Transcript of Proceedings

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

THIRD MEETING

OF THE

SECRETARY'S ADVISORY COMMITTEE

ON

AUTOMATED PERSONAL DATA SYSTEMS

Bethesda, Maryland

Thursday, 15 June 1972

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The meeting was convened at 9:00 a.m., Dr. Frances Grommers, Chairman, presiding.

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C O N T E N T S

P R O C E E D I N G S

DR. GROMMERS: Have you all had a chance to look at the agenda of this particular meeting? We might turn to that first and you can look at the details.

The session that we are going to have this particular set of three days is really a working session, and the way the committee meeting is divided up we have morning presentations this morning, tomorrow morning, and Saturday morning. The afternoons and evenings are devoted to workshop sessions.

This morning you will have presentations of three different areas. One is going to be the Federal Reports Act Clearance Process. The second one is going to be some substantive information as to what is happening in university record keeping systems. And the third part is what some of the security problem are.

Tomorrow's presentation is going to be in response to your requests that various members of the committee have a chance to get their ideas together and present them at one time and in one place to you for your mutual discussion and questioning.

The Saturday morning presentation is substantive information on the specific topic that we know we have to deal with in the report, and that is the individual identifier question.

The purpose of the discussion groups will be to look

at the outline in small groups and talk amongst yourselves. We will probably divide up into about five groups and that will be determined a little bit later on in the day. I will let you know how those groups will be divided up.

I would like anybody, though, that would like to lead a group or who has a particular suggestion of somebody they would like to see lead a group to also get that information to me in the next hour -- if you would wish to be able to lead such a group, if you have some people in mind you would like to work with. I am not sure it can be divided up that way but I would like to have that information as a basis of starting a working group division.

The purpose of these groups is not to produce an outline but to exchange information at an informal level. There will be nothing recorded. You will just have a chance to talk out a lot of the issues in your own terms.

And the specific task that the committee really has to address itself to is to define the systems that you are going to talk about in this report of all of the possible things that could be talked about. We have perhaps a five-months working period. A report really has to be in almost final form by November in order to have something ready by January. Therefore, we are going to have to cut out a small piece of the total universe and perhaps describe the rest of the universe and suggest what needs to be done to get information

on the rest of the general topic.

So in general your task, as I see it, as members of this committee is to decide what it is you are going to address yourselves to -- and this is in the area of the citizen and automated data systems, and the planners of the automated data systems.

You are going to want to say how you would like to evaluate what that system is or what that situation is: Is it good? Is it bad? Are you going to evaluate it in dollar terms or in personal-rights-of-privacy terms, or whatever?

You should evaluate the system in those terms and make recommendations as to how you would change the system.

And you will use the outline that you are presented here with today just as a basis for starting out. You are in no way bound to this outline and we would like very much to have you modify it.

With that as a description, there is a little bit of committee business.

First of all, Ron Lett is standing in the back and, David, how would you describe him?

MR. MARTIN: Ron Lett has taken over the duties which Jim Sasser, whom you all knew, was performing and he is the new Executive Officer for the committee.

DR. GROMMERS: And he has asked that if each of you could see him for about five minutes sometime during this three-

day period individually, he would like to talk to you about how he gets in touch with you and travel forms and some other business of that type.

I think that with that as a beginning, what we will do is start having our presentations now, and David would you introduce our panel discussants.

MR. MARTIN: Yes.

Our panel presenters this morning will be Roy Lowry, who is the Clearance Officer in the Statistical Policy Division of the Office of Management and Budget. And as I perceive him, Roy has the sort of central governmental position of oversight, of adherence by the Executive Branch, to the requirements of the Federal Reports Act, which is an act which constrains, in ways that you will hear about, the processes of collection of information by the federal government.

Roy's interaction is with, I take it, all agencies and departments of the Executive Branch, including the Department of Health, Education, and Welfare which, as you know, consists of a number of operating agencies. And he has what you might say are counterpart persons to him who have responsibility within departments and agencies of the federal government for managing and overseeing the adherence by those agencies and departments to the requirements of the Federal Reports Act.

So from HEW and the Office of the Secretary, Tom McFee, whom all of you who were here at the first meeting met

and heard from at that first meeting, who is in charge at the level of the Office of the Secretary of overseeing the process of HEW's adherence to the expectations of the Federal Reports Act.

And then also we have with us Arthur Benner, who has a similar kind of role within one of HEW's operating agencies, to wit, the Social Security Administration.

And the perspectives of each of these gentlemen and the institutions within which they work are, as you might expect, somewhat different with respect to the process of adhering to the Federal Reports Act, and I expect that this difference in institutional perspective will be revealed during the course of the presentations and questions and discussion following that.

If Roy and Tom and Arthur would come to the table here we can do this sort of as a panel presentation, with Roy leading off.

MR. LOWRY: Madam Chairman, I am very glad to join with you this morning.

I am really a little bit unclear as to how I should approach this. But there is at least one thing that is very clear. Mr. Martin told me that I should bring some copies of a budget circular which guides all of the controls placed on government collection of information under the Federal Reports Act. He wanted to be sure that no matter what happened here during these three days, you had something to show for your

presence. And with that I will distribute these copies; if you will each take a copy as it passes by, you will all have a copy of the budget circular.

And then we have an extra little bonus this morning only, Transmittal Memorandum Number 1, which is a little addendum that we put on this some years after the first circular was issued.

This is sort of like the guy who went out west for a vacation and spent sometime on a dude ranch and the first morning he wanted to go out for a horseback ride and asked for a gentle horse and they take him down to the corral and man, this thing is touching the ground every once in a while. And the fellow looks at this horse and says "That is terrible. Hey, I just wanted to tell you I have never ridden a horse before." And the man at the corral looked at him and said, "All right. You are starting out even. This horse ain't never been rode, either."

I feel that way in discussing the Federal Reports Act because I don't know how much you know about it and I don't know exactly how to fit it in with your program.

But let me start.

The Congress of the United States, about 30 years ago, became very upset with a number of forms and questionnaires and what all that were being addressed to the population generally and business in particular by various agencies of the federal

government. It seemed, especially during those war-time days, that everybody who was in an agency had to start some kind of a questionnaire or inquiry to gather information, seemingly in order to justify his existence.

And it was said at the time that newcomers to the federal government who came from far parts of the country to participate in the administration of the war effort used to devise these things on the way in and you could tell whether a man came by train or plane by the length of the questionnaire he offered on the first day he was there.

So the Congress was very upset by this and it was determined we should try to put some kind of control on this government collection of information.

They wrote a very short act called the Federal Reports Act. I believe you have received copies of this. It is a remarkable document not for the precision with which it was drafted because it doesn't have that, but because of the clear determination that the Congress wanted to have some real clamps put on the government efforts to just gather any and all kinds of information from the public.

In doing this, the Congress really put the load on the Director of the then Bureau of the Budget, now the Director of the Office of Management and Budget, and made him totally responsible for doing the job. It put no bounds, practically no bounds, on his judgment. It did, however, relieve certain

agencies from the requirements of the Act. These are the Internal Revenue Service and certain other agencies in the Treasury Department and any agencies that are involved in supervision of banks.

But outside of that, every federal governmental agency is subject to the requirements of meeting the Federal Reports Act.

Primarily, and for purposes of our discussion, I think the most important part of the Act is that part which says that no federal agency shall collect information from 10 or more members of the public unless the Director of OMB shall have indicated that he does not disapprove of this collection.

Well, once this sort of thing is written into law, you have something that looks like Circular No. A-40, which has been passed out, sent out very shortly thereafter to the federal agencies, telling them how they are to comply with the law, the form in which they are to submit requests for clearance, and how they are not to make any requests for information from 10 or more members of the public unless there is an approval from the Office of Management and Budget, and that approval is indicated by a serial number which is placed on the questionnaire or other device that is used to gather information.

The Act is broad. It includes not just questionnaires. It includes telephone inquiries; it includes broad kinds of information-gathering plans. It may be very

unstructured.

One case I can remember, just to show you how broad the control is in terms of unstructured inquiries, NASA and the Department of Defense were interested in finding out to what extent the aerospace industry, itself, invested in research and development, and to what extent these investments had yielded anything that was of practical and commercial value to the industry.

Well, this is a difficult thing to put into a questionnaire, and they didn't even attempt it. All they did was to pick out the vice presidents of R&D for the various aerospace companies, some 20 of them that they considered important, and to write a short 3- or 4-paragraph letter to each one of these men, first having contacted them by telephone.

The letter did nothing more than to set forth in very general terms what was sought. And subsequently in each case a man called and talked with the vice president for R&D for about 8 hours, getting his views on what his company had done, or companies with which he had been associated had done, and what the practical results had been -- a very unstructured thing.

But the plan was subject to clearance and it was approved.

The law carries no penalty, however. Congress having said that all this shall happen, it carried no penalty after

that. Nobody is going to lose his job; nobody goes in the clink; nobody gets hit in the pocketbook.

So how do you enforce it?

Well, you enforce it by making it embarrassing. And it can be embarrassing. It is embarrassing to an agency to have a violation of the Federal Reports Act drawn to its attention. It becomes particularly embarrassing if the agency is told to send telegrams out to everybody who was supposed to answer the questionnaire to tell them they don't have to answer it. This sort of thing turns out to be a relatively effective way of enforcing the requirements of the Federal Reports Act.

There are, of course, some sneaky people that do evade it once in a while, and they get away with it sometimes. But on the whole, I think that the government agencies recognize the general public policy objective of holding down the burden on the public of reporting answers to questions to government, and there is generally pretty good discipline on the part of all federal agencies.

The agencies make, as this circular indicates, a request for clearance of a request to collect information in a rather particular form, and it comes over to the Office of Management and Budget and there it is reviewed by professional staff, either in the Office of the Statistical Policy Division or in the office of one of the Program Divisions that deals with the budget of the agency that wants to collect the data, or

possibly both.

This review knows no bounds. The review can inquire into the technical questions. That is, if it is a survey that relies on a sample, it can inquire into the soundness of the statistical methodology. It can inquire into the questions as to whether they are appropriate for the purpose for which the information is said to be sought. It inquires into whether the particular instrument chosen is likely to achieve the results that the agency anticipates. The inquiry can address itself to the cost of the proposed information-gathering and make some judgment as to whether it really is worthwhile in terms of cost. And it can and does address itself to just about any aspect that one could imagine that might be inquired into in connection with any survey or questionnaire.

Now the Department of Health, Education, and Welfare does, of course, collect a great deal of information. Much of this information is collected in relation to grant-in-aid programs.

PROFESSOR WEIZENBAUM: Excuse me. May I interrupt to ask you a question?

MR. LOWRY: Surely.

PROFESSOR WEIZENBAUM: In this review that may not know any bounds, is there any provision for any sort of adversary proceeding? Who represents the person who may be asked questions he may not wish to answer?

MR. LOWRY: Nobody represents the respondent. However, we do have -- well, there are several aspects of this.

One, we do ask the agency as part of its submission to inform us of what consultation it has had, and with whom, in the preparation of the report.

We do publish every day a daily list of all items that are before us for clearance. This is -- well, first of all, we have a mailing list of over 200 of people who indicate an interest in receiving this daily list, and anyone who wishes to receive it may get it.

And anyone who raises a question about any one of these things that is before us for clearance and wishes to discuss it, we will discuss it.

PROFESSOR WEIZENBAUM: All right; thanks.

MR. LOWRY: We do have a so-called business advisory council on federal reports which we consult in some things related to business and we do have a labor advisory committee which also is consulted from time to time on particular reports. But that is the size of it.

Anyone who is interested can get a copy of the things that are before us. Anyone that wants to see the stuff once he knows about it has an opportunity to see it.

So in this course of review we do have consultations with the agency. We particularly have consultations with other agencies which have maybe similar interests that might well be

served by the same questionnaire.

The basic over-all objective is to hold down the burden of reporting on the public, reduce duplication of government questionnaires, try to make sure that the government's needs are met in optimum fashion by any particular inquiry that is addressed to the public, and to use this as a tool for coordinating the government requests for information.

I started to say the Department of Health, Education and Welfare, of course, has a great many of these requests for clearance. Many of them are associated with grant-in-aid programs. Every application for a grant has to be approved, every application form. Every kind of reporting form that is used to get sort of progress reports on grants or financial reports -- all of that has to be approved. The reporting forms used for the National Health Survey have to be approved. Various and sundry reports that are developed for the purpose of evaluating the effectiveness of educational or other programs have to be approved.

Reports that are investigating new areas of concern in health or education, primary areas, have to be approved.

So we do a thriving business with HEW.

Now, HEW poses some problems -- not unique to HEW, but I think they are in such volume with HEW that I think they are worthy of particular note.

You see, HEW gets information that it collects itself

but it also contracts with organizations to collect information. It also gives grants for various and sundry purposes, some of which involve the collection of information.

And this Transmittal Memorandum No. 1 which was distributed deals with a particular area of grants and contracts, rather ineffectively, I hasten to add, because we are currently involved in a revision of the whole circular, and especially this area covered by Transmittal Memorandum No. 1.

Because when we get into the area of grants and contracts, it is a little bit different than the government's collecting information on its own. A contract, you can understand, is pretty clearly something that is sponsored by the agency that awards the contract. I award you a contract and you are going to collect some information, in return for which I am going to pay you some money. It is pretty clear I am sponsoring that collection of information and that is subject to the Federal Reports Act.

But now you make an application for a grant to investigate something or other and it sounds like a good idea to me and I say you can have whatever amount it is, and in the course of this you want to collect some information.

Well, this becomes a very touchy area because the man who receives the grant roughly takes the position that, "I have got a grant. I am supposed to investigate this thing, and you are sort of beginning to interfere with my academic or other

freedom if you start messing around with the questionnaire that I propose to use."

On the other hand, the fact that the man has a grant does sort of involve the Department of Health, Education, and Welfare in any questions that he asks. And it becomes a rather nasty kind of gray area that we have been tussling with over the years, and I guess not fully successfully, even as of this moment. Because it is just in this area of grants that we get into some of the kind of questions which I think this committee ought to be concerned with, because grants are frequently given when we are exploring new areas of importance. Should the government be interested in questions of family planning? If you say yes, and you say we ought to have some grants for that, which we do, then you have got to be pretty sure that we don't know everything that we need to know about family planning and somebody is going to have to ask somebody else some questions. And you can be pretty sure that the kind of questions that are going to be asked are going to be regarded as rather personal by many people. And if the federal government is wandering around asking these questions, either by itself or if it gives a grant to somebody to do it, how involved does the federal government get and how involved is it in this process? What control should it exercise over the questions that are asked?

I could just give you a couple of examples of how touchy this can be.

The Food and Drug Administration sometime ago became concerned about the possibility that there is some sort of real relationship between the use of the Pill and the incidence of cervical cancer. Now apparently there had been in the medical literature a certain amount of discussion of this. If the Pill does have some relationship to cervical cancer, should the Pill be banned? Should there be some sort of a warning put on every Pill box? Or what should be done?

First of all, you need to find out whether there is anything to it. So a rather large-scale program was designed for this. Much of this was of a laboratory character, but it did involve also a survey, the participants in which would be some 30,000 women who would be involved in the total experiment running over a period of years.

One of the hypotheses that has been advanced is that if a woman's sexual life has been rather active and started early, that this has something to do with it. Another hypothesis has been advanced that if the woman has had a variety of partners in her sexual activity, this has something to do with cervical cancer.

Well, if you are going to look into these things, I don't need to tell you that right there you have now got some very, very personal questions. And this survey was hung up for well over a year trying to deal with some problems that arose on this particular kind of thing.

There is no doubt the questions had to be sensitive. If you are going to do anything in the area, you have to ask the sensitive questions. So you just can't walk away from that one.

PROFESSOR WEIZENBAUM: Was the government doing this survey by itself or a university?

MR. LOWRY: No, a university was doing it.

But here is the problem we tussled with.

First of all, we argued with the man and reduced the number of questions by about a third. It must have been 30 or 40 per cent of the questions we wiped out because we generally agreed after prolonged discussion they were irrelevant to the study. But all the sensitive ones were there.

Now, what happens, though? A survey of this kind is conducted. You have got several thousand women on whom you have this information and you have done the tabulations and everything else, but you have original questionnaires, you have original cards which were punched, and you have some original tapes. What do you do with these things? Who gets these things when the study is done? What is done with these things?

These were very important questions and in many of these areas this kind of question becomes very critical. It becomes particularly critical with the university or other experimenter in this case.

Suppose in any survey you go to a contractor or you give a grant to somebody and he develops a sample and he is

investigating something sensitive like this, and he now has a sample. And he might conduct a number of other interesting and important kinds of surveys using this sample or some sub-sample from this, which he now has. Is he entitled, by virtue of that contract, to this kind of a capital asset?

And I am not making any inferences about the man. We are saying these are real scholars and all that, but they now have a capital asset of a particular kind.

Is he entitled to that? This is the kind of question we have been wrestling with. And in this case we argued that he sure as heck wasn't, regardless of what other great scholarly things could be done with it, that the government ought to take the responsibility of disposing of this stuff and doing away with it.

Anbody can cheat on that, of course, and that poses another problem, but I don't know how you handle that outside of the normal legal way.

MRS. SILVER: Is part of the problem that the names of the people were included in the survey? It seems to me if individuals weren't labeled but answered the survey because they needed the statistical information and there was no way of finding what bit of information belonged to whom, why couldn't it justifiably be used again?

MR. LOWRY: I don't care how you handle it, you start a survey -- and in this case the names were separate from

anything else. You had a tear-off sheet. But as long as that survey was going they had to have the names associated with the people to make sure -- you know, if they had to have some sort of a follow-up, if for some reason it didn't edit right and they wanted to check out something, as is common.

There is really no sure way in which you can completely disassociate these things. You put numbers on the things but you put numbers on the names and if you have to associate them you get the numbers back from the name. And you can just play around with all these ideas. But that possibility of developing this sample or sub-sample is still there and there is no way out. There is just no way in which you can be absolutely sure you have got this locked up.

So we reached an agreement in this particular case that the government would get hold of it and the government would take the responsibility for destroying it. Because any time you get anybody into a sample for some serious study and you are asking them some personal questions, if they agree to participate in this study they sure as heck are not agreeing to participate in or be approached for ten other serious studies, no matter what they are.

This kind of problem becomes increasingly important, and particularly in these areas of grants and contracts where we are on the edge of human knowledge and where we have important problems that we want to deal with, and where we are really

talking about sensitive kinds of information.

I don't know really what I can add to this discussion of the process that would be useful or helpful to you.

I think I have outlined that the law requires that every questionnaire or every plan to collect information be examined, that we have a procedure for doing this, that we do involve other agencies, particularly other federal agencies, in consultation when there is an inter-agency interest; that there are ways in which persons outside the government who may have an interest in this sort of business can gain access to the review procedure; that we are sensitive to matters which are sensitive; and that is is a matter of particular concern in these areas where the federal government is really the sponsor of the data collection through a contract or a sponsor or somehow semi-sponsor through grant procedure.

MR. MARTIN: Mr. Lowry, could I ask you just one question. Is there any difference in your approach to a proposal to garner information when you perceive that all or a portion of the information to be collected is going to be automated? And secondly, is it in any way part of your concern what is going to happen to information after it has been collected except as you have to consider that with reference to questions of relevance or redundancy?

MR. LOWRY: Well, do we consider whether it is going to be automated? Well, only to the extent that, you know, if

the agency says, "We are going to automate this," then we want to see the way in which the questionnaire is presented is really subject to that kind of processing.

Outside of that, that is not really a matter of particular concern.

DR. GROMMERS: Mr. Lowry, in particular do you have anything to say about whether or not it is going to be linked?

MR. LOWRY: With anything else?

DR. GROMMERS: Yes.

MR. LOWRY: Well, I would say that we would expect to be informed of that as part of the request for clearance.

Now we do, of course, try to link information in some cases, and use information collected for one purpose to serve other purposes.

For example, information reported on income tax returns by small businesses is the same information that would be reported by these businesses for a census of business or a census of manufacturers or whatever. Without destroying the integrity of the income tax return, it is possible to take these key items off the return and use them for the censuses. And by doing this, it relieves some two million small businesses from the necessity of replying to a more extensive census return. That we do.

DR. GROMMERS: Do they know that you are doing this?

MR. LOWRY: Do the individual businessmen know this?

It has been widely reported again and again, and I think on the whole the business community approves of that, rather than getting the questionnaire to fill out. In fact, every five years when the census is taken, you have to justify asking these questions, and one of your defenses is that you save two million guys from having to fill out this return.

DR. GROMMERS: But do they want to be saved?

MR. LOWRY: Oh, you had better believe it. Every five years you can just bet there is going to be a tremendous government inquiry into paperwork because a lot of fellows who haven't received a questionnaire for five years suddenly get one and are all upset about it and want to know why you need this information.

MISS COX: I have a couple of questions. You have no control over university research groups and research organizations collecting data and what kind of questions, when it is not federally supported?

