Supposing that we recommended this.
7 What -- I was actually adding something to this, not just a
8 property right, but this vests the ability and the control in
9 the person. What if we recommended this? Is this in any way
10 going to get a serious consideration?

11 MR. BASKIR: What it will do is reflect added
12 support to the very small group of people that think that is
13 the way we ought to structure the problem, and the more people
14 -- if you all are persuaded by that, there can, let's say three
15 or four lawyers who are now pushing that as a concept, then you
16 have an added push behind it; not to say that it will ever
17 succeed, but you have advanced that as a concept. You have
18 enforced it, in other words.

19 DR. GROMMERS: What you have to do is match the
20 lobbyists. You have to get lobbyists to match the lobbyists?

21 MR. BASKIR: Yes. That is the idea -- the way an
22 idea finally wins is that it collects more and more support.
23 Right now the information is now that right of access to the
24 most basic information has really not gotten very far in practi-
25 cal terms because the pressure is against it.

1 DR. GROMMERS: Why not? Excepting for health, which
2 I could refute for other reasons, why not?

3 MR. BASKIR: Your reason in health as discussed
4 before was matched by Tony Mandello's reason that it is too
5 expensive, and -- I can't rephrase it, but a lot of other
6 reasons; one of the reasons being that we do not want other
7 people poking our nose into how we are making decisions.

8 MR. MC LEAN: I will give you the argument raised by
9 credit agencies for denying consumers access.

10 They said the sources of information would dry up if
11 the person could see his credit files and see what other people
12 were saying about him. The sources would no longer be willing
13 to make statements that he is a dead bet or that he is carous-
14 ing around at night.

15 DR. GROMMERS: I am sorry for them if they go out of
16 business, but the right of the individual is more important
17 than their right to do business.

18 MR. MC LEAN: I think you are right, but that is
19 their story.

20 MR. BASKIR: I will be the devil's advocate and say
21 Tony Vondello will say that if you are going to make decisions
22 about an individual employee's performance, you need candid
23 commentary, and you are not going to get candid commentary
24 about it, and you are not going to make good decisions if
25 people know not only what has been said about them, but, indeed,

1 who said it.

2 DR. GROMMERS: I agree with him except I would like
3 to have him prove to me his first implication.

4 MR. BASKIR: In the army, as a matter of fact, there
5 is no such confidentiality. Efficiency reports are open to the
6 individual. Who made the efficiency report is their superior.

7 There are difficulties in the army evaluation sys-
8 tem. While I do not think those difficulties are in terms of
9 candor and accuracy, there are other kinds of difficulties.

10 DR. GROMMERS: We just say to Tony he is not right.
11 If he is right, that you need that confidentiality, the rest
12 follows.

13 MR. BASKIR: It is an unquestioned assumption.

14 DR. GROMMERS: I am questioning it.

15 MR. BASKIR: Enforced by a way of doing things which
16 has been unchallenged since time began.

17 DR. GROMMERS: I could even go so far as to challenge
18 any regulation at all to whoever is evaluating the person and
19 his ability to perform. I have never seen any proof in any
20 sociological experience or rat experiment, or any --

21 MR. BASKIR: There are a whole series of psychologi-
22 cal tests and other kinds of tests that are given people to
23 find out about them; what kind of person they are, all for the
24 purpose of making a better decision about that person's future
25 performance, and somebody in personnel management once told me

1 that not one, not one of those tests, had ever been validated
2 to show they showed anything at all.

3 DR. GROMMERS: There was not even an evaluation of
4 a child's I.Q. test and his performance in the next grade up.
5 These have been used with economic sanction. In fact, a
6 child who is limited by the stigmata of being a 90 I.Q. is
7 certainly losing -- and -- and --. This is something that we
8 should, I think, take as an issue. We have mentioned the use
9 of information in a personalized way, for comparison, okay;
10 for evaluation, okay; but why should it go to some other place
11 as to be aggregated. Really I cannot see what it is, why there
12 is a great effort to provide or develop planning systems and
13 evaluation systems at the state level at least.

14 From one side, from the federal government; and from
15 the other side, that gathering has been made in a centralized
16 way --not living in the states with the basic information that
17 is needed for their own decisions.

18 What we are really saying here is that the standard
19 is an unvalidated standard that is being used to measure, and
20 nobody is questioning the fact that it is being -- part of the
21 wisdom of the center that these standards are correct, that
22 Tony's feeling that he needs these confident or unconfident
23 reports is a valid method, valid evaluator.

24 Maybe we could start using the techniques, systems
25 technology, rather than saying what they are doing is wrong --

1 proposing one that works.