MR. LOWRY: Oh, heavens no. The federal government has no business in that kind of thing. If the federal government gives a contract, as we have done, then that is subject.

MISS COX: I understand. And once in a while they get by, but that is the exception.

MR. LOWRY: They may sneak one by but most universities are pretty good about that.

MISS COX: The other one on sensitive questions:

There are ways to get information on sensitive questions which is not identified to the individual. How much consideration is given to that in the surveys? There have been developed methods that we can say of your 30,000 people what percentage is taking pills and all this information, without having any of it identified with an individual.

MR. LOWRY: The question isn't whether anybody is on the Pill or not --

MISS COX: No, I mean you cannot connect their answer with the individual.

MR. LOWRY: But in this case you want to know about these particular women over a period of five years, how many of them come up with cervical cancer, and then you want to isolate how many of those relationships are through their taking of the Pill and to nothing else.

MISS COX: But you can do that by a group -- I see what you mean. Always you have to identify the individual for follow-up.

MR. LOWRY: Well, this is --

MISS COX: You can get the situation --

MR. LOWRY: This is a prospective study. The rather unique thing about this particular study you are talking about is taking a group of women today and following them for a period of five years.

MISS COX: I see.

MR. LOWRY: And they are going to be visiting family planning clinics. They are participating in this all the time. A certain number of those women are going to get cervical cancer in that time.

MISS COX: But there is another approach taking a representative sample now and finding the percentage and taking another 30,000 five years from now and have the percentage of women that are doing this now and percentage of women who were doing it who have the cancer -- I mean there are other approaches to that.

MR. LOWRY: There are all kind of approaches, but this was a detailed prospective study to try to isolate this from all other factors on which there are hypotheses.

MISS COX: I see.

MR. LOWRY: That made it unique and very different from going to women who do or do not have cancer and getting some facts and then doing it again.

MISS COX: But Budget is conscious of the fact you can get probability.

MR. LOWRY: Oh, yes.

MS. CROSS: Do you have general policies concerning retention and storage of data collected for one specific grant, let's say, where the people who collected it may store it and use it for other purposes?

MR. LOWRY: There is not an over-all policy on this.

Many grants and contracts do contain provisions for the disposition of records and data and so forth collected in the course of the study, but not every one. And this is a matter of concern.

MS. CROSS: So that conceivably you could have a research center storing a set of data and some other investigator in that research center using it for a different purpose?

MR. LOWRY: Yes, but that is a different thing than the question that I raised.

MS. CROSS: Yes, it is a different thing in a longitudinal study.

MR. LOWRY: But I am not talking about a longitudinal study. I am talking about having in effect a sample that you can use for different kind of investigations.

MS. CROSS: Okay.

MR. LOWRY: Once the data is put together, if it can be used for some other purpose, there is really nothing wrong with that. What we are concerned about --

MS. CROSS: I am not so sure about that.

MR. LOWRY: All right. I am expressing an opinion. One of the great things about information is that it doesn't rust, decay, wear out, and you can use it for a variety of purposes. But in terms of the individual who participated in a study, to have that person sort of theoretically sitting there in a sample and you want to have another study on something that is quite similar and you say, "Aha, I have got 5,000 of

these over here and we will use this sample" -- I think that is a very serious kind of problem, because those 5,000 people volunteered to participate in some kind of study. They didn't volunteer to be in somebody's vault here to be a sample for something else.

PROFESSOR WEIZENBAUM: Then why do you say there is nothing wrong with using information for another purpose?

MR. LOWRY: The information is different from using the sample of people. If you got a bunch of tape -- now we are saying you've got the information disassociated from individuals. We've got a bunch of punch cards with information but no individual identifier.

PROFESSOR WEIZENBAUM: You are talking about disassociated information?

MR. LOWRY: Right.

PROFESSOR WEIZENBAUM: Fine.

MR. LOWRY: That is like Census information. You can get ideas of ways you can reorder that and rearrange it and use it to answer a lot of different kinds of questions.

PROFESSOR WEIZENBAUM: But this idea that information doesn't rust, a piece of metal that is coated with some anti-rust something or other doesn't rust, either, but when you take it off, it does. Take some Census information, let's say, some very innocent thing like how many automobiles people who make more than $10,000 a year own, say. Take something like that.

Suppose you take the date off. Okay --

MR. LOWRY: Well, if you did this. But you see, that becomes useless than.

PROFESSOR WEIZENBAUM: Then the point is it becomes rusty. It rusts.

MR. LOWRY: No.

PROFESSOR WEIZENBAUM: It deteriorates.

MR. LOWRY: No, that never deteriorates. If you use 1960 or 1950 Census information to try to deal with a problem for today, it isn't that the information is rusted because that information is still good for what was the case at that time. But if you want to use it that way, I would have some reflections on your procedure, not the information.

PROFESSOR WEIZENBAUM: What I am trying to address myself to here is this is a very innocent thing about these automobiles we were talking about. But the fact is that sometimes the transmission of partial information, when procedurally it is perfectly all right -- for example, you have said it is all right to transmit the whole information, that then the selection of particular pieces of information may in fact be terribly misleading, especially for example when it concerns individuals.

MR. LOWRY: Well, if a researcher in using any information neglects the time frame and other things that are important to the information, it is certainly a terrible reflection on his research procedures. It is not a reflection on

his research procedures. It is not a reflection on the quality of the information.

PROFESSOR WEIZENBAUM: He may have a special purpose for doing that. For example, he may be a prosecutor or he may be an impeachment manager in the Congress who is presenting highly selected information on, say, just to pick a random example, Justice Douglas.

MR. LOWRY: I think he couldn't get it out of any of these studies.

PROFESSOR WEIZENBAUM: No, I am talking about the nature of information generally and what happens when one carefully selects and so on.

MR. LOWRY: Oh, I think we are all aware of that, yes.

DR. GROMMERS: Mr. Trainor had a question that he wanted to ask.

MR. TRAINOR: Mr. Lowry, my question was: Since you are at the first point of requests for information nationwide from the federal government, it seems that would be a very good place to handle the confidentiality issue.

MR. LOWRY: It is a vital issue with us.

MR. TRAINOR: Is there anything in the Reports Act which requires protection of confidentiality and that you pass on and put an imprimature in that way on a survey that is taken?

MR. LOWRY: No, there is nothing in the Federal

Reports Act that requires that. A number of federal agencies have certain requirements as to confidentiality in their law. Probably the most restrictive law of this nature is that which applies to the Bureau of the Census.

There are a number of legal professions of more general character which relate to confidentiality which are -- I think you would have to say, less protective.

What we try to do on every questionnaire is to provide information to the prospective respondent that lets him know the degree of confidentiality there is or is not in this thing.

Let me give you an example -- and this goes to a different kind of thing and this is not an individual. This goes to businesses.

We have a great concern these days about pollution. For a number of years there has been the notion that we ought to have among other things a national industrial waterways inventory, that is, every plant in the United States would have to report what junk it lets flow out of the plant, whether it drops into a navigable stream, the municipal sewage system, or whatever other methods they use.

This has been a very popular idea and environmentalists have been pushing this for some ten years now, almost -- nine years. But they have always been reluctant to make this a mandatory kind of report. They have been reluctant to say to

the businessman, "Every one of you guys has got to report this thing and we are going to keep it on file and it is going to be a public record and there it is going to be."

They seem to be always interested in having a, quote, "voluntary report," close quote, on which this guy would report this stuff. And then they somehow want to treat it partially as confidential information and partly as a public record.

PROFESSOR WEIZENBAUM: Who is "they" in this case?

MR. LOWRY: "They" in this case is a variety of legislative and administrative people associated with the federal government that are interested in dealing with this problem and getting information on it.

Well, we had a terrible time and we got very seriously criticized because for seven years this thing was before OMB for clearance. It was a terrible record, we were really aiding the polluters, and that sort of thing. The truth is in 7 years it was before OMB for 60 days because it would get hung up on this question of confidentiality and the agency would get it back and play around with it and there would be a reorganization and it would be shifted to another agency and they would play around it and you would have a change in administration and there would be a different approach to the whole problem. So there was a great deal of just fiddling around for about 7 years.

And then finally we found the way to get out of this thing. We got the EPA to say "Okay, we will approve this but we

are tired of fooling around with this confidentiality issue. You've got to tell the man who is going to respond to this it may be used as a public record and may be released, and so forth, at your discretion.

Now, there is nothing wrong with doing that as long as the respondent knows and as long as it is voluntary.

He can now look at it and say "you may pick me and make my record public and that guy across the stream is polluting just as bad and you may hold him confidential at the same time. The hell with you. I am not going to participate in this survey." This is the kind of problem you run into.

You have to let the respondent know. That is the big thing.

MR. TRAINOR: You asked the question earlier what we could do. In the absence of such a provision being in the Act could you require a federal agency requesting a report to show how the confidentiality of the information could be protected?

MR. LOWRY: If the agency says, "We are going to treat all responses on this particular inquiry with confidentiality," then we say, "How? You tell us."

MR. TRAINOR: But if he doesn't say that, you require it?

MR. LOWRY: No, if he doesn't pretend there is going to be any confidentiality, we don't get excited about it except

if we see some questions in there which we may ask him, "Don't you think this ought to be confidential?" We raise the question and if he says no, we say "You have to make it clear on your inquiry this information is not going to be confidential."

DR. GROMMERS: Do you have an obligation to review the statute of the agency?

MR. LOWRY: No.

DR. GROMMERS: To see whether or not they are required to have confidentiality?

MR. LOWRY: No, we are not required to do that. But I know of no case where an agency was required to have confidentiality and didn't have it. I think agencies -- generally speaking, the federal agencies are aware of the problems of collection of information and the need to treat confidential information as confidential.

Now, the biggest control on this is that most information is gathered voluntarily, and that is, the person is going to volunteer to participate in this inquiry. He can answer the question or he can say no.

DR. GROMMERS: Would it be correct to say there was no office of the government that was required to check and see whether the statutory requirement of confidentiality, if it was there, was met?

MR. LOWRY: No, I think you've got two or three questions there. I will tell you that there is no agency that

is required to check every law to see whether the information has to be confidential.

I will tell you that if an agency says that the information which it is collecting is to be held confidential, the confidentiality provisions and procedures will be examined with great care.

And one of the things we will examine at that time is what is the legal requirement for confidentiality.

DR. GROMMERS: But if they don't bring it up, you will not' is that correct?

MR. McFEE: But each agency has a general counsel who is concerned with the agency's carrying out appropriate statutes.

PROFESSOR MILLER: There is a special statute that I think corresponds to Mr. Trainor's Title 44 Section 3508, which you will find in your papers this morning.

This is the general provision that applies to all federal agencies transferring or receiving material in confidence, andaapplies more or less a cumulative confidentiality test. So that a receiving agency must give the received information the same level of confidence that it had in the donating agency. And if it fails to do so, there are penalties of law that can be applied for a disclosure of that data.

But 3508 is like Swiss cheese, because there are no protective provisions in it. There are no enforcement

provisions in it. And of course it does not become operative unless the data as an initial matter falls under the confidentiality requirements of the donating agency.

I might also call everybody's attention to 3508(b) which deals with the requirements on all agencies in terms of releasing information obtained from individuals.

3508 should be read in connection with the Federal Reports Act but it is not, as I understand it, OMB's job to operate under 3508.

DR. GROMMERS: Do we have copies of these in the data handed out today?

PROFESSOR MILLER: 3508 is in the folder.

DR. GROMMERS: Ms. Cross wanted to ask a question, too.

MS. CROSS: It is not that important.

DR. GROMMERS: I would like to hear from Mr. Benner and Mr. McFee first and then we will continue the discussion for another time period here.

Would you all speak to things that haven't been spoken to here.

MR. McFEE: I wanted to try to give you a little perspective of what this particular situation looks like from the Secretary of HEW's office. It is a little bit of a different perspective than what Roy has and hones in a little more specifically on the problems of HEW, and Mr. Benner will be

able to give you the same kind of a perspective but from an individual agency.

I met most of you at your first meeting and I think you know what we are up to in this area. I thought I would give you just a quick background and I think the discussion that we have had so far can be summarized as the fact that the Federal Reports Act originally wasn't passed because anybody worried about confidentiality or invasion of privacy. It was passed for one thing and one thing only, and that is that the business and industrial communities were getting upset about the volume of information that was being required from them.

Now, because the Act originally was written that way doesn't necessarily mean that we cannot use it as a very valuable tool for getting at the problems of confidentiality, protection of information, and some of the other things that we are very much concerned about within HEW.

And I want to make that point clear, that we find it the most valuable single instrument that we have to get a control over the over-all data collection activities in the Department. And we have -- and I know Arthur knows this -- bent the intent of the law and we have some of our own particular internal guidelines which are still perfectly within our prerogative to issue and to enforce, that we use in conjunction with what the actual law is to get at some of these particular problems.

Now, I put together this little hand-out to give you a kind of feel for the size of the problem in HEW and where it comes from and I will not spend much time on it. I will just go through it very quickly.

First of all, HEW, as any government agency, really collects data for two purposes, not just for their internal needs to manage the Department, but also we have a responsibility -- in fact, the U.S. Office of Education was established in 1867 just to provide statistics to the educational community. In fact, that was its whole purpose back there.

And we definitely have a dual responsibility and that is to provide the nation with information concerning the state of health, education, and welfare, as well as our interna needs and the needs of Congress in the decision making.

Now we are kind of in a dilemma in that if you look at some of the quotes from former Secretary of HEW they have all been frustrated, and I think any policy maker within a federal government agency could say this, and that is that we don' have enough information. We need more information, better information, in order to make decisions about some of the major problems that the federal government has a role in in the socia area. And along with this push for more information there is a counter-force from the public, and we have a little quote fro a superintendent of schools out in St. Louis to give you an idea of what the backlash is for our information collection

activities.

So we kind of have a push for more and better information internally, and a backlash of the fact that we have been trying to put a burden on people. And this actually is a good situation because I think it attempts to at least force us to ask some of these very serious questions about hog-wild information collecting.

Within HEW the major areas that are responsible for the collection of information and processing of information internally are the four major statistical centers and there is a chart there that shows you they spend about $26 million and employ over a thousand people in these four centers. Now, these four centers have grown tremendously since 1971 and our overall statistical budget is upwards of $50 million in these four centers alone.

To give you an idea of the volume of input HEW has something to do with in relation to the Federal Reports Act, Roy said we are one of his better customers. We have about one fifth of all of the business that Roy has for the whole federal government. And you can get an idea here from this summary of reports chart that we collect throughout the Department over a thousand separate forms. That would be the best way to describe this. Some of these forms are one-pagers, some are 50 or 60 pages, but we call them a report or a form. And you can see our agencies and where the requests for information come from.

The little asterisks tell you how many are collected within the statistical centers.

This is significant to HEW because it is within the statistical centers we have the real expertise on survey sampling. And it happens to be -- and I don't think it is an act - that is where some of the sensitivity to invasion of privacy questions exist. It kind of goes along with the professional discipline that exists within the statistical centers. So I am much less concerned with what the statistical centers do from a management standpoint then I am for all these agencies that collect information that are not in the statistical centers. So, from my point of view, within HEW the asterisks become quite important.

The next area gives you an idea of what the guy out in the big wide world is concerned with when he has to respond to our request for information.

In 1971 we got 107 pieces of mail in response to these thousand reports, and you can get an idea there of the burden that is being put upon people that deal with HEW. And there is a break-down by our agencies as to where the big burden is.

You can see SSA, which Mr. Benner is here to represent, has the largest number of responses. But you will find the majority of these are the application process and are nothing more than claim benefits, applications for Social

Security number, and this type of thing.

The man hours to fill these forms out -- again this is external to HEW. You can see there is a tremendous investment out there in providing HEW this particular information. And these are millions of man hours.

The next one summarizes who fills them out and for what purpose. And this, I think, is important in the area you are concerned with. As you look at internal HEW information a data collection activities as a model or sample of some of the problems you are going to run into in some of the specific tasks this committee has, only a quarter of our forms are actually filled out by individuals, and as you can see the majority of our business is done with non-federal government, state and local government, school systems, state hospitals, state universities, and organizations where very little individual information comes in that way, but information on organizations, on business, on universities, and this type of thing

And most of these things are statistical informatio Like a university is asked for a break-down of enrollment by minority race, but there is no individual identification attached to it. Of course the university has to keep files in order to provide this information, and the point that I wan to leave with you is that even though we do not collect the information, the serendipity of the work that we require or the information requires, permeates throughout these organizat

and creates personal data files because of our requirement to collect data. But actually, as far as we are concerned, our requests for information in most cases are not related specifically to an individual, although some of it is.

You can also see that the purpose of collection of this information -- the majority of it is for administrative purposes where we are trying to find out what happens to our money. And the application process, you can see, is only about 18 per cent. And strictly statistical surveys to find out the state of HEW amounts to only about 23 per cent of our total operations.

Throughout HEW, in addition to those statistical centers, we have almost three times or four times as much statitical and data collection activities going on in organizations outside of those statistical centers. You can see here those numbers within parentheses are the ones in major statistical centers in those agencies.

I give you this as kind of a perspective as to what HEW's over-all information-gathering activities are. And I als want to point out that you have in your packet of material that was given out a proposed draft of a new set of guidelines for the Department that cover just the things that you have been talking about. This has been in preparation and been in work for about six months, and it is presently out into the HEW environment, getting comments back from our agencies and from

our lawyers as to how much of this we can do.

And obviously your inputs into this would be very useful to us, even though that may not be one of the primary responsibilities of this committee. I know Arthur has looked a them and has provided some very useful comments.

I would like to close with some reactions that we ar getting internally within HEW on the proposed guidelines. And these are important because I think it tells you some of the dilemmas that you are going to have when you lay out some proposals as how to handle personal data systems.

First of all, we have a real problem with the assurances of confidentiality and its relationship to the Freedom of Information Act. And we just got a ruling back from our genera counsel that says things look pretty bad, and that is the fact that even though we give an assurance of confidentiality and even though we have collected the information under the clear assurance of confidentiality, if, under the Freedom of Informat Act we had no right to hold that information confidential, this overrides the pledge of confidentiality that we have made.

And this is the most serious thing, Arthur. I don't know how we will get around this.

Let me give you an example. If we go out and collec information about a business and say, "We are going to use this only for internal HEW policies and it will not be released to your competitors," and they provide us that information on that

basis, if we had no legal right to give that assurance even though we gave it, at the time a court case is brought up to release this information, it will get released.

And this has happened two or three times already in HEW and it has caused us some real problems.

So our lawyers are being very, very strict about tho areas that we require pledges of confidentiality in our guidelines and they do not want them to be nearly as broad as was in the guidelines.

The second problem we are having is a reaction on th part of the agencies -- and maybe Mr. Benner can speak to this a little bit, on the levels of review within the Department.

We have a decentralized review process where each of our agencies now deal directly with Mr. Lowry in order to expedite the over-all clearance process. We have been operating this way for about four and a half years and it is the Secretary's Office's contention that we need to get back much more aggressively and activate at the Secretary's level into this review process and our agencies are resisting this considerably on the fact that they don't feel that another level of manageme should intervene.

We are having some very serious reaction from our agencies on the requirements that information for determination of eligibility be separated from other statistical information in the information that we collect from people that are going t

receive grants.

In other words, if the information is not essential for determination of eligibility, we want it separated so that there is no way that one can discriminate by use of this data in the awarding of the grant application.

For example, if income is not a criterion for a particular grant and you want to collect this information so that you can have a social-demographic kind of picture of where your money is going to, this has to be kept separately so that the person that awards the grant will not have access to income data and therefore could prejudice the award of the grant on income.

And I think you can see that we think from an administrative process this makes sense. Our agencies are resisting this sheerly from the standpoint of the infeasibility of doing this, almost having to create two separate systems.

The next thing they are reacting to is the delegatio of authority aspect. Some of the questions that you asked Mr. Lowry about, "Is there anybody that can appeal this?" or, "Does the recipient get a chance to enter into the particular process this thing applies internally within the government. There is absolutely no appeal mechanism to the ruling that Roye Lowry makes right now. If the Secretary of HEW wanted to do a survey and the Director of the Office of Management and Budget said no, the only appeal mechanism is the President of the United

States and this is a pretty ridiculous situation but there is the way it sits right now.

And nobody has appealed to the President yet.

MR. LOWRY: I am not sure they can because the law says it should be the Director.

MR. McFEE: We are trying to require that there be a delegation of authority in specific subject areas. In other words, it seems to us the most effective way to review those kinds of information requirements that are being imposed upon universities would be for the U.S. Office of Education to be th person that would be involved with the review of all requests for information from institutions of higher education. Suppose ly they could create the capability there and the expertise to know what was a good demand on the university, what could be provided, and could therefore provide a coordination mechanism of all requests against that particular university. OMB has been resisting this. The law does not allow for it. And they have the final say right now. And we would like to see a delegation of authority under this law built in and we are trying to create such a thing within HEW, which we can do at least within the constraints we have legal authority to do.