2 MR. BASKIR: One real problem is that each of these
3 little areas has always had the ability to construct let's say
4 its own information system, its own testing, in spite of what
5 Dave said in terms of the actual questions being asked. The
6 people that administer the finance systems, they decide what
7 information to collect, and nobody questions it primarily
8 because -- one, nobody else is interested, and, secondly, nobody
9 else knows as much. There is no outside force that they have
10 to answer to in terms of the kind of information that they
11 collect. If there is a question, why are you collecting it, we
12 believe it will help or we know -- or it will help in order to
13 administer the system.

14 DR. GROMMERS: Supposing you prove to them that it
15 is not so. They still have the right to do it anyway. You
16 would be far enough ahead to get somebody to demand a legitimate
17 answer. If you start asking these questions, they have enough
18 clout behind you so they have to give you a legitimate answer.
19 You find suddenly within that organization will say we don't
20 need it after all.

21 MR. MC LEAN: Very often you can say that something
22 does not work. You have injustice on those who it selects
23 versus those who it actually does select out.

24 DR. GROMMERS: Even if you could prove -- supposing
25 you could prove it was gratuitous. You could make correlations

1 between police cars drawn by horses in the street and the rise
2 of cholera. You could show that, in fact, it was purely spuri-
3 ous, and six other unrelated tests would show the same thing.
4 Wouldn't they still have the right to do it?

5 MR. BASKIR: That kind of questioning is not done
6 very much.

7 DR. GROMMERS: You mean it might change whether or
8 not they would do it or whether they have the right to do it?

9 MR. BASKIR: Most of what we do in the subcommittee
10 is asking questions and requiring a justification for an action.
11 That is a lot of what happens in Congress. The very process of
12 asking somebody to justify what he has done often works to
13 change the procedure. It is very slow. There are not very
14 many successes.

15 Earlier in talking about the difficulties of chal-
16 lenging somebody on a particular question, I tended to downplay
17 it. I do not mean to say there is no value at all in it. Ask
18 somebody to go back and question an assumption. They may find
19 they are unable to give you an answer so they will change.

20 DR. GROMMERS: But out of the goodness of their
21 heart? There is nothing that says they will have to?

22 MR. BASKIR: That is right.

23 DR. ALLEN: In some respect isn't one of the ques-
24 tions focused at this committee, the use of the social security
25 number, focusing on that and defining something that is not

1 relevant information, but information that you may want to dis-
2 courage by prohibiting, that certain private parties use, and
3 you could define a remedy for those who did make such unauthor-
4 ized use in the sense of creating a right to damages imminent,
5 punitive to individuals from who they got that number from.

End 30

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1 MR. BASKIR: You could construct it in terms of
2 injury. The thing you can do with legislation that you cannot
3 do through the ordinary trial processes of challenging somebody
4 is that you can declare something to be wrong and then declare,
5 in a sense, almost arbitrarily, a consequence that you do it.
6 You may not be able to prove that the unauthorized use of
7 social security number has caused you any injury if you tried
8 to sue, but you can write a piece of legislation that says,
9 "Thou shalt not, and if you do, you pay approximately one
10 thousand dollars irrespective of anything else."

11 MR. MC LEAN: The social security number is merely
12 a mechanical device used to aid people. What you are really
13 talking about is the criteria, the other criteria they employ
14 to make a substantive decision, and you are really challenging
15 whether that criteria is adequate. It is one thing to develop
16 information and collect safeguards for that information. It is
17 another thing to go to the heart of challenging.

18 DR. ALLEN: But you could challenge those in exactly
19 the same way that you decided that racial information was irrel-
20 evant and undesirable to collect as part of employment criteria.
21 You could prohibit it and provide penalties for those who vio-
22 lated that norm.

23 MR. MC LEAN: Yes. But when you begin with the
24 social security number, which is purely a mechanical device, to
25 racial information -- I fail to see the relevance of the concern

1 about the social security number other than perhaps to provide
2 the Secretary of HEW with a convenient handle on the whole
3 problem, but let's recognize it as such and that would divert
4 a lot of energies to worrying about whether peoples' social
5 security numbers are being divulged or not.

6 MR. BASKIR: What you do, and I think it is some-
7 thing like we were talking about before, is that the social
8 security number becomes a symbol, a convenient symbol and a
9 convenient tacking place, to get at something you are much more
10 concerned about.

11 MR. MC LEAN: It is a handle on the problem.

12 MR. BASKIR: You could do that if it turns out you
13 want to prevent linkage of disparate systems instead of saying
14 you shall not match this with this you --

15 MR. GALLATI: You are talking about linkage really.

16 MR. WHITE: Other linkages will, though, be
17 developed that will replace the social security number.

18 MR. GALLATI: Not if you deny linkage.

19 MR. BASKIR: Your object is, I think, in this
20 area to make it more difficult to match several kinds of data
21 on the same individual because you decide that if you do that,
22 bad consequences will happen that will form a wall to make it
23 more difficult to match these two systems.

24 MR. GALLATI: Or at least require that the permission
25 of the individual given for this purpose is not now linked for

1 a totally different purpose for which he did not give the infor-
2 mation. So, the barrier between the linkage has to be something
3 that the individual can control?

4 MR. MARTIN: Here, since you are still here, see
5 how you respond to this question. The proposed identifier, as
6 I recall the literature on it, is advanced to facilitate data
7 interchange. The assumption in making that proposal is that
8 facilitating data interchange is "a good thing" under all and
9 any circumstances.

10 MR. WHITE: No. Under authorized circumstances.

11 MR. MARTIN: But you do not deal with that. The
12 standards fraternity just does not care about that. That is
13 not its problem.

14 MR. WHITE: That is your problem.

15 MR. MARTIN: Exactly. It may be that the problem
16 is so big and is going to take so long to solve on a data
17 setting by data setting bases, on an analysis of linkage by
18 linkage bases, that it then seems prudent to men and women no
19 less rational than standards builders that lets throw as big a
20 monkey wrench as we can in your standards setting operation,
21 recognizing you will find ways to repair the damage of every-
22 thing thrown that wrench, but we will set you back a little
23 while we address the discrete and difficult case by case link-
24 age problems. I think, you know, that is the two forces that
25 are at work here.

1 You sort of abdicate the problem, and that is all
2 right. The standards fraternity, it isn't its problem. It's
3 got a very narrow specialist concern, namely to make the
4 machinery work well. I think why this standard has run into so
5 much trouble is because the standards fraternity has not been
6 willing to engage in the difficult question of helping to solve,
7 in some way or other, the hard to define, but real concerns
8 about linkages, and it takes a posture that says linkages --
9 seems to take a posture that says linkage is a good thing.

10 MR. WHITE: I would like to define two types of
11 linkage which have not been addressed. One is the linkage
12 between two files collected for different purposes and the
13 degree that the standard identifier facilitates that type of
14 linkage.

15 The other type of linkage which is just as important
16 is that once a file has been established on a person and that
17 file needs to be updated, then there has to be a absolute link-
18 age so that as new data comes in, it is posted to the correct
19 file so that it is to the benefit of the individual involved to
20 assure that the data about him is posted to his file and not to
21 somebody else's.

22 Those two types of linkages need to be taken into
23 consideration.

24 MR. MARTIN: But your standard does not distinguish.

25 MR. GALLATI: Has nothing to do necessarily with

1 your universal identifier. You do not need a universal identi-
2 fier to post to any individual file. All you need is a unique
3 identifier for that file.

4 MR. WHITE: A unique identifier.

5 MR. MARTIN: Joe Naughton may be a little more sensi-
6 tive and thoughtful than most computer center directors, but
7 even Joe's attitude to what is going on in his system is, "I
8 couldn't care less, I am running a service bureau." He tolerates
9 the fact that he has no control over a substantial number of
10 personnel that work in his computer center, the people who
11 clean it and maintain it are -- and who guard it are not his
12 people. If there are not enough of them, it is some other
13 bureaucracy that is responsible. If the cleaners are unreliable
14 and might do something that might compromise the security of
15 whatever level of security he has in his center, it is not his
16 responsibility. He is not accountable for it.

17 I think it does bother Joe, and I think Joe has bent
18 a few lances on that basis, but most computer care center
19 directors could not care less.

20 MR. WHITE: We are developing guidelines and stan-
21 dards from that standpoint, too. This is the security versus
22 the privacy issue.

23 DR. GROMMERS: I am still very puzzled why two
24 powerful committees have worked a number of years on this and
25 have not yet solved it for us.

(Laughter.)

1 DR. GROMMERS: It is very naive, but it is my lack
2 of understanding the legislative process.

3 MR. MC LEAN: Because there are powerful forces in
4 our committee, our society, who do not want the problem solved.
5 They impinge upon the Congress much more heavily than the forces
6 that want it solved.

7 MR. BASKIR: The forces that want the problem
8 solved are very recently recognized. Privacy now, there is a
9 big rush to think about it, but not five years ago, or ten
10 years ago.

11 DR. GROMMERS: So it is still possible? It is --
12 there has been a lot of inertia, but there is not an absolute
13 problem?

14 MR. BASKIR: Very early in the game we are thinking
15 about privacy.

16 MR. DE WEESE: I have a kind of a suggestion, maybe,
17 on how to overcome that particular problem. I was wondering to
18 the -- extent to which a lot of information people have come to
19 rely on the use of the social security number. I was wondering
20 if the Secretary took a position that the social security could
21 no longer be used for non-social security purposes until such
22 time as Congress passed sufficient legislation to protect
23 privacy. I was wondering if that would create a new lobby in
24 the Congress for privacy legislation that possibly was not there
25 before, i.e., the information users.