The last thing is the point Roye brought up very effectively, the problem of the relationship between the grante and the contractor and its relationship to those operations tha are under direct operations in HEW. We are trying to go furthe

in the direction of controlling grantees and we are trying to go further in the direction of putting restrictions on grantees

Later on in this series you will hear about a migran information system that is being developed. And this is being developed under a series of grants, and ask these people when they talk to you later about it, what the legal authority of HEW is in relationship to the people that are actually collecting and controlling and managing that information. The forms within that system did not come under the Federal Reports Act, and there is a question as to whether maybe it shouldn't have, and what is the relationship of HEW.

So the whole area of how far do we get into the grantee business is in the midst of a very great internal controversy where the problems of freedom of academic thought, whether the federal government can enter into questions of whether this is relevant information and whether this informati should be collected, and whether the federal government has the right to require prior review of any surveys under, for example a research grant which is having the biggest problem. And I would say this, that the research community is pushing very ha to stay out of the process. A number of the administration people are pushing very hard to dig further back in.

So that is kind of a quick nutshell of the way the situation looks right now from the Secretary's level.

PROFESSOR MILLER: Tom, I thought that was an

excellent presentation, by the way, particularly the last point of this incredible dilemma of trying to keep the research community immune from the federal presence but the problem of not being able to protect under the federal confidentiality provisions unless you bring them into the net and bring them under the Federal Reports Act.

I am intrigued by the difficulty you are running int with FOI. I gather your general counsel feels that your pledge of confidentiality do not qualify under the third exemption of the Freedom of Information Act, in other words, specifically exempted from disclosure by statute.

MR. McFEE: No, the problem, Arthur, in fact -- if you will notice the guidelines -- all pledges of confidentialit have to be reviewed by the general counsel before you can make them and he is supposed to determine at that time whether indee under the Freedom of Information Act is this a valid thing that comes under Section 3 that you are talking about.

The question has not been that.

If a pledge of confidentiality is given without that interpretation of the substance of it in the Freedom of Informa tion Act, whether the government is bound by that pledge. And it has said no.

PROFESSOR MILLER: I take it there is a very, very basic question that is yet to be resolved under FOI, namely what does "specifically exempted" mean. For example, your 1106

in the Social Security area may not be a specific exemption and regulations mandated by the Secretary may not qualify for exempt status under this provision, which I gather leads your general counsel to think further about asking Congress for more delineated specific statements of confidentiality in your operating statutes.

MR. McFEE: Well, seriously that is not the directic it has led him to. The direction is that he doesn't want to move for any further definition of the thing. If that is where he wanted to go I would be right there with him to help him.

PROFESSOR MILLER: Let me ask you this question, then. Isn't it an appropriate area of concern for this committee to think about its need for that?

MR. McFEE: I think you have to address that issue or you can't do your big job. Because if this committee comes up with a series of proposed legislative requirements for a new act or something in relationship to the personnel indemnifier, you are going to have this exact same problem in relation to the Federal Freedom of Information Act. So somebody has to face it and I would appreciate very much some help from the lawyers here in this direction.

DR. GROMMERS: Arthur, could you be a little more specific for those of us who don't know what 1106 is.

MR. BENNER: This is a section of the Social Securi Act, 1106.

PROFESSOR MILLER: The general statement about confidentiality subject to regulations promulgated by the Secretary. And that may be too vague a statement of confidentiality to quality for exempt status under the Freedom of Information Act.

MR. McFEE: You are correct. In fact, that is exactly one of the situations on the Medicaid provider reports which have just been ruled as not valid.

PROFESSOR MILLER: Exactly.

MR. McFEE: Even though the Secretary has issued regulations that cover this, the Freedom of Information Act has been interpreted that it could not cover those areas.

PROFESSOR MILLER: For the non-lawyers this is a classic illustration of Congress legislating about two different things at two different times. The Freedom of Information Act which is a disgorgement policy, the public's right to know, says everything is open except these nine categories in the statute. And one of the nine categories in the statute is a very common provision that says, "Everything is open except tha which is specifically subject to confidential under another statute."

The difficulty is all the confidentiality statutes, or the vast majority of them, are at least 30 years old and they are very vague and very general and may not contain the kind of specific exemption that this disgorgement policy is designed to promote.

Ultimately the courts have to adjust that sort of imbalance and conflict between the two sets of statutes.

DR. GROMMERS: What might happen? Could you just give an illustration of a particular piece of data that would not be confidential?

MR. McFEE: Let me give you an example. Under this section of the Social Security Act the regulation promulgated by the Secretary of HEW says that information collected from doctors that make Medicare payments or Medicaid payments under the Title 19 program, and reporting of that information to the HEW will be held confidential under this particular act.

Now the present General Counsel has ruled that we had no right to give that pledge of confidentiality, that is, this is indeed just the kind of information that should be released under the Freedom of Information Act.

And so even though we have now collected it from doctors all over the country, we are being required, with the pledge of confidentiality which we thought was covered under our section of the Social Security Act -- the General Counsel has ruled that we can no longer keep this information confidential. And he has gone so far as to say our suggestion "okay from here on out we will release it," is that it has to be released retroactively, which is very damaging and obviously has a great impact on a number of doctors that don't want people to know how many welfare patients they treat or how much

money they are getting for it.

DR. GROMMERS: Are you also saying they have to disclose the diagnosis?

MR. McFEE: No, this is just on dollars and fee for service.

PROFESSOR MILLER: Though I gather there is some ambiguity as to the cost justification process. There is some data generated there which may border on diagnosis.

DR. GROMMERS: If they have to produce what you have to produce on Blue Shield forms to justify the cost, you are disclosing the diagnosis.

MR. McFEE: That has not gotten into the situation yet.

MR. BENNER: Of course to that extent the individual himself, authorizes the disclosure of this information. In fact, in most of the Social Security programs, the individual himself is authorizing the information that is given because it is for his benefit. In most cases he is going to get some kind of a benefit out of it.

PROFESSOR WEIZENBAUM: But he is not in a position to make the cost-benefit analysis. So you say it is for his benefit and it may be in the short run. In the long run it may not be to his benefit. We just don't know.

MR. LOWRY: I think you are missing the point. The individual is authorizing the release of this information to

Social Security in order to obtain a benefit.

PROFESSOR WEIZENBAUM: I understand.

MR. LOWRY: And that benefit is dollars under a program.

PROFESSOR WEIZENBAUM: This is very like, in the abstract at least -- and not so very abstract -- very like my going to a physician and authorizing him to perform some service for me, for example an operation, or to give me some medication, because I am going to get the benefit of feeling much better afterwards, of being cured of some disease. And the whole issue of informed consent comes in here, and under some circumstances it is easier to inform a client completely and under other circumstances it is very difficult. And it is especially difficult when the person who is doing the informing isn't in a position -- I am not talking about anyone being nasty -- isn't in a position to know what all the consequences, what all the costs to the individual, and what all the benefits to him may be in the future.

That is the kind of thing I am talking about.

While I have the floor, may I make one other remark?

DR. GROMMERS: Certainly.

PROFESSOR WEIZENBAUM: I think for the first time in many meetings I have to criticize Arthur, I believe, for having made a dangerously misleading statement.

He said the difficulty with this conflict that we we

just talking about -- the difficulty is that the statutes, the confidentiality statutes, are well over 30 years old. That is not the difficulty. For example, to update those statutes would not repair the problem that we are now talking about.

The difficulty is that there is a very fundamental and it seems to me irreconcilable in some sense, and unavoidabl conflict between confidentiality as an idea and privacy as an idea and the public's right to know as an idea. There is a very fundamental conflict there. And every attempt to balance these two is going to unbalance it in some particular area. There is just no way of avoiding that and all one can do is exercise wisdom.

We have the same difficulty in a much smaller enviro ment, namely in worrying about the university information syste The student has the right to know certain things about the operations of the university. The faculty has a right to know certain things about the governance of the university, and so on and so forth.

On the other hand, there is information that one ask of members of the university community which ought to be kept private and confidential, for example, say letters of recommend tion with respect to promotion of a faculty member. These are in his file. Ought he be able to see them? Ought he be able to see what colleagues say about him? In our culture we generally say no.

And what we run into, starting in a sense from scratch, was not the age of previous legislation on this point, but the very fundamental conflict that surely we feel that there is a right to know, and on the other hand we feel we have to protect the confidentiality and privacy of individuals, and indeed of the institution, in some sense. And you run into a situation where these are simply irreconcilable.

PROFESSOR MILLER: Joe, you are quite right. The way I put it is dangerously misleading. It is not the question of raw age. All I was trying to get across was that the legislation was passed at a moment in time when information patterns were so primitive and dissemination was virtually unknown that nobody ever really thought through what you would call the secondary implications of a very, very vague confidentiality principle.

The agreement to disclosure in order to receive a benefit is an elusive one and comes to grips with the concept of informed concent. It doesn't even begin to scratch the surface of how much information must proceed to Washington from the doctor, even assuming the legitimacy of cost justification. It strikes me that precious little thought has been given to that: How much data is it really necessary for the auditors to know about Jones who had a heart attack during an adulterous interlude, to take a graphic case.

(Laughter.)

MR. LOWRY: Let me enter a slight demurrer to this.

In the clearance of a number of Social Security forms, particularly Social Security, we have been from time to time a little upset at the amount and kind of detail that are requested. And we did a fairly thorough examination of a number of forms. And one of them I remember -- one or two I remember. There were some forms for people that can claim benefits -- the widow of somebody that died of brown lung or black lung. These are mostly going to be some little old ladies living up in the end of a hollow in West Virginia and she doesn have much education and she is pretty distraught anyway, and the forms she has to fill out is appalling.

And I look at this and say, 'the gal is going to get thirty or forty bucks a month and this thing is terrible."

So I walked up and down all over -- whoever it was from Social Security that presented this thing. And you know they come in and there is a specific provision of the law. Every place they quote section so and so, and by gum everythin is requested. And it is right there in the law. And in order for that poor women to collect a few miserable bucks, it takes all of this stuff, because the Congress wants to be sure that we are not really opening up the Treasury, you know, just givi out the money to everybody. That is how you get this kind of conflict.

MR. BENNER: It is true in most of the programs you

have, your disability program, your retirement program, a lot of questions are required for entitlement that are required by law. They have to qualify and they have to ask these questions

PROFESSOR MILLER: Maybe we shouldn't require them by law.

MR. BENNER: That is a good point, I think.

MR. LOWRY: I am for that.

PROFESSOR MILLER: How many Senators or Representatives will read H.R. 1 or its successor draft legislation before it is voted on? The vast majority of the legislators have no conception of the kind of detail that is in that bill involving data extraction, just as I personally feel that if you walked up to a Congressman and said "Mr. Representative, when you voted for Medicare, did you intend to wipe out the doctor-patient privilege for the poor people of the United States?" he would say "Of course not." And then you start describing the kind of data that might be coming through on cost justification and the net effect is if the poor people of the United States or the elderly people of the United States -- there is no doctor-patient privilege for them. That couldn't have been intended.

MR. McFEE: There is a very definite strong feeling on the Hill -- and I don't know that it is the majority, but it is strong -- that one waives all rights as a human being in privacy if he indeed requests any support from the federal

government.

I won't call names, but I have been in front of Senators who have said this directly as the fact, that they hav no qualms about asking them to provide anything and letting anybody know about what has been provided if indeed the return is a benefit.

I think this is a very, very serious problem and that is why, Arthur, this stuff gets written into an awful lot of laws.

MR. MARTIN: Can I make a qualifying comment from my experience on the Hill and HEW, legislative experience. There are very few laws -- and particularly it is true of Soci Security Administration -- there are few laws in which the hand of the Executive is not very much a party to the drafting of the legislation.

(Laughter.)

I think it would be somewhat misleading if committe members who are not sophisticated in the legislative process were to believe there is truly this independence of function of two branches of government.

And Arthur Benner, with all due respect to you, I think we do not need to indulge in myth making with this committee.

MR. LOWRY: There is something more general than ju the Social Security Administration and it is this, that any t:

in the case of the U.S. Government, where it is going to lay out a dollar or $2 or any sum of money for anything, there is a very great concern that this is done in some way that some fellow isn't putting his hand in the till and getting a little he isn't entitled to. If it is a Social Security benefit, if it is a Veterans Administration benefit, if it is some contractor that is building something for the government -- man, the reports he has to make and the detail is just appalling. There is this great concern that every dollar of public money be spent honestly and there not be any graft involved. And that really gets you right into a jam on this whole question of information, and when it turns out to be individual benefit it gets you very tight on the things that you ask.

And we really don't trust each other very much when it comes to spending that public money.

PROFESSOR WEIZENBAUM: Perhaps some Congressmen think that some members of the public are just like themselves

(Laughter.)

MR. LOWRY: Every man starts with his own recognit

DR. GROMMERS: I would like to ask Mr. Benner if he would like to speak to us now and then at the end of his talk we can have questions first to him and then to everybody

PROFESSOR WEIZENBAUM: How about a small break?

DR. GROMMERS: You want a small break now?

MR. BENNER: After all this discussion, I think

the clearance process in Social Security -- actually, I have hand-outs here, too, so that you won't go home empty-handed. These hand-outs are really rather fundamental in comparison to what we have been discussing here.

I am going to try to make this very short. In the clearance process within SSA, it is a very large organization so the responsibilities are decentralized. The program bureaus have responsibility for the content and technical accuracy of forms. They are submitted to the forms and records management section where they are analyzed and designed, and from there they go on to a review by all bureaus and the General Counsel, and through this review we try to eliminate as many sensitive questions, as much detail as we can. And indeed, in the analysis and design of the forms we have on occasion come up with an existing form that just by a slight revision could take care of it, and we didn't need the additional form, the new proposed form.

So there are quite a few checks and reviews within the administration, and I have given you a copy of the procedure, a draft of a procedure that we were about ready to issue on a clearance process within SSA when we received the copy from the Department, the draft from the Department. And we decided we had better hold ours up because there is a lot of supplementation and changes that will have to be made to it. But it will give you an idea of how we disseminate to the

bureaus and offices the responsibility for reports clearance.

And I have also attached to that a copy of one submittal so that you can see how we prepare our submittals for the Bureau of the Budget.

There are some forms that are attached to that, however, Form SSA5100 and 5100-A which do not formally go -- well, they never go to OMB. They are retained in our own Forms History folder.

On the clearance of forms, we also, before it goes to Mr. Lowry's shop, request or assign the responsibility of the Bureaus to make sure that if the form needs coordination with any other DHEW agency or any other outside agency, they are responsible for this clearance and generally we will show on the submittal form when it goes into Mr. Lowry's office.

That very briefly -- now, in the statistical area, the Office of Research and Statistics reviews and closely supervises most of the statistical operations. And if you have any questions in that area, I have a cohort back here by the name Heller who will answer those questions, because I am not that familiar with the statistical operation, itself.

MR. DOBBS: Do you have to resubmit a form which has already been approved if it is to be used further?

MR. BENNER: No, unless you are adding something to the form. If we have an existing form and to take care of all the needs for the proposed form we have to add two substantiv

questions, in that case we would have to resubmit that original form, justify the substantive questions.

MR. DOBBS: So in those cases where you do in fact decide to use that form for some new purpose, Mr. Lowry does nc get a chance to exercise his test of reasonableness in terms of the new purpose?

MR. BENNER: Oh, yes, he would.

MR. LOWRY: I think it is rather difficult to envision this in the Social Security milieu because these forms -- most of them are so particular to the running of this vast insurance company that he is unlikely to have this situation.

It arises more frequently in other agencies.

What generally happens is this: The agency will cal and say "Do you want a new formal submittal?" And I will say, "Tell me what it is about." And I will say, "Send me a memorandum on this and I think we can work this out informally because you told me the new purpose for which this can be used as well as the old purposes. We are going to have to have something for this new purpose, rather than go through the whc exercise of having a new form if this thing can be used, and the only change that is going to be made is that the number of respondents is going to increase and the number of responses is going to increase and the number of man hours is going to increase. Tell us what that is."

Agriculture, for example, had one case of this kind

There are a number of kinds of programs under which farmers are getting certain payments if they participate in the program. One of them may be with wheat, another one with feed grains, and I believe one with rice and something like that.

Well, you can have a form for wheat and another for feed grains, and another for rice.

So they decided they would have a kind of general-purpose form for all these programs, one sort of application and report.

Well, having introduced that, another kind of crop was brought into this kind of program and they extended it to the use of this other crop, and all we did was adjust the responses. Because they were going to get the same information.

But we are aware, then, of what is being done. I don't think an agency really is using something for -- it is hard to envision the problem that you raise outside of the context that I have responded in.

MR. DOBBS: Thank you.

MR. ANGLERO: Do you think that OMB, as such, is an adequate agency to perform expanded duties in terms of an advocate or if a new regulatory agency should be established to deal with this whole aspect? Do you think OMB, if that is so, would be the right agency or some other agency should be created?

MR. LOWRY: I would hesitate to offer an opinion on

that.

I think you have to think of the context in which the whole procedure takes place, and that is, that the agency must demonstrate that it has a need for information for a purpose, and the particular vehicle that is being proposed to gather this information is suitable and is likely to yield the information that will in turn support the purpose.

Now, if the information is required, that is if, under some law, it is mandatory that this information be supplied, then you really don't have much of a problem.

If, as is the case with most information, it is voluntary, the prospective respondent has a very easy way of dealing with it. He tells the man or woman that knocks at the door that he is not interested, or he neglects to return the things that are sent to him. He just is not going to participate in it if he doesn't like the questions.

MR. ANGLERO: From the point of view of systems analysis and from the point of view of data gathering, would you say that the OMB has been performing -- I don't know if it is its function or not -- the work of advising the differen federal agencies in terms of the way they should aggregate or accumulate information?

Is OMB concerned about defining a system that could be applied to all agencies of the federal government in this respect?

MR. LOWRY: There is no over-all system for handling information. There can't be. There have got to be thousands of information systems in the federal government which serve particular purposes.

We are concerned in the Census, for example, about how information is aggregated and presented and how the information is processed in order to know -- to have some idea as to how it is possible to use this information if presented in some other way, if somebody gets some idea of doing it.

We are concerned with the statistical possibilities of using income tax returns, and of the whole statistical series that are called Statistics of Income which are published regularly by the Internal Revenue Service.

We are concerned that the information on employment that may be gathered by the Bureau of Labor Statistics, and that which may be gathered in the federal-state cooperative program involving employment security is consistent. We are concerned that the kind of information gathered by the Labor Department about employment and that kind of information that is gathered about industrial production by the Commerce Department somehow has some bounds of consistency so we know we are talkir about the same thing.

Because we don't have a centralized system and because we've got a lot of different agencies that are gathering information, this kind of coordination does become a problem.

MR. ANGLERO: Excuse me for following this up: Would you say that the primary issue we are facing in this committee would be that to the degree that personal information is taken -- or the possibility of bringing this personal information into a central data bank or, if not bank as such, linkages developed, that could be otherwise somewhat, if not eliminated, at least lowered -- I don't get the right word in English. If, instead of having aggregated personal information at the central level, the personal information is maintained at the local or state level?

MR. LOWRY: I think the committee might want to address itself to that. The question then is one of maintaining the personal information at the level closest to the source of collection, which would be the most decentralized source, and that any information that is transmitted to any other level be in some kind of form of statistical aggregation.

I think that is a reasonable kind of thing to explore.

PROFESSOR ALLEN: Mr. Lowry, on the question of the practical deterrents to failure of an agency to submit forms for clearance, you suggested that the embarrassment, the having to send telegrams to respondents that they need not reply, was an effective practical deterrent.

On the practical deterrent to breach of confidentiality -- suppose the pledge of confidentiality has been made in context of statutes that are broad, general, vague, and old,

how does it, in practice, work out if there has been a breach after the pledge of it? Is there an effective protection to the respondent?

MR. LOWRY: Let me start with -- the most effective one, as I indicated, was the Bureau of the Census, and there is a very specific legal penalty involved there including going to jail and being hit in the pocketbook. I think it is generally regarded that the Census confidentiality is about as tight as anybody could imagine. In fact, the Census Bureau has -- there have even been court cases on this, where the Census Bureau took the position that not only was a copy of a Census return confidential, but a copy of a Census return retained by the respondent in his own possession was equally confidential. And there was a case that went clear to the Supreme Court on this, in which the Federal Trade Commission was trying to get some information from the St. Regis Paper Company, and this issue was involved. And we had the interesting position of the Department of Justice sort of defending the Bureau of the Census position while the Federal Trade Commission was going the other route.

In this case the Supreme Court decided against the Bureau of the Census and the immediate reaction was to pass legislation that took care of that problem.

Now, in the other cases where the confidentiality is of a more general character, if that is violated, what

really happens or what would happen would be the survey would no longer be any good. The response rate would go down like a rock because the respondents would know that that which they were reporting was not going to be held confidential, and most of our information gathering is on a voluntary basis. Once the respondent no longer has confidence that that which he gave in confidence is really retained in confidence, you can just be that that information gathering is finished.