1 MR. BASKIR: I could give you a little example of
2 what that would produce. There was a case, trying what you
3 were suggesting, in Washington. A fellow was improperly
4 arrested, and the fellow wanted to do something about it. The
5 judge said, "Yes, erase all record of that arrest. This is
6 improper." Two things happened. First, he was substantially
7 versed and substantially modified. The immediate reaction was
8 first, a bill submitted into Congress that would permit the
9 distribution records as it has been going on from the FBI,
10 wherever it is supposed to go. While that is locked in
11 committee forever, for a good long time, we are now focusing on
12 the question of arrest records and its distribution. Very
13 casually on the floor, as an amendment goes in, the very same
14 legislation to reverse that judge's decision. Now, that is the
15 story as we have it, as of the day before yesterday, you see?

16 As soon as you do something you suggest, they come
17 sweeping back again and restore the status quo. It's not only
18 that. Because yesterday, as a matter of fact, they got that
19 rider struck out of the law on the House side, at least so that
20 we were -- we are still in a conflict on the issue that was
21 raised.

22 MR. GALLATI: Before any legislation was solved,
23 there was a --

24 MR. BASKIR: That is right. It nearly slid right
25 back in the law to destroy the status quo.

1 DR. GROMMERS: Who wanted to put it in?

2 MR. DE WEESE: Senator Bible.

3 MR. BASKIR: Reflecting the interest of the law
4 enforcement and other communities who need the law enforcement
5 or for years have been using it and think they need it.

6 DR. GROMMERS: That is what I wanted to know.

7 What do they need the record for?

8 MR. GALLATI: Everybody wants records, criminal
9 records.

10 Sheila Smythe represents an organization whose head
11 called me up just before I left for Washington and said, we
12 used to get 30,000 criminal records a year from the FBI.

13 They will not give them to us. We want them from you.
14 We want those records. You give them to us.

15 We are going to have some tough time with this
16 problem. But what was even more interesting, I found out
17 in this conversation that the Greater Associated Hospitals of
18 New York, or whatever it is, maintains a fingerprint file of
19 300,000 criminal offender records and fingerprints associated
20 therewith and has their own classified files and people
21 maintaining this file.

22 This is a private organization invested with a public
23 organization.

24 DR. GROMMERS: Does everybody know this?

25 What would be the effect of one of the functions of

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1 this committee bringing to light lots of things like this,
2 like the fact -- like the information the insurance companies
3 are, in fact, asking for. I didn't know that.

4 MR. GALLATI: I was shocked when I heard this. I
5 didn't know that.

6 DR. GROMMERS: What would be the effect of that?

7 MR. BASKIR: There is a big value to bringing this
8 kind of information up. All the information we have, Ken has
9 legislation, we don't. All we have done is to try to bring
10 these things to public attention to get people -- first
11 scare them and then get them thinking about it.

12 There is a big value to this.

13 MR. MC LEAN: It has a cumulative effect. There is
14 a vast amount of lethargy in the Congress to change anything.
15 It is extremely difficult to bring about any change in
16 Washington, no matter how simple or meritorious.

17 When you are talking about something as complicated
18 and multi-faceted as the right of privacy, to collect public
19 information, you are talking about a considerable task indeed.
20 You have to -- it is a problem that you have to chip away at.

21 Hopefully the committee's report will be one
22 effort along with several efforts, and perhaps in five or
23 ten years, we will have moved the country.

24 DR. GROMMERS: We would be lost. Computers work
25 faster than that.

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1 MR. MC LEAN: That is the time frame that is realistic

2 DR. GROMMERS: We will have to do something before
3 then, or it will be too late.

4 MR. MARTIN: How about getting IBM in to give you
5 a detailed account of how they plan to spend \$40 million.

6 MR. BASKIR: I think we would like to find -- we
7 tried and we invited a representative of IBM to our hearings
8 last year for one purpose, and that was to get them there
9 so that they would have to say something about privacy.

10 For years and years, of course, IBM was not saying
11 anything about privacy or the social implications of their
12 machines.

13 The mere fact that the President has said, yes, we
14 are concerned about it and here is \$40 million is an extra-
15 ordinary step forward. Lord knows what they will do with it.

16 MR. MARTIN: It is a step.

17 Let's not decide until we know which way they are
18 going, whether it is forward or backward.

19 MR. BASKIR: The first thing you have to do is
20 get somebody to recognize there is a problem. It may not be
21 very big in terms of solving the problem, but when they don't
22 realize there is a problem, you get them to recognize there is
23 a problem, you can say you have come a long way towards
24 starting.

25 DR. GROMMERS: Can we stop?

(Whereupon, at 5 p.m., the hearing was adjourned.)