MR. JUSTICE: What evidence do you have to support that?

MR. LOWRY: What evidence? I am asserting there is no serious indication that confidentiality has been breached even with the vague law. But I am telling you that I am confident that especially in any kind of a sensitive survey, this is what would happen. There is no doubt about that.

MR. BENNER: I can give a specific example in the case of Social Security where each employee is given a confiden oath before he is employed, or at the time he is employed.

Now, Social Security has a large number of employees and you will always find a rotten apple in the barrel here and there. And we have had, I believe, two occasions where employe were prosecuted, sentenced to jail for selling some confidenti information out of the Social Security records.

However, these are rare cases, in 30-some years.

MS. PALLER: Are there any mechanisms for redress o

compensation to injured parties in any of these laws?

MR. LOWRY: Not that I know of. I don't know of any

MISS ELLIOTT: I would like to make two comments. The question has been raised several times: Is there an advocate for the respondent? And for Office of Education programs as the system is now working, before instruments are proposed or proposed instruments may be sent to Mr. Lowry for forms clearance, they must first pass through an Office of Education procedure known as the Data Acquisition Plan. This has been put into action in effect within the last year, so it is recent

The materials in the Plan are submitted to the Council of Chief State School Officers. This is composed of the top official of the Department of Education from each state. They have their Committee on Educational Data Systems review all these instruments. They are sent to the states. They are judged and so forth.

One representative of the Council of Chief State School Officers also sits on a committee of deputies which reviews proposed instruments which were not developed in time to be submitted to this over-all review and so are coming along later as exceptions to the Plan.

I think it is fair to say it is too soon to tell yo how well this is working. The instruments planned for fiscal '73 went through this procedure during this last winter. I think there were many aspects of the procedure which really di

not work as well as people hope they will, and so everyone is i
the process of trying to improve this review process.

This is one example of a situation in which respond-
ents do have an active voice in the review process.

PROFESSOR MILLER: Not respondents. Users. Every-
body you described is a member of the great using community,
not the responding community.

MISS ELLIOTT: These people are representing the
respondents in this case.

PROFESSOR MILLER: Oh, really? The school teacher
represents the child. The administrator represents the child.
The state director of education represents the child.

MISS ELLIOTT: In the sense in which you are saying
this, of course, it is quite fair for you to ask the question:
To what extent does the state department of education represen
the individual child.

PROFESSOR MILLER: Harvard University doesn't repre
sent me, let alone a student at Harvard. I find that over-
sight.--

MR. LOWRY: The way you say it it comes out good an
strong but I think you really want to take a look at the kind
information that is being requested. These are questionnaires
that are being addressed to school systems or to state school
offices, and they are not, on the whole, getting any informa-
tion about the characteristics of children outside of their

PROFESSOR MILLER: But you can't guarantee me that one hundred per cent. There have been documented examples of questionnaires under government funding that were highly sensitive and obviously had not gone through your clearance, let alone this kind of clearance.

MR. LOWRY: You have taken on a woman here who is describing a particular procedure and I am telling you that it is a fact that she is talking about respondents in the cases she is talking about.

PROFESSOR MILLER: That doesn't make any sense to me.

MISS ELLIOTT: The second point I wanted to make would answer Professor Miller's question. At the same time the Council of Chief State School Officers is instructing its constituents at the local level. The following instructions are being given to them. If they receive any questionnaire or request for information which has to do with the educational situation and does not have both the OMB number and the Office of Education number printed on it, they are to send it back to OMB.

DR. GROMMERS: Lois, could you give an example of a couple of questions that are on those questionnaires that you are speaking about?

MISS ELLIOTT: Yes. For the type of question which would be addressed to the school district, it might ask, "How many elementary teachers do you employ?"

For a type of questionnaire which would be addressed as a matter of fact, I have some samples with me -- a different type of question which would perhaps apply to the college student who is applying for a federally-insured loan would ask his name and the school which he plans to attend.

DR. GROMMERS: How about his financial status? Would that be on there?

MISS ELLIOTT: There are questions which ask the school district to apportion a population of that school district according to perhaps five socio-economic levels and so on.

PROFESSOR MILLER: But none of this applies to the kind of research that comes from OE funds by a contract that doesn't go through the Federal Reports Act procedure.

MISS ELLIOTT: The instructions which the Chief State School Officers are giving their constituents are that any questionnaire of any type -- and this would include the area that you were discussing -- which comes to them without these numbers should be sent back to OMB. And the companion parts of that is that Commissioner Marland, who heads the Office of Education, has put in writing that he expects Bureau heads to take disciplinary action against any program officers who permit non-cleared instruments to go to the field.

DR. GROMMERS: What we are really trying to find ou is whether or not the respondent to the questionnaire is in

fact represented at these levels. That is why I was asking you what were the questions.

For example, if there is a number of cars of or financial statement attached to a name of a student, a specific name, is the student directly represented by anybody? If financial information is not attached to his name, then it is not a pertinent question.

MISS ELLIOTT: There are several survey procedures which have gone through the forms clearance procedure with all the checks which go with it, including approval at the state level.

DR. GROMMERS: Which include information like the na and number of cars?

MISS ELLIOTT: Which include an estimate of financia status of the family.

DR GROMMERS: Of the family; okay.

MR. LOWRY: Let me tell you, on this you would get the financial information on a person associated with his name if it is some kind of a form where he is making an application for some sort of assistance in which that information is vital. That is, you have to be in some sort of income level in order to get the assistance. Yes, then there will be that. But on the kind of information which we are getting about the students and income from any kind of form that is being discussed with the State School Officer, it is the kind of information that

says, "Estimate how many of the families, or how many of these kids come from families where the income is under $2,500 or $3,000 a year, between $5,000 and $10,000," or something like that, which is a statistical category which doesn't associate any individual student. In fact, no names of any students are associated with these forms.

The kind of things we are talking about here are where you are getting something about the socio-economic-demographic characteristics of the student body that is the beneficiary of a Title I grant or something like that.

MR. DOBBS: Mr. Lowry, we have heard some descriptions of an experiment in the State of Florida, using the Social Security number. Did that go through this kind of process?

MR. LOWRY: You are going to have to give me a little more on that. We've got over 5,000 reports in our files and we've got between 2,700 and 3,000 a year and I will need a better identifier to bring it to mind.

MR. DOBBS: I understood this was early assignment of Social Security numbers to elementary school children in the Florida area, and perhaps many other states. Did that kind of requirement go through this procedure that was just describe

MR. LOWRY: Oh, no, that wouldn't.

MR. DOBBS: It would not?

MR. LOWRY: The only thing that comes through us in that regard would be the question of its application for

Social Security number. That form is approved by us.

MR. DOBBS: I see. So the decision and the use of that particular form again, which had been created for whatever standard techniques for assigning the Social Security number were, at least in this case, used in a different way than it ha been previously used and was planning to be used. Is that a fair statement?

MR. BENNER: Many of the questions were the same. There were a few varied.

DR. GROMMERS: Mr. Dobbs, I think, is really asking a question about the scope of OMB, whether OMB in fact has anything to say about whether the number should have been issued at all.

MR. LOWRY: We have no control over this. We have a control over the form that is used to apply for a Social Security number. And I presume anybody in the United States can apply for a Social Security number.

MR. BENNER: That is right.

MR. LOWRY: And that is where we go.

Now, if the State of Florida wants to use that Social Security number for something else and asks that all kids entering the first grade have a Social Security number -- if the State of Florida does this, this is another problem.

It is like the State of Virginia asked me to supply my Social Security number to get a driver's license.

OMB has no control over that. And I am not at all sure that the Social Security Administration has any control over that. It is a different thing.

A CONFEREE: This is exactly the kind of problem that led to the Commissioner's Task Force Report that you haven't seen. It is something we have no control over.

DR. GROMMERS: The question of who has control over that sort of thing is one of the most important things you, as a committee, have to address yourself to finding out.

MR. LOWRY: That is right, and how do you establish that kind of control in a democratic society.

DR. GROMMERS: And what are the implications of establishing such a control or not establishing it.

DR. BURGESS: I would like to ask a couple quick questions.

Going back to the previous discussion on the OE plan, did you make any distinction, technical distinction as survey researchers might make, between an informant and a respondent, where the respondent is providing answers on his own behalf, where an informant is providing answers on behalf of others or on behalf of an institution?

MR. LOWRY: The respondent --

DR. BURGESS: Because I would think the implications of that distinction which are important for other reasons in this regard would have to do with accuracy issues.

MR. LOWRY: The respondent to an inquiry addressed to a university would be a responsible official of that university. He responds to the university. And the kinds of inquiries that would be addressed to that university would usually be kinds of information that could be derived from university records or estimates derived from university records.

The respondent to an individual household survey is very frequently the person that is home. And there are, as you know, all these kinds of problems associated with household surveys.

DR. BURGESS: But there may be reasons -- in fact, there have been studies of school administrators as school administrators where one examines educational backgrounds, attitudes, and experiences of these kinds of people, where the research or evaluation interest is in them as people.

MR. LOWRY: There have been surveys that have been addressed to -- let me take one. The Commission on Civil Rights had a fairly substantial survey two or three years ago which was addressed to 800 school districts in the five southwestern states -- it is not accurate, but it is close.

And they got information about schools from the state offices, that information which could legitimately be expected to be obtained from the state offices, from the central school administration in the school districts concerned, from sample schools in those districts, from classroom teachers in those

districts. And they did try to explore the attitudes of these administrators and the attitudes of school principals and the attitudes of teachers. I believe they may have even had a pupi questionnaire. My memory isn't good on that.

DR. BURGESS: So that distinctions aren't made?

MR. LOWRY: No, in each case he answered for himself

DR. BURGESS: You treat whoever answers the questionnaire regardless of the nature of the questions as the respondent?

MR. LOWRY: What we were trying to do was to get the information from the teacher about himself or herself and how he or she perceived whatever they were talking about. They got from the principal the information about himself or herself and how he or she perceived these same things.

What they were trying to do was get perceptions and attitudes at different levels but nobody attempted to answer for all teachers. There was a sample of teachers in which they derived something about the universe of teachers.

DR. BURGESS: One other question: Perhaps this was touched on earlier, but what kinds of provisions exist for the rediffusion of data that were obtained directly by an agency or by a subcontract to a non-governmental research performer, notwithstanding the fact that the questionnaire would have been approved? Are any procedures invoked to control the further diffusion of that information?

MR. LOWRY: I think this gets back to that question that I referred to in the beginning. I look at it from the question of the initial information and its association with individuals when one gets sensitive questions. And I indicated we don't have an over-all policy on this and I think there is for many things again a kind of conflict of objectives, althouc I am not quite clear how much of a conflict there is if you are sure you are not really disseminating stuff about particular individuals.

DR. BURGESS: Well, a major study was just done unde an OE contract of language and area study programs in the Unite States which included a saturation sample of all people in language and area studies. And this information -- I know tha information is accessible by anyone who wants to get to it, which is seen as a positive kind of response on the part of th man who is the developer and principal investigator on the project.

But on the other side, there is a lot of informatic there that one might want to protect at what people might call a trivial end so people might get hold of information to develop a mailing list --

MR. LOWRY: It is this thing of having a capital asset. If you have all students in language and area study programs or a large sample, you can think of 10 or 15 scholar studies you might want to do and they might all be of

considerable importance. But the question is: Are these guys entitled to do these other studies when they didn't have any idea they were going to participate in those to begin with.

There is no over-all policy; it is a matter of conce and I think there is a conflict in your objective.

DR. GROMMERS: Dave.

MR. MARTIN: I believe you said you had regular relationships with a business advisory council and a labor advis committee. Have you ever considered establishing relationship for advisory purposes with any other kind of groups, such as, for example, the National Welfare Rights organization or the American Civil Liberties Union, or whatever?

MR. LOWRY: Well, the answer to that is we tried to figure out how to do this with some other groups. There is not a sufficient volume of forms that really justifies this.

I do know that the ACLU doesn't get it, but the NAACP and several of Mr. Nader's wholly-owned subsidiaries get our daily list of forms, and from time to time we have had inquiries from them.

Our meetings with the Business Advisory Council on federal reports are open, and we put on the mailing list for any meeting of this advisory committee anybody who wants to be on the mailing list.

It does, in fact, include a number of newspaper reporters. It includes a number of college professors. It

does, in fact, include a number of newspaper reporters. It includes a number of college professors. It includes a number of representatives of Mr. Nader's group. It includes a number of administrative assistants, Congressmen and Congressional committees.

The interest in being informed is apparently substantially greater than the interest in participating, because very few of the folks come around and most of them that do get very discouraged before that meeting goes on, because these things are pretty dull and painful for the most part.

There are from time to time certain inquiries that do attract a considerable amount of attention from the public interest groups. When I say "a considerable amount of attention," out of 60 people maybe 8 will come. That is considerable

And there may be one or two of these fellows who have some real contributions to make. But they participate by attending and get discouraged before it is over with.

MR. BENNER: I have a related remark. From the social security angle we do a lot of contact work with such organizations as American Medical Association, United Mine Workers, Golden Age Group -- well, just on and on. They have committees in fact that review a lot of our forms that are related to their particular field before they even go to OMB.

MR. MARTIN: That was going to be where the other part of my question was leading. That is: Do you seek to

induce on the part of government agencies and departments a process of consultation or advisory relationship between those agencies and departments and the constituencies with whom they might logically interact, such as Arthur Benner just described? Or do you leave them to decide what they will about that?

MR. LOWRY: We want to be informed of the extent of consultation.

MR. MARTIN: I heard you say that. I am asking whether you have a process for inducing such consultation.

MR. LOWRY: No, we just want to know whether they did or didn't.

MR. MARTIN: And you don't care whether or not it happens as long as you know?

MR. LOWRY: It gives us some clue as to what we may have to do on our own if they didn't do any. And if we recognize some people we think are interested in this particular thing, we are going to consult with them. If it looks like they have consulted with people -- we do this, and sometimes this is very interesting. The word "consultation" sounds great but it has a lot of different meanings and what to some agency may sound like consultation may not have appeared to be consultation to the guy who was allegedly consulted with. So what you do every once in a while, if you get on the telephone, you call up a few of these people who are supposedly consulted with and ask them about it and soon find out if there was some real

consultation or wasn't.

DR. GROMMERS: Off the top of your head could you give us an example of a recent case where a consultee actually produced a change for the benefit of this consultee?

MR. LOWRY: Yes, this is really -- this is a little tough to handle, to try to think of exact cases. I can't think of an exact case. But I do know that in this area of HEW, we do follow a policy of checking with some of the people in vario areas. I wish I could remember a precise example, but I can't.

DR. GROMMERS: But in general you would say it does occur?

MR. LOWRY: It does occur but once in a while we find the consultation was less consultative than one would have imagined. Then we have to do some more consulting.

DR. GROMMERS: And as a result of your consulting you might, in fact, change the agency form?

MR. LOWRY: Oh yes, it might substantially change.

DR. GROMMERS: Could we get a letter or something from you about a specific example just for the committee's work at a later date? Is that possible?

MR. LOWRY: I would have to rely on the reviewer that I would consult, and she happens to be going off on vacation. If I catch her before she goes, I will get it.

DR. GROMMERS: Also, could the committee be on your list.

MR. LOWRY: Would you all like to receive everything the daily list?

DR. GROMMERS: I certainly would.

MR. LOWRY: As has been said, "We will bury you."

Why don't we arrange to send you a sample copy, just address to each of you one copy of the daily list. And then, if you really want to be on the list, we will send it to you. And we will arrange to send you one notice of a BACFR meeting, and if it looks to you like you would like to be on the list for that stuff, we would be pleased to send you that. That is no problem.

DR. GROMMERS: Mr. Gallati.

MR. GALLATI: Perhaps this is an unfair question to ask you. I don't know to what extent you are concerned with the area of designation in the federal government in terms of duties. However, it does relate to the whole question of sensitivity to certain things prior.

At a point of time about a year ago the states had drawn up a project and had successfully demonstrated it to the Congress and to all concerned, relative to the handling of criminal history records for purposes of law enforcement and criminal justice generally. The outlines of the program which was drawn up by the states, acting in consortium under federal grant from LEAA, required that the states and not the federal government be the main repository for criminal history records.

This had tremendous implications in terms of state-federal relations, tremendous implications in terms of security privac The President's Crime Commission had recommended that the stat be the central repository and the federal government remain only in the index function.

At the time when this was being considered as to what the next step was in terms of the operation of the system I contacted -- and I don't recall at this time whom I contacte in OMB, but I do know that the problem was presented to OMB by the Department of Justice or by the President, himself, I am not sure, and this was a very, very significant problem from our standpoint, that is, from the standpoint of the consortium of states involved.

I didn't get tremendous satisfaction from OMB. I had asked for an opportunity to discuss this with them. I had asked them to look into it from the standpoint of consulting with Project Search because the consortium of states were work ing in this area. And I generally got the impression OMB was not sensitive to, number one, the state-federal relationships involved and, number two, to the problems of security and privacy involved, and very shortly after, we understand, they recommended that there be a giant federal data bank for crimin history records; and since then the FBI has assumed this responsibility.

Now, I suspect from what I have heard OMB examined

this very carefully from the standpoint of efficiency, possibly effectiveness in the management sense, but I just wonder to what extent appropriate consideration was given by OMB to questions of security and privacy.

And this relates, I think, to the whole problem we are discussing here. To what degree is OMB sensitive in the area of security and privacy.

MR. LOWRY: It seems to me you have outlined some experience in which you suggest that it wasn't.

I cannot respond or in any way add to the committee' intelligence on this particular matter because this sounds to me as though it came up in one of the program divisions and was associated with some sort of a budgetary request. I can assure you that I do not recall anything of this kind being presented wn connection with an information-gathering device which would have come through our place, would have been required to come through information clearance.

So I really am incompetent to answer that question. Undoubtedly someone in the Program Division would be competent to talk with you about it.

PROFESSOR WEIZENBAUM: I understand that, but there is another question that is touched on in this, that you did talk about earlier, namely you talked about the problem that you face in ascertaining whether a particular request that does come to you serves the purpose that it is intended to serve.

MR. LOWRY: Right.

PROFESSOR WEIZENBAUM: I think one thing closely related to that is: Who, then, questions the purpose?

MR. LOWRY: Who questions the purpose? I think in the review we raise questions about that if it appears to be appropriate.

PROFESSOR WEIZENBAUM: You do?

MR. LOWRY: Review of anything that comes through -- the first question you ask is -- the first thing that they have to include in the supporting statement is why they want to do that which they want to do, and what the agency thinks is going to be accomplished by doing it. So we get involved immediately in the question of purpose.

MR. DOBBS: On one point of Bob's question, Mr. Lowry, granting you can't deal with the specifics of this case: Is it the case that your office in those cases where it can identify that there already exist sources of information in som particular problem domain, which in your opinion will satisfy some new requests -- do you then specifically recommend that the appropriate linkages, for example, to get at it be established?

That is sort of question number one.

And, secondly, is your major emphasis in making that decision based on efficiency, operational cost kinds of considerations, versus the sensitivity to the security and

privacy issue which Bob was referring to?

MR. LOWRY: I think the answer to the first question is "that depends."

MR. DOBBS: That is nice and unequivocal.

MR. LOWRY: Let me give you a couple of "for instances." The Bureau of the Census collects information on the finances of state and local governments. And as one part of this survey of the finances of state and local governments, it collects or has collected information from public institutions of higher learning.

The Office of Education collects information on institutions of higher learning.

Now, for a number of years there was interest in getting these two coordinated to see if the universities couldn get one questionnaire rather than two. And the two agencies ha an avowed heart-felt desire to cooperate, but nothing ever happened. But there was on occasion a fortuitous event. The survey form used by the Bureau of the Census and that used by the Office of Education both expired at about the same time. And we thereupon secured some cooperation between the two agencies so that the Office of Education collects the information from the public institutions as well as the private institution and sends a copy of the information from the public institution to the Bureau of the Census. And the public institutions know that.

So there was one place where we got rid of one form and put them together.

Take a contrary case. The Bureau of Mines collects information on all sorts of mineral and mining production and other economic information.

The Federal Trade Commission was interested in conducting a particular kind of survey, an investigation, in a particular kind of mining industry in a particular part of the country, to see whether some violation of the antitrust law existed.

Now the Federal Trade Commission knew that it could get the information if the Bureau of Mines collected some information. And they went to see what they could get from the Bureau of Mines. The Bureau of Mines collects this information voluntarily and promises confidentiality.

The Bureau of Mines did everything that it conceivably could do to provide information to the Federal Trade Commission without violating confidentiality. But the Federal Trade Commission insisted that this wasn't sufficient; they had to have the original reports. And then they came to the OMB and they sought to have the Director of OMB order the transfer of that information under the provisions of this Title 44-35 or what have you. So we had a little meeting on this and it was pretty clear the FTC people were adamant, but the Director decided he would not order that transfer because the

information had been collected in a voluntary survey, under promise of confidentiality; that the FTC could not promise the same confidentiality for the information if it was turned over to them, and that the FTC could just go out and collect the information for its investigation on its own hook, and that it could make whatever use it wanted to of it in a legal proceeding

I don't know -- I know you are interested in information about individusls, persons, and I can't think if an applicable situation. So I give you the examples that I have given you, which are not quite what you want, I am sure.

MR. DOBBS: There is a conclusion I draw. Let me see if I can crystalize it. That is that your concern and your consideration about the confidentiality about the privacy issue as I heard in that example was based on whether or not the original collecting agency had set some standard for so doing.

MR. LOWRY: It had promised the man that.

MR. DOBBS: The agency had set some sort of standard. And I guess the question is, then: You don't go beyond what the agency has required in terms of establishing any additional criteria or any additional evaluation in terms of whether protection is adequate, whether in fact the confidentiality, privacy, et cetera --

MR. LOWRY: I hate to give you an answer to that because I don't have a for instance and I would like to have a for instance. But basically we try to find out: What was th

man promised at the time he supplied this information to the government.

MR. DOBBS: I was saying if the man was promised confidentiality --

MR. LOWRY: He will get it.

MR. DOBBS: And if he was not promised confidentiality even though there may be some damaging offshoot from that --

MR. LOWRY: I want to think about that a minute. He was not promised confidentiality. Is there anything to hinder the transfer of information.

I can't find an instance. If I can find one, I can answer the question.

DR. GROMMERS: I think this might be something we would definitely want, as a committee, to be sure that we get more information on and we can develop an instrument for pursuing this further as part of our work.

I would like to thank you gentlemen very much for coming and helping us today, and I think what we will do is have some coffee now and then go on to a different subject.

(Whereupon a short recess was taken.)

DR. GROMMERS: I really didn't want to give a coffee break in the middle of that discussion because I thought we would lose the thread of the thought there, so I thank you all very much for being thirsty for a little longer than we had planned.

We will see how this goes, whether we have Mr. Carlson's presentation before lunch or not. If it is possible, I would like to push lunch off a half hour or so so we can have the whole afternoon for a discussion group rather than have presentations.

At any rate we will start and have Mr. Liethen's presentation.

MR. LIETHEN: I have been asked by the committee and Mr. Martin to present to you some work that I have done during the past three or four months at the University of Wisconsin concerning our records policy, and particularly its interrelationship with the state statute on public records and the access of the public to those records.

I should correct, just as a matter of fact, the titl that you have on your agenda this afternoon which indicates I am from the Office of the Chancellor. We have a number of chancellors. I am from tne Madison Campus, which is the larges one of our units. I don't pretend during my remarks to make any representations for any other campuses in this country. I have concentrated primarily on the problems that we face in the State of Wisconsin and with our institution which, with its merger with the old state university system, is now the fourth largest higher educational system in the country.

Dr. Grommers asked me to begin this morning with several comments about why people are so concerned in higher

education with the collection and maintenance and dissemination functions of information.

There were several points in the recent past at which the University's dissemination policies and maintenance policies came into public attention.

On my campus, the first one occurred in 1967. This was when the institution's policies of communicating directly with the Selective Service System concerning the status of its students first came to light and was the subject of a number of student demonstrations and ultimately resulted in the institutions agreeing it would no longer communicate directly with the student's draft board but only at the student's request, through the student.

Again in 1968, because of a number of student demonstrations there was impaneled one of the Senate Committees of the United States which began some investigations and attempted to subpoena records from a number of institutions of higher education. At this point it became quite apparent that the institutions did not understand well their record-keeping policy and had no plan of defense when a select Senate Committee attempted to subpoena the records held by an institution.

The University of Wisconsin also became involved in one of these because a state Senate Committee began an investigation into the activities of various organizations and individuals, and during the course of that investigation the commit

attempted to get some information that the students regarded as infringing particularly their First Amendment rights. In that particular case the judge declined to issue an injunction because at that point he did not feel that there was any particular irreparable damage involved.

There are several other reasons, I think now, that a genuine concern on the campuses is caused by the tremendous volume of information that is maintained and collected by the institutions. And what I plan to do for you this morning a little later is to give some samplings of the parameters of information maintained by the University of Wisconsin.

But also the University is really a very convenient source of information and daily our Registrar's Office receives requests for information from any kind of person or agency conceivable.

In 1965 when our Chancellor first issued a directive concerning the dissemination of information, they were frequently receiving requests for information from the FBI, CIA, National Security Agency, local police agencies, the Selective Service System, actual or potential employers, credit bureaus, parents, parole officers, jailers, immigration officials, insurance companies, AFDC coordinators, and legislators. And this is not so speak also of litigants attempting to subpoena records held by the institution.

This is only a partial list. There are undoubtedly

other kind of organizations and people attempting to gain information held quite conveniently by the institution.

The University of Wisconsin just recently also converted to the Social Security number as the identifier for its students so consequently in our computers in the instances where it is being used, the information is keyed under the student's Social Security number.

One reason why the high record keeping in higher education also is not a very burning issue on the campuses is the fact that record keeping is actually a very low visibility function of the institution. It continually is a matter of course. It collects information on its students which it holds in various offices, and it is not really a matter of much concern to the students until it becomes apparent to them that in some political context usually that information is being released in an adverse manner.

It is a difficult issue also to conceptualize particularly when you realize that the information maintained, the entries made upon a student's records, may not represent any damage at the present time, but actually is a potential harm to the student and may come home to roost years and years from now when it is quite probable that the student will neither be able to identify the source nor the extent of the damage caused by the entry on the records.

The objectives that I have this morning are several-

fold.

First, I want to give a kind of broad sampling of the types of information held by various administrative units of the University of Wisconsin at Madison. And second, I want to suggest some of the various interesting aspects of our record release policy, and particularly how that relates to our state public information statute as we can define it -- and I will go into that later.

Again I also want to enter a caveat here because I am trying to speculate, really, on the application of the statute to our institution because the statute, itself, has never been fully litigated and never in an educational context. So we have really to attempt to understand how this statute will be applied to our university, and particularly attempt to plan for the eventuality when it may be litigated and we may be called upon to defend our policy.

Now the kind of information maintained by the university is quite varied.

The first contact the student has with the institution comes through the Registrar's Office and this would be all the information the student supplies the institution, including his high school transcript, high school recommendations, test scores. In some cases it will include personality test scores, family background data, some indication of his activities in the community, honors achieved, and also what his educational and

professional plans are.

The Registrar also, of course, maintains the academi record card, which would repeat a lot of the high school background information, the student's address, some other identifying information, and then a list of all courses taken, grades received, and all official academic actions taken.

Because we are a state university the Registrar's Office also performs another function and that is, we have to charge our students who are not residents of Wisconsin non-resident tuition.

One of the first things a non-resident student will attempt to do is qualify as a resident student and this will require him to go through a process of attempting to show the state that he has some intent to live in Wisconsin, that he does not have substantial ties to a jurisdiction other than Wisconsin.

This currently requires this particular person apply ing to supply rather detailed information about his financial background, the sources of his income, where he has worked in the past, where he has filed income taxes, where he has voted, where his parents live, and also what his plans for the future are.

SENATOR ARONOFF: May I just ask one question that is not directly related, but do the new Supreme Court rules on residency for purposes of voting which are virtually nil

now have any effect on whether a person is an in-state student or out-of-state student as far as the student is concerned?

MR. LIETHEN: It is our feeling that they do not.

SENATOR ARONOFF: It is our opinion that they do.

(Laughter.)

MR. LIETHEN: Well, I think we have reached a difference of opinion.

SENATOR ARONOFF: Maybe the purposes are different. I'm sorry. Go ahead.

MR. LIETHEN: I might just add that this has require us to modify our approach to the statute, I think, because there are some problems in the statutory language but we are applying it as requiring the student to supply information and us to classify him based on that information.

One of the agencies on the Madison Campus that collect some of the most detailed information is our Financial Aid Office. A student who applies for financial aid from our institution must fill out a questionnaire himself giving a quite detailed review of his sources of income, but also, since our institution ties in with the college scholarship service, we require the parents to fill out the confidential statement which requires them to fill out extremely detailed information This agency would be of interest to the State Department of Revenue which has attempted to obtain information from this agency. The Financial Aids Office will also maintain ...

computerized records of the amount of aid given to the student. These are under the Social Security number identifier which will identify every transaction the student has had with the Financial Aids Office up to the fact that if he makes a repayment and the check is dishonored by a bank, it will show on his computer record.

One of the most easy to understand records that is maintained is the academic record, maintained in our institution by the college the student is currently enrolled in. This is an interesting record in several respects. Skipping the obvious information of it, it will also contain anecdotal summaries of any meeting the student has had with a member of the dean's office involving any kind of academic action. This will involve many personal actions. They are keyed on another card with a statement of official action. But for each student there is a summary of each test he has taken that is achievement type test and also high school performance. This is, through some statistical manipulations, projected into a grade point predictive, giving the chances in a hundred that the student will achieve a grade point in a certain grade point range. For example, it might be a grade point predictive of 20 in the 2-point to 4-point range. This is compiled in various forms. There is sometimes a single-digit number ranging from 1 to 8, 1 being the highest, which will also indicate the various kinds of grade point ranges the student can be expected to achieve.

Several years ago these were so detailed in their predictives that predictives were established for various academic areas, engineering, social sciences, English and so on. Our counseling area is the prime area where counseling of students with personal problems, career problems and the like occurs. This is a staff of psychologists which is an important point to remember because they do not have medical degrees and consequently do not qualify under the state's doctor-patient privilege statute. This agency also holds all the test scores a student has taken including the achievement test scores and any additional career test scores a student volunteers to take if he seeks counsel.

For a number of us who matriculated in the early 1960s at the University of Wisconsin they have on file our Minnesota Multiphasic Inventory Test, still identified so far as I can tell by name. I asked why this information was still maintained and the answer was probably quite obvious, it is a tremendous data base and they don't want to destroy it.

We have extensive medical facilities on the Madison Campus: Our student health and also our University of Wisconsin hospitals and this would include also all of the medical records that would be maintained by the hospital, including a complete medical report submitted by the student as a condition of entry into the institution. The dean's office will maintain disciplinary records. The residence halls will maintain disciplinary

records. These people also do limited counseling.

I could go on, but let me just suggest various other agencies where information will be maintained on a student. There are informal files maintained by a professor or by an academic department. Counseling files where a student has a counselor in the division of residence halls. We employ a lot of students in various divisions of the institution so we have payment records, pay records, payroll, and also performance records on those students. And this, of course, does not also include our Division of Protection and Security which is our police agency.

Presently very little information is maintained on computer. The Registrar and the Office of Student Financial Aids are the only offices presently operating with the use of computer. None of this information is on line, meaning it can be accessed through a terminal and I should say this is at the present time. I understand that there are plans to go to an extensive terminal facility that would mount a considerable amount of information for a student onto direct on-line units, which would then allow access throughout the campus.

Presently the Madison Campus operates under a policy established by our Chancellor in 1965 that has never been rescinded or modified. Chancellor Fleming is now president of the University of Michigan. He established a policy that said that we have three classes of information on the campus:

Public information, generally that information that is available through the student directory and that is the student's name, the course pursued like Law I, his campus address, home address and campus telephone number. His name will also be asterisked if he is married.

We have also confidential information. This includes only medical and student counseling center; and restricted information, which is everything else.

Basically access to this is on the "need to know" but under the policy "need to know" it is hard to understand how they are going to define it.

For example, the Registrar's Office, pursuant to this policy, enacted its own policy which states that intra-universit requests are virtually limitless, which means any officer or employee of the university can request information and probably on a marginal need to know, obtain that information.

One of the problems with our policy is that it has never been published, for reasons I can't discover. The policy is not that well known except among the employees of the university, usually division directors who received a mimeographed copy in 1965. The students do not know about this policy. It has never been published for them in any kind of student handbook. There is no articulation of the "need to know" or establishing various classes of information and the types of person who may access them. Consequently, implementation of the

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Chancellor's policy is very much on an ad hoc basis and depends upon the sensitivity of the individual who is the custodian for the records, the sensitivity of this individual to the privacy elements and questions that are involved.

Except in the Office of Student Financial Aids, there is no record maintained of who has had access to the records, when, and for what reason. We have no central coordination of the various policies implemented by the various office I should indicate that pursuant to the Chancellor's policy, individual policies have been enacted by virtually all the agencies I mentioned except for the Division of Residence Halls.

There are no criteria or there is no attempt to review the type of information that is sought to be collected by an agency to determine whether that information is indeed necessary to be kept.

There are no real parameters established on research, research either conducted over the university data base or by agencies seeking to create a data base by further questionnaires

There is no policy that establishes criteria for conversion of information to other uses than that for which it was originally collected. For example, can the Office of Student Financial Aids collect information and then turn that information over to the Department of Revenue or another agency of the university for a use that is entirely unrelated to the original collection?

This is a basic outline, and needless to say very quick, of the information that is maintained by our institution.

I think that it should be quite evident that we maintain substantial amounts of information, and it is primarily due to the fact that the modern institution of higher education has a virtually all-encompassing set of auxiliary services, each requiring more records to be maintained.

This information is maintained in separate offices, not in a central file or dossier at the present time. But were this information to be collected together and put into a dossier, I think it would go without saying that the extent and detail of the information would virtually exceed the kind of dossier that are established in any other portion of our society save for few examples.

I could stop here if there are any questions about this phase before I go on to talk about the state statute and how we perceive it may be applied.

MR. JUSTICE: How many people are you talking about altogether?

MR. LIETHEN: Thirty-five thousand students, those presently enrolled. I could add there is no destruction policy in any of the agencies and consequently these financial aids go back to 1960 and the Registrar in perpetuity and the others according to how much space is available. So it is 35,000 currently but probably hundreds of thousands on the outside.

MR. DOBBS: How much of the information that you describe is generated as a result of internal requirements, versus those requirements which are laid on you from the outside say in the case of the student financial aid where that is a government insured program.

Do you have any feel for that?

MR. LIETHEN: I have no indication. The time and resources available when I did this study really allowed me only to scratch the surface of the information.

Most of the policies -- as I said, there is a lot on paper but what is even more significant about the policies themselves -- what is most significant is what is unwritten. And what is not exactly clear without actually going in and questioning each item of information is the reason why it is being collected. And that would probably be left to a much more detailed study to be conducted in the future. I have recommended that that be done.

DR. BURGESS: One other agency that maintains a lot of information is the alumni office. Have you looked into that?

MR. LIETHEN: I have not examined the alumni office. Actually the alumni foundation at Wisconsin is an independent agency. It is not -- they do not have direct responsibilities and are not considered part of the administrative offices.

DR. BURGESS: Is there any evidence that student files go there?

MR. LIETHEN: There is no transfer of information that I know of. The alumni office seems to know where a lot of us are after we graduate. I am not quite sure how they do it

PROFESSOR MILLER: I think Phil has touched a point that has been a very sore point at institutions I have been familiar with, in which there seems to be a rather cavalier transfer of data at the graduation point to the alumni records unit, which in no sense could be justified on a "need to know" basis.

I take it, Mike the system you are describing would literally or conceivably tolerate a disciplinary unit within the university gaining access to many of these files that you have described.

MR. LIETHEN: Oh, to be sure. We are in the process of doing that right now because starting this week they are beginning prosecution of about 500 students on the term paper keys and they will have access to the academic files.

PROFESSOR MILLER: Can you foresee the possibility, for example, that a disciplinary unit on an ex parte basis could gain access to the anecdotal material collected by the psychologists and counseling officers?

MR. LIETHEN: I am not aware of an instance when that has happened. I will not say that that hasn't been attempted and has not happened. I think as I get on in the presentation it will be amply evident that that information under

the statute is technically available. It cannot be foreclosed from anybody who has inquired about it.

PROFESSOR MILLER: That has happened in a number of institutions without notice to the individual student and without any right of confrontation with regard to the psychologist's scratchings. By the way, we all see life through our own eyes. You described handsomely and in detail the student-keeping structure. I assume there is a parallel faculty record-keeping structure.

MR. LIETHEN: I assume there is. I limited myself to the student dimension.

PROFESSOR MILLER: It adds another dimension.

MR. LIETHEN: Yes, a very big one.

(Laughter.)

DR. GROMMERS: Arthur, the faculty record-keeping system kept by whom?

PROFESSOR MILLER: The university.

MR. LIETHEN: The academic departments, payroll office, health --

MR. MARTIN: Police.

MR. LIETHEN: Police, possibly, yes.

PROFESSOR MILLER: I once had to give a speech in the city of Detroit and I was introduced by a man in the public relations office of the University of Michigan who I had never met before in my life. And he proceeded to introduce me with

such detail as to my background that it was perfectly clear that he had had access to the complete file that led first to my appointment at the University of Michigan and second to my being granted tenure at the University of Michigan -- a file that I personally did not -- since I am no longer with that institution -- a file that I did not have access to.

DR. GROMMERS: Jerry.

MR. DAVEY: How much access does a student have to these records, if he is even aware of their existence? If he says, "Look, I would like to see what has happened," does he have an opportunity to view the record at all? What is your policy?

MR. LIETHEN: Curiously enough, the question of student access is not covered by any of the policies except some of the individual ones.

To run down a couple of examples, a student technically should have access to his entire record card and academic record card and the Registrar has assured me that is the fact. A student will have access to his entire financial aid file except for the parent's confidential statement. I might add if the student is over the age of 18, which is the age of majority in our state, the parents may not have access to that file unless consent is obtained from the student.

The student will not be given access to the file maintained by our College of Letters and Sciences. They

maintain a curious policy that that is the property of the university and they will not allow anybody to inspect it. In fact, we are in some jurisdictional problems right now because they won't allow the Chancellor's office to inspect them, either, although technically the records, under the policy of the Chancellor, are open.

They maintain in the College of Letters and Sciences that that record -- what they will do, a student who comes in and says "I want to see my record," will be asked in some detail by the counselor, the assistant and associate deans, why he wants to see it and he will try to identify the particular concern the student has. And as I am told, they will review that file and engage in what is called in the trade an interpretative release. They will proceed to engage in interpreting what information is in the file to the student. But he will not be allowed to see any of the documents in the file and he will never be allowed to see the anecdotal summary.

PROFESSOR MILLER: Is a record kept of the fact that he wanted to see this file?

MR. LIETHEN: I don't know. I have a feeling that - well, I take it back. To follow logically what I understand to be the case -- again I have to emphasize this is what I understand to be the case because you can't tell from the policy sometimes what is really happening -- and I say that mo as an indication of the deficiency of the policy and not peopl

bad intent in the whole thing. But the student is probably going to be seeing an assistant or associate dean under the same circumstances as anybody else would and consequently his meeting would probably be noted on the anecdotal record card.

DR. BURGESS: The file has a printed thing on the outside that says "troublemaker" where you just check off dates.

(Laughter.)

MR. LIETHEN: I could skip over briefly to the school from which I have just graduated and that is the law school. They maintain two sets of files. One contains my academic file academic record card, my undergraduate transcripts, any of the materials I submitted to get into the institution, some notation of the basis upon which I was admitted, any correspondence I have had with them or they have had with m or third parties have had about me, and miscellaneous other information.

Now, since our dean must certify to various state bars other than Wisconsin where this is not required, he would be required to certify to my good moral character or something of that sort. Had there been a disciplinary problem with me in the School of Law while I was there there will be a hold marker placed on my file and a routine release will not occur but any release of information from that file will only occur from the dean's office who will consult a second set of files

in his office and determine what is available and therefore to be inserted in the recommendation. Most people don't know about this file. In fact the professor for whom I did this work didn't even know about it until, in our clinical program, he recommended placement of a student with one of the federal judges and was severely criticized by some of his colleagues for failing to consult these files to determine whether there wasn't some problem with the individual before he was placed in such a position of responsibility.

But I have not really explored the extent of those files. They have had several disciplinary cases generally involving plagiarism in the law school in the last semester.

MISS COX: Do you have access to those files in your present position?

MR. LIETHEN: I haven't attempted yet. My academic file --

MISS COX: But the other file.

MR. LIETHEN: No, I haven't gone into Dean Kimble's office and asked to see what they have on me.

MISS COX: This always worries me when you write extensive letters of recommendation of students that eventually they will be in a position where they can see those files, and in fact I know some cases where they have, where they can then see what you wrote as confidential information for employment.

MR. LIETHEN: I can't really speak to the extent of

that.

DR. GROMMERS: Is there any reason why anybody should be able to write a letter that is considered confidential?

PROFESSOR WEIZENBAUM: Sure.

MR. LIETHEN: I should indicate at this point --

DR. GROMMERS: I would like to have the answer to that.

MR. LIETHEN: The answer is yes.

DR. GROMMERS: I would like to know what the reason is from someone.

MR. LIETHEN: I think yes. That is my absolute position. I should indicate at this point that Miss Cross and I have just spent three days up at another conference in New York where the subject was discussed and I think it would be a fair thing to say this was an item of deep division in our group.

DR GROMMERS: Could I just have a statement of "yes, because" from anybody who feels yes.

MR. LIETHEN: Why don't you do that? Why shouldn't a student have access to confidential letters?

DR. GROMMERS: No. Why should a letter be written that is considered confidential? Under what circumstances is there any justification for anyone's writing a letter he wouldn want the student to see?

MR. LIETHEN: The justifications that I understand that are given, at least the ones that were outlined to us in

the course of our meetings, were that a professor writing a confidential letter is apt to be more frank, considerably more precise about his exact feelings about his students' abilities, motivation, and the like.

DR. GROMMERS: He is apt to be other things as well.

MR. LIETHEN: Pardon?

DR. GROMMERS: He is apt to be other things as well. These are not justifications for doing this. This is the utility of doing it.

MS. CROSS: This is really where there was probably the greatest division between the group, over the philosophy of student records, one group maintaining that the purpose of keeping students' records was for the personal growth and academic development of the student -- which is admittedly one purpose for them.

But there was another equally strong group that maintained the primary purpose of keeping student records was for the purposes of the university, that is, for evaluation of the student, for certification that the M.D. had earned his degree, for transferring letters of recommendations to potential employers, or for graduate schools, or whatever. And if you follow one line of reasoning -- for instance, if the philosophy is that they are primarily for the purpose of the student's personal growth and development, then you would come to your conclusion, that there is no reason why he shouldn't

see any form of evaluation made of him.

DR. GROMMERS: Excuse me. I have no conclusion at all. I am simply raising the question.

MS. CROSS: Well, that philosophy which I would say was at least half of our group. Then there was the other half who said a letter of recommendation is of no earthly use if the two correspondents in the case realize that the subject of the letter has seen it.

We never resolved that.

MRS. SILVER: I would like to hear Dr. Weizenbaum's answer.

PROFESSOR WEIZENBAUM: Well, I speak from limited but fairly recent experience and, as it happens, not with respec to students -- that is, not with respect to people who are students now or indeed who were my students at any time -- but with respect to other people. And I believe the experience to be fairly transferable.

As a faculty member in a university I am asked to write letters with some frequency recommending or not -- or at least commenting on promotions of colleagues at my university or at other universities, or hiring of colleagues at other universities.

The general policy at good universities is that in order to be hired or promoted or given tenure at some university you have to have earned the respect and esteem of people in

your field who are competent to comment on your achievements and so on and so forth.

Those letters would be useless, would contain nothing but empty formulas if I couldn't be assured that the letter is entirely confidential, that it is a letter that I write to the single officer. Sometimes I even get an assurance that the letter will be read and destroyed. They want the utmost candor, you know, with respect to his professional capabilities.

Now, I am not asked to comment on his morals, on anything of the kind, but with respect to his professional abilities.

Similarly, for example, with respect to refereeing articles to appear in scientific journals, the referee is, I think, uniformly, universally, assured that his identity will be kept secret, that it -- in fact, he will be told that it may be that his report will be sent to the author but that his name will be removed. And these forms are designed so as to make this possible. And he may be cautioned to be careful not to use words or phrases that are particularly easily associated with him if he doesn't wish to be identified.

DR. BURGESS: The reason there is a little different.

PROFESSOR WEIZENBAUM: The serving agency will simply not be able to rely on the candor of the reporter.

DR. GROMMERS: How can they rely on the candor of the reporter anyway?

PROFESSOR WEIZENBAUM: Well, I don't know. They may not rely -- it may very well be that the reporter will accept a bribe or whatever. They have no reliance other than professional ethics that this will not take place.

However, they certainly will not be able to rely, if it is widely known that these letters are likely to be read by the candidate. Then candor is excluded. It is simply excluded. It is no longer possible. As it is, it is at least possible.

DR. GROMMERS: I want to make one little point here. There is a distinction between the information being secret and the person's name not being attached to information he sent which is not secret.

PROFESSOR WEIZENBAUM: Take computer science -- Dr. Carlson will support this. The field is divided into a number of sub-fields and in each sub-field there are a handful or perhaps dozens or 20 or 30 authorities, or people who are looked upon as authorities, whether they are or not. And it is simply not possible to hide the identity of such a person on a letter of recommendation under those circumstances.

The number of people who are likely to get asked -- let me give you an example. Take the field of artificial intelligence. There are, I would say, probably five -- at most, ten -- professors in American universities who are the almost exclusive recipients of requests to recommend junior and senior

faculties to other universities. There are at most, I would say, ten. It is probably five. Isn't that right?

MR. CARLSON: That is right.

PROFESSOR WEIZENBAUM: That is it. They wouldn't even begin to write such a letter if they thought their identity was to be revealed or the content of the letter would be revealed.

DR. GROMMERS: I would like to say that I can understand the reasons for this, for your feeling this way, but I would like to have you be very specific about what kind of information you are talking about. For example, you said you wouldn't include information about the moral character. But I presumed you would be talking about objective information.

PROFESSOR WEIZENBAUM: That is just the point. It is not objective information. For example, one of the comments you might make about an individual is that "while his paper on so and so appeared to have been well received by a certain fraction of the community, in fact the main opinion among those who really know is that he in fact isn't a deep thinker and this may very well qualify him to do this and that and the other thing, but it would certainly harm the reputation of your university to have a man of this shallow something or other -- depth -- as demonstrated by his publications and by the general esteem in which he is held in the community and so on, in your university."

DR. BURGESS: That is artificial intelligence?

(Laughter.)

PROFESSOR WEIZENBAUM: That may be.

But that is the sort of thing. The chairman of the department or the senior faculty of the department that is thinking about hiring this fellow -- if they get two or three letters from me, for example, with respect to two or three candidates and then get a letter saying, "this fellow is really good. The particular paper he published which unfortunately didn't receive wide notice is, in fact a very deep paper and this guy has enormous potential and so on and so forth," then they will take that very seriously. Whereas, if I say about everybody, "he is competent" and so on and so on, then they simply have nothing to go on.

DR. GROMMERS: Supposing with the best intentions in the world there was another -- let's say there were two sides of a controversy --

PROFESSOR WEIZENBAUM: Other people do get asked, of course.

DR. GROMMERS: -- and one set of people agreed with one side of the controversy and felt legitimately that the thinking of the opposite side was shallow -- is this a justification for the economic loss that might accrue to the person who was so judged? How do you resolve this?

PROFESSOR WEIZENBAUM: In the kind of cases we are

talking about, there is presumably a hiring or evaluation committee. Particularly if it is a tenure case, there is an evaluation committee in the university. They are the only ones who have the collection of these letters. I don't know who else is being asked to comment on this fellow and it may very well be that my very positive opinion or my very negative opinion is completely contradicted by what everyone else says which, by the way, would hurt my reputation as a judge. That helps to calibrate me. But I don't know who else is being asked and I certainly don't have access to the letters the other people write.

MR. DOBBS: I wanted to present a sort of a different view, at least, of this particular problem in a slightly different context.

It arises in industry and in management in connection with performance evaluation, when in fact one has and collects from an individual a very similar kind of information that is being talked about in a university context.

It is my view and the view of my management that in fact the inability to be candid and frank in such documents is a reflection on the evaluator rather than on the acts so described.

So it is our policy to insist that in fact a manager, supervisor, or what have you, share with the employee any kinds of statements. And it is our burden, if he feels

that he cannot be candid in terms of what he has to say, to educate and/or counsel and/or deal with him to get him to the point that he is able to do that.

So it is a slightly different kind of perception in terms of what that problem is.

Now the second one, having to do with the business of again evaluations and comments about peers and/or others: At some universities I believe it is the practice that although the individual is not made aware of the particular evaluator's name, the content of the evaluation is in fact made available to him.

For example, at the University of California there is a student evaluation procedure in which the student evaluates me as an instructor, which is fine, but he can be just as brutal and just as candid as he wants to be. And I have the benefit of seeing and dealing with that information.

PROFESSOR WEIZENBAUM: In paraphrase, I assume.

MR. DOBBS: No, no. I have available to me directly the comments from each student directly. They are not required to submit their names on those sheets, although they are free to do so if they would like to.

DR. GROMMERS: At the School of Public Health at Harvard we had a very comparable system. The students were told they could put their names or not.

MR. DOBBS: Yes. To focus on the argument, to come

back to Joe's justification, the justification is always the one which says that unless the confidentiality of the originator is protected, you do not get candid and factual information; that in some sense there is some information validity lost. And that is not clear to me.

PROFESSOR WEIZENBAUM: May I respond to that?

DR. GROMMERS: Sure.

PROFESSOR WEIZENBAUM: As a matter of fact, at MIT we do have exactly the same procedure with respect to students' evaluations of professors. In the middle of a semester and again at the end of a semester students are asked to write their evaluation of the professor in that particular course, and the forms that they fill out discursively are in fact available to the professor. They may or may not be signed, as the student wishes, and in addition there is a summary and so on and so forth. That is the case.

With respect to your experience in industry about the evaluation of people in industry, when I was in industry I had the same experience and I found it to be very good. I think that is the right thing to do.

The difference is, of course, that in industry you are talking about in effect members of the family. Okay. You take your boss' evaluation of you, you know, in the context of the small team of which you are a member, whereas in this business of recommending someone for promotion at another universit

this family relationship does not exist. And that makes it a rather different thing.

DR. BURGESS: In one case it is peer evaluation and another subordinate evaluation.

DR. GROMMERS: May I hear people speak on how they feel this differs from the secret witness, the secret trial, and the secret condemnation and execution of someone who was the subject of the secret trial.

PROFESSOR WEIZENBAUM: Let me add one thing here -- and I think this is another difference between industry and the university in this instance. In the university we are now talking about the scientific or scholarly community. And the tradition, of course, in the scholarly community is that everything is open, you know. All the work of the fellow is open. All his papers are public. There aren't any secret papers and so on and so forth. Okay.

Consequently, when someone says about a particular book that he published or about the way he taught at some other place or whatever -- when he makes remarks about that, the candidate may very well be informed that there are some people who believe that you are wrong about this, or whatever.

Well, the evidence is all there. Okay, the evidence is in effect in the public domain and there is the tradition of mutual criticism and so on and so forth, and that is all there.

DR. GROMMERS: The candidate in this case has no opportunity even to know that a bad or good letter was written about him. He knows if he asked for the letter to be written that it is a letter of recommendation. But he is unaware of the contents.

PROFESSOR WEIZENBAUM: Another thing, of course, is that the candidate -- and I don't know any exceptions to this -- it is the candidate, himself, who proposes the referees. For example, when my tenure case came up at MIT, I was asked to submit a list of names of people I would like to have comment on my standing in the community and so on and so forth. And I was asked to submit, I forget how many names -- ten names. And it is clear that three or four of these people will actually be asked -- that I submit ten names and three or four will be asked. So I am picking my own judges. I am picking people I believe will say good things about me.

If in fact, if I don't make it, I may ask the chairma of the department why not -- and I certainly will. There will be a long interview and he will tell me, "Well, you thought tha paper of yours on something or other was pretty deep stuff," and so on and so forth. "Well, it turns out that the community disagrees with you," for example.

I think we are stuck on a point that is not of general interest to the committee, however.

MR. DOBBS: You say that the candor of the informati

in fact would suffer. It seems to me that is an assumption that has been overlaid on the process and it says more about the individual and his feelings about that than it does ascribe any validity at all to the process.

MS. CROSS: In fact, one could make the other case that it would be considerably more accurate if he had to be sure if he were challenged he would be able to back it up.

SENATOR ARONOFF: I wonder if you are getting into a subjective question of the sophistication of the evaluator and evaluatee. I can certainly understand your position here and yet at an earlier meeting you were thoroughly shocked about a dumb bunny school teacher saying that a kid was emotionally incapable of doing his school work.

PROFESSOR WEIZENBAUM: But in that case --

SENATOR ARONOFF: And the kid should have a right to see that the dumb bunny school teacher made this early evaluation.

PROFESSOR WEIZENBAUM: But as a school teacher I am presumably not a psychologist or psychiatrist and I am incapable of making that observation.

SENATOR ARONOFF: You are making a value judgment at sophisticated areas in the university atmosphere -- and I am agreeing with you to a certain degree -- that the confidentiality of the evaluator should be kept confidential, but saying that rule does not apply when you are getting down to another

level of an early evaluation of a school child.

PROFESSOR WEIZENBAUM: Look, again I think this is very common, that in some schools there is, say, an electrical engineering department which in fact contains as a sub-group a computer science sub-department, and they are thinking of hiring somebody and they write to me to ask me, "What do you think of this fellow?" And it turns out he is in a corner of computer science I know nothing about, for example. And what I will do and be expected to do is say, "I'm sorry; I'm not competent to evaluate this man."

SENATOR ARONOFF: Suppose you are not competent but do it anyway?

PROFESSOR WEIZENBAUM: That violates my professional ethics. And I am saying I realize again we are talking about th scientific and scholarly community which is different and has different standards from industry and so on.

(Laughter.)

SENATOR ARONOFF: Okay. I quit. You made the point.

DR. GROMMERS: Jerry.

MR. DAVEY: I have found it is a lot easier to get recommendations over the telephone than in writing. And there is quite a difference in what will be written as opposed to what will be said in verbal fashion.

DR. GROMMERS: One can agree that there is a difference, but my question was really based on the justification for

DR. BURGESS: That is even more in this.

PROFESSOR WEIZENBAUM: Let me make one additional statement that will help a little bit about what happens in a university. Generally speaking, the candidate who names me as a referee or as a reference -- before he does so, he will call me and he will say, "I intend to name you as a reference in my promotion case," or whatever. And I will -- and so will all of my colleagues as far as I know -- very frankly tell him that that is a mistake; he ought not to do that, if in fact all I can do is write him a very negative report.

MR. MARTIN: That really blows the system, doesn't it?

(Laughter.)

MISS COX: But I will tell it over the telephone.

PROFESSOR WEIZENBAUM: No, I will not.

DR. GROMMERS: I would like to just tie this in with the subject.

(Laughter.)

PROFESSOR WEIZENBAUM: We are far afield.

DR. GROMMERS: No, this is absolutely fundamental to what we are doing here -- if you think about what is in the questionnaires that are being asked of the welfare recipients and who is making the evaluation of how many bathrooms there are and whether that is an adequate number of bathrooms, and so on.

DR. BURGESS: I think the question you asked earlie about what difference is there between this kind of exchange o information and information of the kind on questionnaires -- I think that we can't lose sight of the desirability of maintaining some kind of due process, when arbitrary or capricious action by the state or by an institution is involved on the one side, versus arbitrary and capricious action by individuals.

I think one of the important differences is that in the case of recommendations that might be made about a student or by a professional scientist about some other professional scientist -- that that is weighed in the context of other information and a decision is made. And in fact, to turn the coi on an important point that Joe just made, many times people have reputations for giving information which on the face is very negative, but in the context of a person's history of his critical ways of talking about people may in fact be positive.

But the point is that when we are talking about welfare recipients or a university or any institution or industry making a decision about somebody in a subordinate status, not a peer status, oftentimes you are not making a decision but weighing items of information. Those items may be added up and indexed in some way, but the entry of any piece of information is extremely important. And where the states are involved in making a decision, then there are constitutional implications

And I think that is the difference. So in these othe

cases where confidentiality is involved, the social context within which that information is used and the process by which it is used is fundamentally different from the social context and process by which information is used by institutions or by the state.

PROFESSOR MILLER: I think Phil has put his finger on why it is of marginal utility to talk about what is occasionally called the three-party confidentiality problem on a global basis. It is because this very same problem of a three-party transaction involving information arises not only in the academic community or in the business community, but it involves -- you two touched on it -- the criminal accusatory process. It is raised in the credit bureau industry. Indeed, the credit bureau industry successfully convinced Congress that confidentiality in the investigative field was essential.

Each one of these is quite different. We hold the state to a much higher standard of procedural or informational due process when it is state action, particularly when it is state action involving the possibility of the imposition of a sanction or a fine or imprisonment, and conceivably a loss of benefits.

We don't hold the academic community to the same type of standard because it is not penal and it is not state action.

This is not to say we shouldn't hold the academic

community to a higher standard than we do. It is simply to say that you have got to look at the three-party confidentiality situation in context, especially in light of the fact that the expectancies of each of the three parties to the transaction are quite different in different contexts. You could make the argument that somebody who is aspiring in the academic world or aspiring to employment through recommendations from his academic mentors in a sense consents to this type of information dissemination about him.

PROFESSOR WEIZENBAUM: That is right.

PROFESSOR MILLER: He knew when he entered the ball game that these were the rules and it is not unfair to make him play by them.

The difficulty with that is that it forces you back into the consent placebo that we were talking about with Mr. Benner this morning. The fact is that if you want some governmental booty you consent.

Well, again that is the problem of context. What is legitimate extraction or expectation or consent in one context simply is inapplicable in another.

And as hard as it is, you've got to pick them up and lay them down one context at the same time.

DR. GROMMERS: It is inconceivable that it could be illegitimate across the board.

PROFESSOR MILLER: There are very few absolutes in

life, my dear.

MISS COX: But you aren't saying there should be the difference in level.

PROFESSOR MILLER: I am saying there are differences and if somebody wanted to devote his life to rationalizing it he might find out that the differences are justifiable.

DR. GROMMERS: The question was raised whether state universities isn't state action.

PROFESSOR MILLER: I read the last week's Supreme Court of the United States decision that says the Elks Club operating under a liquor license is not state action. God knows under the Burger court what is or is not state action. A that is beyond the scope of this panel.

DR. GROMMERS: I think just for the sake of getting something to eat before you all get too hungry to work, Mr. Liethen is going to finish his presentation.

MR. LIETHEN: It is only another hour and a half.

(Laughter.)

One of the people down this side, the gentleman in the blue shirt, raised something that I just wanted to pick up briefly because it was one thing I failed to mention, and that is the giving of information over the telephone is quite frequ in a university and so far as I can see probably one of our greatest problems. Because anybody who has been anywhere in a bureaucracy knows that if you sound like you need to know

something you can usually bully somebody into giving that info ation. Virtually none of our agencies have any protection against that. If you call up and say you are from the Chancel or's office and assert a need to know, the chances are you wil get that information without anybody -- you could just as easi be calling from outside our system or up-state some place.

The Registrar's office has entered into some kind of protection along that line. They will take your name and title, go then to their own telephone directory and call you at the place you are supposed to be, and if you are there you will get the information. If you are not, you don't.

DR. BURGESS: Gee, that is really a good security procedure.

MR. LIETHEN: It is a minimal one but more than oth agencies are doing. I don't assert it as providing a maximum of protection. What I can say is there ia lot of information transfer within the institution that takes place totally without any determination of the legitimacy of the request or the requestor.

MISS COX: Potential employers can get information about the students from you, people that want to employ the student? They can get the information?

MR. LIETHEN: Those requests are generally channele to the Division of Student Affairs and they will only engage in what I called an interpretative release and with a waiver

from the student.

MISS COX: And with a waiver from the student?

MR. LIETHEN: Yes, they require a waiver up there. I can't say that is a consistent policy if they happen to write some place else, say a professor. That is one of the problems of maintaining records all over an institution. Unless you have a consistent policy that is enforced with some vigor there is going to be a considerable abyss between the practice and the policy.

I wanted to outline briefly our state statute. It is Section 19.21 of the Wisconsin Statutes enacted in 1917. I think you referred earlier this morning to this: This was written at a time that did not contemplate an institution as large and diversified at the University of Wisconsin. Obviously it did not have the contemplation of psychiatric, counseling, financial, and the like all collecting information, but assumed it would all be in one place and all under one agency head who is responsible for those documents and who should, if requested, disgorge them.

Basically our statute covers three situations. It is property and things that are in the possession of the state officer that are required by law to be kept, deposited, or filed with him, and the final one, the third class, to the possession of which the officer is entitled.

This has generally been interpreted by the State

Supreme Court to cover virtually any document that is a convenient and necessary means of operating the institution and engaging in its lawful activities.

Now, if you think again about the nature of an educational institution, there are some problems here. If we are talking about a police chief, the police chief has certain desig nated statutory responsibilities and it is much easier to determ ine what documents will and will not fall under his jurisdiction and therefore he will have lawful custody of and therefore would have to disgorge if asked.

The University of Wisconsin does not have any statutorially different independent mission per se. And consequently the Board of Regents, when engaging in their powers of governing the University of Wisconsin and determining its services, and in fact engaging in auxiliary services of the type I have outlined before, and in fact self-defining their own mission, are consequently expanding their record-keeping responsibilities and therefore the amount and type of records which they would be required to reveal if requested

There are several features of the statute that I would point out.

First, under the statute, except for several exceptions that don't apply in this instance, the statute was considered to have codified the state of the law in 1917, which meant that it preserved the common law exceptions, whatever they

were. Basically there is here some engaging in balancing between the public right to know and some supervening governmenta interest in preventing public access to the information.

The state of the litigation in Wisconsin is such that we don't have a good idea of what would be or would not be included here, but there are some suggestions that we have.

There is some suggestion that information that was confidential when it was collected could be preserved confidential under the statute. I want to go into this in a second.

Secondly, our state Supreme Court has held that our public records law is to be interpreted in the same context as our state open meeting law. And the state open meeting law has defined a number of specific exceptions. The one of particular interest to us is the one that states that we are dealing with financial,disciplinary or personal information that is "unduly damaging" to the reputation of the individual.

The State Supreme Court has warned that the emphasis is on the word "unduly" and that any kind of information released that would be damaging to the individual is not thereby precluded, that in fact if there were some greater governmental need in releasing the information that the individual's reputation is just going to have to go by the boards.

This applies to any officer who holds records and consequently under the State Supreme Court interpretations to any agent or delegate who is operating pursuant to his grant of

authority. This would apply to virtually everybody in our institution.

Now, what we tried to engage in last semester was some delineation of the information that we could possibly exclude from public discovery under the statute. It is very difficult to do this because there is very little litigation in this field in Wisconsin and just about as little throughout the country in any other jurisdiction with respect to the educational context.

We can first exclude information that falls within the purview of the professional privilege statutes. We have two that are relevant in Wisconsin, the doctor-patient and we have a dean's privilege statute. But the way our state adopts an interpretation of these statutes that makes us a sort of strict construction state, meaning they will be applied as literally as possible. This would exclude, in my opinion then, such information as was not submitted to the institution in the course of a specific treatment with a specific physician. That would mean information submitted to the institution, like a medical report and the like, as I had to give to the institution when I matriculated, would be excluded.

We have a Dean's Privilege statute but this statute is virtually useless and the institution is administered with that interpretation in mind. It says that no dean of men, dean of women or dean of students shall be required to divulge

certain information that comes to their attention during the course of counseling a student. Under the statute and the way the court is interpreting this it does not say "the dean of students or his staff," and consequently we are interpreting it only to refer to the dean of students. At a major institution like ours there is very little a dean of students knows that some member of his staff does not know, and consequently the information could be accessed through the other staff members.

There are a number of exceptions. The most interesting one is that the dean of students can be required -- let me just pull the language:

"(1) This prohibition may be waived by the student.

"(2) This prohibition does not include communications which such dean needs to divulge for his own protection or the protection of those with whom he deals, or which were made to him for the express purpose of being communicated to another, or of being made public.

"(3) This prohibition does not extend to a criminal case when such dean has been regularly subpoenaed to testify."

In other words, most of the instances in which a dean's privilege statute would be likely to be invoked have bee excluded under the statute.

This is the first class of four.

PROFESSOR MILLER: Mike, why isn't everybody who works there called a dean of students?

MR. LIETHEN: Well, I don't know. That has been overlooked, I think. It does say "dean of students."

PROFESSOR MILLER: The dean of students for all students whose last name begins with the letter A."

MR. LIETHEN: We haven't thought of that one. I would point out we have one conceptual difficulty in the context in which this law is passed. Shortly after this law was passed and went into effect in 1968, the Madison Campus was reorganized. The dean of students no longer engages in counseling activities. He is the Chancellor's designee by law to bring charges against students in disciplinary actions. Counseling occurs under the Vice Chancellor for Student Affairs and his office. And if one would care to think that this statute was primarily for counseling purposes, it extends to the wrong person in the first place.

PROFESSOR WEIZENBAUM: You have got a regular Catch 22 university.

(Laughter.)

It is incredible.

MR. LIETHEN: There is some suggestion in the case law that information that is confidential is excluded; this basically comes from dictum in another case. The state attorney general has ruled, however, that information that might fall within this exclusion under the case law can only be held confidential if our tests are met -- and again it becomes a

Catch 22 of sorts. The information must have been obtained pursuant to a clear pledge of confidentiality, the pledge must have been made in order to gain the information. It must have been necessary to give the pledge in order to get the informati And on top of that the custodian of the records, even if these first three tests are met, must still make a determination as to whether or not this ought to be balanced against the public' need to know.

MR. GENTILE: And only on days when there is a full moon.

(Laughter.)

MR. LIETHEN: Right. And I think it goes right back to what you said several minutes ago, basically referring to the coercion of information out of people as a condition to availing oneself of public services. There is virtually no information that the university obtains that can't be forced out of the students somehow as a condition of registering for the institution -- that would include most of the test information and family background information. Or in the case of sensitive financial information, as a condition of gaining financial aid.

Consequently, except for probably information given to the student counseling center, where we can't force the student into a counseling relationship unless some sort of confidentiality is promised, virtually no information collected and held by the institution can qualify as confidential under

this particular state attorney general's ruling.

The third category of information is one that I have already suggested, the unduly damaging category.

Again we have very little indication here, and turning to other states, I believe that it would be dictum in a California case suggesting that release of one's academic records and grades would fall within this area. I suppose that one could make an argument that financial information of the detail collected by us would be unduly damaging if released But then again you have to look at the supervening governmental interest and, for example, an interest in maintaining the integrity of a state's income tax law and proper payment of taxes under it, or law enforcement questions could certainly be convincingly argued as being a supervening government interest.

The fourth category we could possibly rely on, and there is nothing other than some suggestions in our case law, and that is showing a need to know. I noticed the statute as I outlined it said nothing about this. There is good reason to believe, under the way the statute has been interpreted, tha one can merely walk in off the street and request this information out of mere curiosity. There need not be any showing that I really have some legitimate need to see that information.

It is possible, given again dictum throughout all of the cases recently interpreting the statute, to argue that perhaps the Supreme Court has been suggesting that this is one

exception, but since it has never clearly been faced with the issue, it has not been decided.

So I think at this point one is left with the conclusion that virtually all records held by the University of Wisconsin, except for the initial statutory privilege areas, are potentially open to the public.

We have not been faced with the situation yet where we have had to disgorge large quantities of information. In fa you will notice the policy enacted by the University of Wiscons and the state statute are diametrically opposed to one another. Our policy is there is no release of information until you can show a need to know. The state statute is that there is a presumption there will be showing of information until there is a showing that it ought not to be released.

So potentially there could be in a proper situation a massive release of information on a given student.

My feeling is that ultimately if we conduct ourselves properly in redefining our particular regulation enacted by the university and begin to establish reasonable categories for "need to know," we might ultimately be able to force the issue of "need to know" and perhaps a favorable ruling.

This proceeds from the theory that the real basis for the enactment of these public information statutes has been to give the public one leg up on the performance and activities of their state officers, to be able to obtain information that

they have been derelict in their duties or have not been performing their duty properly; that this particular theory does not really apply in most cases to any kind of information sough on a student. The university in this case is merely a convenie source of information because it happens to collect the inform tion anyway.

This really ends, I think, what my presentation would be. I can answer what questions you have.

DR. GROMMERS: I will entertain two questions and then we will have lunch and Mr. Liethen will be here and you can talk with him during lunch.

Did you have a question, Mr. Gallati?

MR. GALLATI: No.

DR. GROMMERS: Are there other questions?

(No response.)

Thank you very much.

We will have lunch.

(Whereupon, at 1:45 p.m., a luncheon recess was taken until 3:00 p.m.)

AFTERNOON SESSION

DR. GROMMERS: We will have our presentation deferr from this morning by Mr. Carlson.

MR. CARLSON: I find no way to make up all the time I cannot finish by 12:15.

I intend to speak very informally and for a very short period of time on three or four points that I consider absolutely essential that you have available to you, in terms of an IBM insight into this field of not only data security as the outline agenda says, but with respect to privacy.

And I think the proper thing to do at the very outset is to try to persuade you once again, as others have here at this table in front of this committee, that there is a tota difference between the concept of privacy and the concept of data security. These are two different kinds of problem areas. They have very broad and sweeping intersections and interactio But if you try to do what so many people do and say "security and privacy" or "privacy and security" and think you are talki about a single subject, you mislead yourself, and I think to everybody's disadvantage.

From our point of view, the subject of privacy is a legal, social public policy question. It has to do with the ability of an individual, whether that be a person or an institutional entity, an individual in the eyes of the law, to find out what is in a file, whether it be computerized or not, about

said individual, and then to have certain privileges or certain authority vested in him or in an agency to bring about correction of erroneous data in that file.

The subject of data security is a technical question or a technology question and has to do with either the intended or inadvertent changing, erasing, or other kinds of modification or accessing, removing from files any information that is in there. It is a physical act which has to do with data that is already in, and has very little to do with the question of whether an individual, personal or corporate or what have you, is being harmed by inaccurate or incomplete information.

What I would like very much to do, then, is talk for a few minutes on each of those two and then let you, from your point of view on the committee, perhaps pose questions that presumably can illuminate areas of interest or segments of these two subjects that hold your strongest interest.

I intend to try to relate the program that has been announced in the data security field to the outline of your committee activities that was sent to you by David Martin a week or so ago and which is supplemented by some comments that are in the folder this morning, because I do want to make the comments there as direct and as pertinent to what you are here to work on as I possibly can.

There are many ways to talk about a corporate point of view on something as ephemeral and as difficult to resolve

as the concept of privacy. The thing I would like to do, if you don't mind, if this doesn't cause you any difficulty, is read to you what the chairman of the board of the IBM Corporation said last month in Atlantic City on this subject -- and incidentally, if it is of interest to the committee, I've got a copy of the entire speech here which I will simply give to David and he can make copies of it for distribution to any of you who want it.

But let me read you the page or a page and a couple of paragraphs in which Mr. Learson addressed himself to the subject of privacy.

As most of you know, this is not what just one man happens to think at the moment because a talk at that particular occasion of the Spring Joint Computer Conference has gone through many, many cycles of evolution and contribution from all kinds of different corners of the corporation, and the particular reason that I prefer to read it to you is that it, in itself, is the distillation, consensus, and summarization of about as wide a range of points of view as you will find anywhere, but which in this particular case happen to be from within a company called IBM.

Mr. Learson had talked about the fears that the public had with respect to computers, relationship to billing problems and things of that sort, and addressed privacy in these words:

"There is still another kind of apprehension and we

read about it almost every day, the fear that the computer is going to bring on George Orwell's 1984 and put us all at the mercy of the machine. There is a paradox that is developing in the use of computers by large organizations. On the one hai in the management of a society as big and as complex as ours, there is a need for greater and greater quantities of informa- tion, information that will help us control what we are doing and know better where we are going. But on the other hand, the is a fear that computers also make it possible for large organ- izations and for government in particular to know too much about us. So at what point does societal benefit end and dange to individual privacy set in?

"When organizations were limited to conventional files there was a built-in form of protection. Files were cost to keep, difficult to manage, almost impossible to integrate for easy access. But with data-based computer systems and terminal devices this is no longer the case.

"People who have studied the situation tell us there is little evidence to show that much of this is happening, that is, in the integration and interconnection of private and con- fidential data. But it could happen, and that is what has people alarmed. But to blame the computer for what could happe is both irrational and foolish. To say that a lifetime system of surveillance is going to become inevitable simply because the computer can do it is like saying that the computer has a

life of its own, that it is the computer that will make up the rules according to some kind of determinism built into the machine.

"But as we have said time and time again, man is in control. It is society that is going to have to make the choices: How much and what kind of information we shall collect and keep, who shall have access to it, and for what reason. And this can be established only through public policy.

"Fortunately the Congress has shown great awareness and is beginning to take the initiative, along with Bar Associations and scholars, to develop a new body of law appropriate to the requirement on both sides, the need for information on the one side, protection of privacy on the other. As professionals we have the responsibility and the opportunity to engage voluntarily and constructively in this effort. In so doing we shall not only protect our own rights as citizens but we shall also protect the integrity of the technology we represent."

You will see in statements that many people have already made here in the two meetings of this committee essentially all of what is said here. It just happens to be said in this particular way. You will find in the book that is in your folder, Bagley's work, that many of these things are said in the report of his committee.

The net of it, if I can presume to boil it down to a

single sentence, is that a company like IBM does not feel compe tent to work in a direct fashion in the resolution of the privacy question. That is your job and your assignment and in the agencies with whom you are working and to whom your reports and recommendations will be directed, the government policy, public policy arena.

Now, let me talk just for a moment about this data security question.

Here is an area where a company like IBM can in fact not only feel responsible as it does, but also feel competent to initiate and take what we hope is the right kind of action.

It turns out, if you go back and begin to look at what has been going on for the last three or four years, that individuals, both within IBM and outside of IBM and in a few instances organizations, have been pointing the finger with increasing alarm at the possibilities for misuse of computer systems by people who have some form of anti-social or evil intent.

You all hear the anecdotes of the students in the universities who enjoy the game of altering account numbers on the jobs they are running to get some other department to pay for the work if there is a charge-back system. That is fun and games until it begins to cost real money and now there are sanctions of a rather real nature at some of our universiti

You all hear of problems which people think might be going on but still haven't seen any direct evidence of.

But the technical opportunity for smart people to invade a computer system and to alter or extract or erase data within that system is just too easy today in the event there i a serious effort made by people with the wrong intent.

Through the long and arduous process that insights of this sort take when they work their way through an organiza tion or an organization as large as IBM in any event, this cam to a head this past winter and spring, and the top management of IBM decided that despite the fact that there was no outcry from the customer set asking for specific capabilities, that the probability was extremely high that within the next three or four years, or five years at the most, there could be a ver very strong demand, and that somebody had better get cracking with the necessary technical work to develop not just an answe but a set of answers which could be nested into the economic merits of whatever level of security might be desired.

This was a decision, as many such decisions are, arrived at in part by gut feel and by in part looking at the trend of the data available, the commentary, the complaints, if you want to call them that, which are available to a compan like ours from the customer set and from the outside world.

There is no significant set of answers available today, but what has just been announced as of last month is a

local program with an initial price tag of some $40 million placed on it, which hopefully at several test sites will begi to get answers to the kinds of questions that you all have: Security testing and certification, and how the system can control access to the information, installation cost, ease of operation, and the security of the people in the computer room and all those who have privileged access to the computer and the resources of the system.

It was announced that there are going to be four test sites, one inside IBM. It has not yet been announced where they are going to be and in fact I was a little bit shocked to have a person in a meeting I was in the day before yesterday, who works closely witn them, make the comment there were going to be five.

So obviously someone is getting through about this and already applying the standard upgrade to the statement of what is going on.

So I can't tell you at this instant how many center research centers, there are in fact going to be.

DR. BURGESS: Where will the other four be?

MR. CARLSON: There will be at least three outside IBM, and considering the kind of thinking that I have seen, I would not be surprised to find one in a university, one in an industrial company, and one at a non-profit research center. That way you could cover all your bets and it looks like you a

giving the right kind of organizations an opportunity to participate.

Now, the intent is to create a technology, and the experimental results from these research programs will be give to anybody who wants them. The centers that will be funded, including the IBM Internal Center, will be provided the privilege of giving the test data and the experimental results to anybody interested. The IBM Corporation thinks this is so important that the whole industry has to move together on it. I just might add as a caveat that IBM intends to compete very vigorously in any implementation through its own equipment or its own software on that, but that is the normal way of doing business.

But it is sufficiently crucial from the point of vi of our management that we don't want people waiting around and through some filtering process try to observe what the insight: are that are obtained from these results. I think that is perhaps one of the most crucial elements of this program that I can identify to you, that we think this is a national problem. We think it needs to be dealt with on a national level in term: of the availability of the results.

Once again, the results will not in any way provide a single answer, because intelligence agencies and people like that are going to have some severe security requirements as compared to an educational institution and others, although the

discussion this morning began to turn my mind around a bit on the kind of security that might be needed in any environment.

But there obviously will be levels of desire, level of economic justification, and what is most important is that there be responses which can be tailored to whatever it is people want to spend for various degrees of security.

One final comment which has been said here many times -- and I must say it again just so there can be no misunderstanding -- there never will be a complete security syste There is no such thing as perfect security in any kind of environment, and there is no intention and no hope that this prc gram that I am talking about will somehow or other be the perfect solution to this area of activity. It may come at a very high price proximating it; in other words, you will make it sc difficult, so expensive, for the guy that wants to crack the system that he won't try, but given enough funds and enough time any system is reachable if through no other route than the guy who designed the system.

So let me stop there. This is the trend. This is the direction that IBM is taking. It thinks it has the right point of view in terms of separating the privacy issue as a social and public legal issue separate from the technology questions of data security, and it is stepping up with some vigor, I think, to a national responsibility as far as securi questions are concerned.

With that introduction, I will accept questions.

DR. BURGESS: Could I just ask: To what extent does IBM now provide customers with utility programs or other kinds of advice with respect to the security of systems?

Is that largely done by the customers, themselves, or do you have a program that assists customers in that regard?

MR. CARLSON: We have a very limited program and its implementation has largely been in classified areas.

Yes.

MR. DAVEY: Would you illustrate with some specific examples the areas which you might be attacking first, as the area of teleprocessing or the area of share systems. Will you be a little more specific, in other words, as to what types of questions and what types of answers you will be seeking.

MR. CARLSON: The way the question is going to be addressed is that we are going to find out what the differences are inserted by these different environments.

Each of us as individuals has some judgments to offer as to where the most critical problems exist. The people responsible for carrying out the program are challenged with getting into test cases in each of these environments and applying a kind of a set of levels of security to see whether the environment itself introduces special needs for protection.

I could answer your question from a personal judgment that the terminal-based kind of thing probably has some very

special exposures that a local operation wouldn't have. But almost the instant I say that I know people who are going to show me with minimal lines of protective devices on the terminal lines and the CPUs that concern of mine could be made to go away. But that is what is going to be tested, you see. It is to look at all the environments and find out.

MR. DOBBS: I certainly agree with the separation IBM makes between the problems of data security and personal privacy. Did IBM feel that the privacy issue was one that it, as a corporation, either should not or would not address? Is my interpretation right?

MR. CARLSON: In the formal sense that the IBM Corporation believes that it can design products or services to offer a customer set for the solution of, quote, privacy problems, it at this moment sees no way to deal effectively with creating such products and services.

MR. DOBBS: I see, from the product and service poir of view.

Let me then get to the specifics.

Does IBM recognize as part of its corporate respons: bility and its given unique role in terms of the industry and the impact that it has had on our whole culture as a result of the computer phenomenon, does it recognize the responsibility to make a contribution in this area if only through the kind of thing that it sponsors, I believe at Harvard, in which it

has a program of supporting fundamental research which deals with the issues of the relationship of computers and the social implications.

Did you feel at least that kind of obligation?

MR. CARLSON: Is your question: Is there a promulgated policy within IBM with respect to that question?

MR. DOBBS: Yes.

MR. CARLSON: May I take this off the record.

(Discussion off the record.)

MR. DOBBS: A secondary question: On the question of the security efforts, will those efforts be influenced at all by the kind of thing I understand Bob Gallati is either doing or getting ready to do, and that is to very specifically spell out separate requirements for technological aids to security which he will then ask to respond?

MR. GALLATI: We have a study going on now with Stan Rothman.

MR. DOBBS: Will they attempt in terms of the technology development to respond to these particular kinds of today privacy problems?

MR. CARLSON: Most assuredly, most assuredly. And implied in this talk last month is almost an open invitation to people who feel they can define a specific problem today, come marching in with that, with the hope we can get that problem particularly examined within one of these centers, and

have those results not only available as a test vehicle but of course help the guy solve today's problem in the process. You might as well get some productivity out of this effort on an on-going basic, if you can.

Let me amplify, if I may. I also consider within the framework of your question that this committee, if it follows the precepts of No. VI in your outline will also have the opportunity to stipulate a very specific set of requirements which a company like IBM in this experiment or set of experiments must address and must begin to get answers to.

I see the interface between this committee and the IBM data security experiments to be -- I don't think you people want to become concerned with the technical effort itself. What I hope you can do is march right up to us and say, "from a privacy and personal data identifier point of view, here are a set of things that you'd better damn well have at various scales of degree of protection," and that becomes a set of design specifics that the experimenters are going to have to work against. And I would say further that within the framework that you are working on, it would be far more helpful than giving us a set of global statements to tell us about specific instances and tell us what rules you think can be applied for finding out if the design satisfies the requirement, and point us to some on-going data systems where the tests can actually be conducted. I would urge you to become that specific in

trying to interface with what is going on.

MR. GENTILE: Walt, when the representatives of the Rand Corporation were here at a previous meeting, they laid out a very interesting chart and one that I will suggest that the committee adopt and get permission to use in its own report. They pointed out the use in very much the terms that you have used, the privacy and right to privacy on the one hand, and they had data security on the right side of their schematic, but they had a lot more in between. And my point is that there is a lot more in between the legal right to privacy and the who legal issue and the social policy level determination and the data security.

To address only the data security seems to me you are safeguarding against a very small percentage of what the problem really is.

I think that you are protecting against the technical super-sleuth. We are assuming that there is, you know, some group of people that are out to get emanations from these communications lines, but I think that that is such a small fraction of the whole problem that it is an injustice to spend $40 million on data security and not anything on all of these other in-between areas of concern, such as the custodian and policies there. We heard from the federal government's collector, from OMB this morning, who is concerned with the collection. And if we are to take a systems approach to this,

which is part of IBM, I would assume, we should address the whole system and not just one small segment, especially when that segment represents maybe less than 10 per cent of the problem.

And I think that although IBM is right in saying, "Yes, data security is our responsibility," I think it is an incorrect posture to say that, "Whereas data security is our business because it affects our product, our software and our hardware, we'll just let the rest of it go because that is some body else's job description" -- I don't think that is right for a company that has 70 per cent of the share of the market. I think as a public service if nothing else, IBM has the responsibility.

MR. CARLSON: Let me tell you what I think the answe is to that question or that challenge.

Through the concentration on those things which we can do and we think do well, we believe that the process -- at least I believe that the process will work back into these gray zones which you are referring to and will begin to awaken, through descriptive as well as demonstration processes, what has to be done in terms of legal sanctions or other modes of protection which go beyond the questions of the physical security that is represented by the words "data security."

To simply say that working and understanding as we know how what the data security, as I so harshly defined it as

being the physical aspects can do, you then, not just by implication but rather specifically begin to state what some of these other areas are, which no amount of physical hardware-software kind of implementation will take care of because you now are dealing with people behavior, with social values, with matters of that sort.

Now, the answer then is IBM is not stepping away from that responsibility. It is declaring to you that it has chosen a specific path to that arena, which is to get itself grounded first and then move as it finds opportunity to move to help educate those who have the responsibility for solving these other problems.

Now, I hope that is a sound decision, but it is the decision.

Joe.

PROFESSOR WEIZENBAUM: I am not about to issue still another challenge to IBM.

(Laughter.)

MR. CARLSON: Go ahead; everybody tries.

PROFESSOR WEIZENBAUM: But I would like your reaction to the following:

Within the last few months the Advanced Research Projects Agency, which is an agency of the military, has underwritten or sponsored a project based at Livermore, as it happens quite generously funded, in which they will take a number of

very highly-trained people, computer people, whose specific job it will be to crack military systems and even atomic energy systems in order to discover what the weaknesses of the systems might be.

And of course, once those discoveries are made those systems will be tightened up in those areas and the team will then go ahead and try to crack it from some other point of view.

What I would like your reaction to in view of this is that it seems to me what is very likely to happen is that there will be two kinds of security. And I am not now talking about confidentiality and security, just as you are not. There are two kind of security in the United States. One will be military security for computer systems and the other will be commercial security. Now you are working on the commercial aspect.

This particular project has as one of its immediate side effects the training and maintenance of a cadre of people who will in fact be highly competent in cracking even military security systems, and will therefore certainly be competent in cracking commercial security systems.

This seems to me to create a rather dangerous situation.

I would just like your reaction to that.

MR. CARLSON: Two reactions, Joe. The first is that the IBM will not be singularly addressed to commercial.

They will address all of the aspects of the military security problem areas that we feel we can deal with in generic ways tha permit publication of those results. This simply says that there will be soft illumination areas and things like that that we probably just won't get into because even the words involved are still classified.

PROFESSOR WEIZENBAUM: Exactly.

MR. CARLSON: But there are many, many areas of military and intelligence security operations whose technologies and whose concerns will be included in this set of experiments at a generic level without getting to the specifics of what the data are within an intelligence agency or command control system or something like that.

So it will be as broadly based as we can possibly make it.

The second thing is that my reaction to creating a cadre of code crackers, if you will, or file crackers, is an eminently desirable kind of operation. I even tried it in my role as president of ACM, to create a technical activity, a very hush-hush kind of thing, in which a variety of people, many of whom you know who have already developed some expertise in this area -- tried to get them to accept the assignment to get into certain systems, and then confront the designers of those systems with the results.

My own personal view is that through that kind of

formally designated responsibility we will probably clean up some of these things an awful lot faster.

There needs to be an auditor kind of operation out there.

PROFESSOR WEIZENBAUM: My concern is that this particular cadre I am talking about will be a cadre entirely in the service and at the disposal of the military.

MR. CARLSON: You will find in the Learson talk -- and I think you will find when some of the details come out of some of the experiments that precisely the same role will be assigned to groups of people within a commercial area, to work against the systems that IBM will be experimenting with.

DR. GROMMERS: Bob.

MR. GALLATI: I would like to react to this because I am very much concerned about it personally.

I think the action of IBM is commendable, even if perhaps it should have happened sooner, but there is a tendency to think in terms of this type of data security -- I might mention, too, we cannot have privacy without security. We can have security without privacy but not privacy without security. But there is a tendency to think of the rascals that are going to use all kind of tricks and so on to get into the system, and I hope that is not the entire aim of IBM in this security endeavor, because there are many things which involve privacy which are not the cops and robbers type of situation.

There is the problem of shared systems, for example, how we can share a single computer and still lock out systems, prevent leakage within a computer; the whole problem of dedicated systems and how we can control a system even though it may be part of a larger system; the problem of do we need these giant computers as opposed to mini-computers; should we make available to many systems which cannot now afford a computer some kind of computer which will be viable for them and not require the expansion of larger and larger and larger systems?

Of course, there is the whole problem of how we can set out our specs in the best possible manner. As far as I know there are no standard specs available anywhere for security for a particular system.

MR. CARLSON: That is also my understanding.

MR. GALLATI: That is what we need to have. We nee to have it in all kinds of contexts, and I hope this is the direction in which IBM will be moving.

MR. CARLSON: The answer, Bob, goes this way: The needs, as we feel them, are so urgent at the high end, the large installation, the large file kinds of areas, you will fi us necessarily concentrating there first. We are committed, however to discover as soon as possible ways of application of those methodologies, whatever they may turn out to be, to the smaller and smaller units as fast as we can.

But I think what you are going to see is that the

first set of implementations will be specifically directed at the high end of the installation sizes. And that is kind of the nature of things and I think at the moment it is a very practical or pragmatic kind of question.

DR. GROMMERS: Mr. Martin has a question for you here

MR. MARTIN: Walter, if we assume there is no such thing as data security theoretically --

MR. CARLSON: I said no such thing as perfect data security.

MR. MARTIN: If we assume there is no such thing as perfect data security -- I don't know what it adds to add the word "perfect" -- it seems it would be possible to interpret IBM's decision as a kind of placebo which is being designed to allay concerns about whatever enhanced threat to privacy, if any, may be presented by this technology.

I realize it is a very hard kind of question for you to answer. It is like asking you to psychoanalyze your own firm's or the technology's motivation.

To what extent is this possibly, in some kind of implicit way, what IBM is doing? I am not suggesting this would be a conscious decision by IBM, but is this --

MR. CARLSON: The answer to that question, I believe, goes this way, that IBM has received so many specifications for so many different kinds of protection that it is at the moment frustrated because very few, if any, of those requests have

carried with them a dollar sign as to what people are willing to pay.

As we have probed over and over again in specific situations, what we have found out is the guy says, "I really don't know what it is costing me at the moment, or what it is likely to cost me, but you tell me what you can do and give me a price and I will tell you whether I want it or not." And what our program is aimed at doing is getting out of that vicio circle of nobody knowing on a dollar-and-cent basis what they are talking about, to begin to get value parameters that will show you that it is not a placebo, that if you've got a dollar to spend we will give you a baseball bat to hit people over the head with as they come in. If you have a million dollars to spend we will give you something far more sophisticated.

MR. MARTIN: What I am trying to get at is: Unless it is part of your effort to arm your user customer with the ability of trying to weigh the dollar cost of security versus the "how do you measure it?" cost of whatever the consequences are, invasion of privacy or whatever -- what is it serving to know that it will cost him so much to have data security? Because he has got to be able to weigh that against something.

MR. CARLSON: Right.

MR. MARTIN: And apparently you are saying, "That is not our problem and can't be."

MR. CARLSON: No, I am saying it is specifically

IBM's problem to get not only the cost of providing security, but also all the tools, appraisals, estimating techniques that you can lay your hand on to place a value on different levels of security. They must go hand in hand. You've got to know what it is going to cost. You've got to know what kinds of benefits are going to come from it. And these experiments are being specifically designed to carry both evaluation-of-cost and evaluation-of-benefit analysis side by side.

MR. MARTIN: Let me try the question one more way. Will some of your investment go to trying to develop a measure of freedom?

MR. CARLSON: No.

MR. MARTIN: Or any other sort of social indicator that will give you a basis for measuring whatever value, not monetary measure, which is thought could be preserved by such and such a level of security?

MR. CARLSON: The answer is we will not endeavor to provide any systematic and orderly body of knowledge addressed to measurement of freedom or privacy or whatever con-ept of that nature. What it will do is permit you, as the intended user of a system, to insert a figure which you believe is a social value or something of that nature.

The formalism will always permit, and will demand in fact, that those indirect or hidden or social implications be addressed.

DR. BURGESS: May I just follow up on that?

DR. GROMMERS: Yes.

DR. BURGESS: Off the record.

(Discussion off the record.)

DR. GROMMERS: One last question.

MR. TRAINOR: I think I sense a kind of dissatisfaction with the position that you mention. I noted this dissatisfaction when you used the words "economic justification of what people want to spend for security." I think we are growing out of welfare areas. It seems unlikely to me if you put a price tag on security and you say, "pay that large bill in the welfare area," there will be a kind of reluctance to do that. It seems to me there is a kind of abdication of responsibility here which is akin to the automobile manufacturers where they say, "Look, here are optional shift devices. Put them in there if you can pay for it."

I see it more as a kind of pollution of information that the large computer companies have contributed to, and I ask if you could give us suggestions of such devices that the federal government could insist computer manufacturers meet, such as emissions in the automobile industry.

Is there some way we can approach it more positively? That is the way I think David was trying to get at it. And could we insist from the federal government posture that certain fail-safe devices be present in computer equipment purchased

for personal data reasons?

MR. CARLSON: I think the answer to that question is I wouldn't be sitting here at this table if I didn't think the answer to that question was yes.

Now, how the mechanics develop for creating those specifications are far more a concern of the federal government and a committee like this at this moment in time than it is a computer manufacturer.

MR. TRAINOR: I can see that it would be. You know, I am just suggesting that corporate responsibility might suggest that you could come up with some techniques that we could include and require throughout the industry. I would wonder if your $40 million would lead toward that kind of activity. Do you think it would?

MR. CARLSON: Well, at the risk of tightening your sense of dissatisfaction, I think I would have to say probably not, as we see the current plan of attack. But I just remind you once again that I have challenged this committee -- and I think it is a highly significant responsibility of this committee -- to begin to write those specifications so they can be reacted to.

DR. GROMMERS: I think we had better thank Mr. Carlsc and address personal remarks to him.

MR. DOBBS: I just want to make a comment, not a question.

DR. GROMMERS: If it is very brief, because we have so much else to do.

MR. DOBBS: It is. I hope it is brief.

John and Joe and Walt have indirectly, in different ways, talked about the amount of resources being devoted to the issue of privacy technology. Okay? It seems to me appropriate that the committee consider among the kinds of things that it might recommend some additional resources from some place, either the government or otherwise, be devoted to the issues of privacy which seem to be not getting as much attention.

That was the only thing.

DR.GROMMERS: Thank you very much.

MR. CARLSON: Let me just say I have an errand downtown I must carry out but I will be back for dinner and discussion this evening as well as Saturday morning, so I am available.

DR. GROMMERS: We are running nicely behind time by about a half-day by now, and I would like to call your attentic to the fact that after dinner we have scheduled informal working groups which we are counting on occurring, and that was why we had the presentations in the afternoon. But if that should not work out we would have to go back to the other forma and have presentations in the evening so that work could occur in the afternoon.

Arthur will present to you some of the considerations of the thematic outline.

PROFESSOR MILLER: I don't really know what that means, Frances, and in view of my well-known inhibitions on public speaking, this will be rather brief.

What you have in front of you, particularly the six-page June 7 document marked "Draft - Thematic Outline of Report of Secretary's Advisory Committee on Automated Personal Data System" is a very, very derivative document, literally written by David sort of under the direction of or as an ex post facto recordation of a 9:30 a.m. to midnight meeting in Cambridge attended by Madam Chairman, Mr. Weizenbaum, Mr. Allen, and myself. You might consider that to be the Cambridge or Academic Mafia, but basically those are the people who babbled about the problem, basically in terms of what the entire committee has been talking about over its past two meetings. And the produc is really not intended to be anything more than what its capti says.

First, it is a draft.

Second, it is a thematic outline of the report that in theory the group will present to the Secretary. It is not designed to be a work allocation device. It is not designed t be a comprehensive statement of what it is we will do between now and December. It isn't designed as something taking preliminary positions on anything.

It is sort of a slice at the problem, a way of looking at the field as this group has defined the field over four days of work plus the one day of the rump session.

Now, it is perfectly clear that there are many ways to slice this field and this pie, and there are many ways to state the themes and organize the themes, sequence the themes. This is just one of them which we thought was a capturing of what has gone before.

I think the outline is relatively self-explanatory. You could break it into three major subsections. For example, I, II, and II on page 1 really represent a comprehensive statement of the state of the art, what is happening, definitions, a the usual what lawyers call boiler-plate, thrown in, defining the elephant, describing the elephant, et cetera, et cetera.

Parts IV and V sort of involve social cost and social utility of the systems, broadly speaking. This is the area in which there are the pros and the cons. This is the area in which we have to find out what are the costs, what are the benefits. In a sense IV and V represent what we've got to find out before we can rationally make recommendations or reach conclusions.

The third major subsection, as I view this, is VI and VII -- the material from page 3 to 6.

This is sort of "Well, here is the state of the art and here is the best reasoned cost-benefit analysis of the

problems and pluses of the systems. This is what we think we need, Mr. Secretary, or this is what we think you should think about implementing, procedures for maximizing the utility of the systems as we see them, and minimizing the risks of the system."

And as you go through the material on pages 3 through 6, you see that they break down more or less in terms of legal needs, procedural and administrative needs, the rights of the individual, et cetera, et cetera.

Now, virtually all of the individualized themes we have discussed as a committee during our meetings are in a sense captured in this six-page document. They may not be spelled out with a nice, neat lable, but they are there. They are, in a sense, distributed through the document. And if you look at the material, you will find the likely areas in which those individual themes will be discussed.

Thus, for example, late in the day or early in the evening of that session in Cambridge, we had on the board a structure that had: "Item 1, record transfer.

"Item 2, record keeping.

"Item 3, values and social issues.

"Item 4, system safety.

"Item 5, civil liberties and civil rights.

"Item 6, identifiers.

"Item 7, scale of size; centralization, decentralization.

"Item 8, the need for the systems.

"Item 9, the legal structure in back of the systems.

And all of those individual themes David simply has distributed through the document he mailed out on the 7th of June. So there was no attempt, absolutely no attempt, in the composition of this document to eliminate any one of those individual themes from the discussion and compass of the report.

That is really about all I have got to say.

DR. GROMMERS: Arthur is going to answer some questiosn now that you may have about this, and if we need any further illumination after that, I will tell you something about what product we expect out of the working sessions.

PROFESSOR MILLER: I should note that the intent of the group is to keep this open-ended. Every one of the divisions in V, VI, for example, has a final category "Other?" and that is there with full intent that the "Other" category be embellished and articulated.

MISS COX: Arthur, I actually spent the time to see what overlap there was, and I would say that between 80 and 90 per cent of this is a direct overlap with issues as listed by groups and individuals outlined as given. There are just a few items that I found a little difficult -- they are sort of hidden but they can be, by your freedom of operation here, inserted without any question.

Nowhere do you use the word "identifier." And that

is not an intentional omission. It does come into the other items, because in order to do this you have to have identifiers

PROFESSOR MILLER: That is right. And you know, it may well be that as we dig in we will decide that "Identifier" takes on an independent status. If there are 15 per cent of th original issues missing, I apologize. They should not be. They are all intended to be here.

MISS COX: The other 85 was where you could easily see it. There are a few here, if you looked.

DR. GROMMERS: These were actually arrived at by starting from those papers.

PROFESSOR MILLER: Yes.

DR. BURGESS: Could I just ask a question. One list is as good as another and I think this is a good list. As you said, yourself, it is a list of themes or issues and a committee doesn't -- you know, task forces don't work on themes they work on problems. And I think what bothers me the most is really to make positive statements out of all your prefatory statements in the beginning that this is not an allocation of work, it is not an agenda for action -- I think the problem is how do we get to that point.

And I don't see that this moves us beyond where we have been, except in a rather elegant and I think very clear way to state what we have thought about and considered.

And it seems to me the issue remains one of defining

what the problem is in functional terms.

You talked about the system a lot in discussing this but I think if we have learned anything we have learned there isn't a system. You know, there are lots of systems that we partia-ly understand and some of which we have only recently learned about. But I would think that rather quickly we have to move to some problem statements and away from thematic or issue statements.

PROFESSOR MILLER: Agreed. This tells us where we are right now. This might be viewed as sort of a sectional outline of a 200-page written document to be prepared by December 1. And in the great tradition of buck-passing, in response to your point, I will simply say that if elected, Madam Chairma has a plan of action.

That is obviously where we are going as soon as --

DR. GROMMERS: This is why I invited you all here today.

(Laughter.)

It is to do exactly what Phil has defined. That is what I see as the main work of the committee in these couple of days, and that is the purpose for dividing up into the working groups.

What I've got on the blackboard, if you would like to have a look at it, is how I have tried to get the problem that the committee has to solve by probably the 1st of Decembe

which is to produce a report. And to work back from that, how do we get a report at all? And second, how do we get a report that talks to what we wish it to talk to.

And the first problem -- I will describe this afterwards but the first problem is: What else are we supposed to talk about in this report? What else are we supposed to advise the Secretary on?

I have talked to this at great length with David and I believe his feeling is that we are to define that as a committee. We are to look at what is the situation, the state of the art of information systems in personal data systems as broadly or as narrowly defined as we wish to do so, to make such a distinction, to say what it is we are going to work out and then to evaluate that in terms of any criteria we wish to choose to evaluate it with, and then make some recommendations as to how to change what the situation is as we have found it to be.

Now, in order to do that, there is a lot of information that some of us may need. There is some information that others of us may need.

So what I would like you all to do today for the rest of this afternoon and this evening and for tomorrow afternoon and tomorrow evening -- we will divide up into groups and I will tell you the constituency of the groups as we have separated you out.

There are 16 of us here today to work, and the purpc of these groups is to arrive at what Phil just spoke about arri ing at, a clear statement of which problems we wanted as a committee to address ourselves to in substantive terms, that is, cutting out -- we can't discuss the universe. We cannot solve all the problems of automated personal data systems between now and December 1. Which ones would we want to address ourselves to in order to make the most impact from the time and effort and dollars that we have available now?

And in order to do that -- on this side (indicating) is the task of the work groups. Each of the groups will do the same things, but I suspect we will get three different set of outputs, which we then on Saturday will put together and decide what will be the rest of the work of the committee, what other things we need to do.

I will look at the left side first and then talk about the right side.

We want to define and describe the situation. That is equivalent to the system. We want to cut the data systems that exist in the United States or internationally today, those we are going to address in the report. If it is going to be all, then it is going to be all.

The system is including at least the citizens, the planners of the data systems, and the systems themselves.

And we want to, in our report, evaluate the situatio

that is, the system, in terms of some criteria. Examples of some criteria might be in terms of the discussion today wheth or not the respondent is represented or not, whether or not t principle of due process is applied or not, whether or not th is any control on file management. If files are supposed to be destroyed, is there any way of knowing whether they have been destroyed or not. I am just suggesting these and you ar not obligated in any way to consider these.

This is what I mean by criteria.

Now, in order to do 1 and 2, we need to list for t committee as a working group all the specific data collection activities that need to occur before we do this. And we need to list this even if we can't get it in six months. Because if a large body of data is obviously missing, one of our reco mendations could be to study this aspect of the situation or spend some money to find out about this area.

So this is to be an enumeration but with some indi cation of the probability that it will be in fact available b December 1, and the cost of collecting it, both in terms of people and time.

Now, examples of lists like that might be -- and I will provide you -- you can take notes if you like but I will provide you by tomorrow with a typewritten list here. This i just for your guidance. You don't need to stick to this at a The tasks I would like to have but not the description here.

For example, the lists you might want to know. You might want, for example, a report of the requirements, the review and the control procedures in confidentiality of a certain kind of information system, for example the migrant workers' children.

You might want to know which agency has control or which process has control over permission for the use of the Social Security number.

It was brought out today that OMB did not have it. It might be useful to try to find out who does, if anyone.

We might want to try to get a list of the uses of the Social Security number outside HEW, as is now contemplated or as is now going on. These are simply examples of data you might like to have in order to fully describe this situation.

As a result of how you define the system and how you have evaluated it, you will make some recommendations or we will make some recommendations here. And that recommendatio might be further study; it might be action or inaction.

We might, for example, advise the Secretary not to change his policy, not to make any statement at all about the use of the identifier.

So the three workshop groups will spend their time, first of all, talking about the outline and what they want to include in the outline, what they would like to add to the outline. And I would really like to have a written statement

by Friday evening, and we will get it typed up by Saturday mor ing as to what you want to address, how much of the system you want to cover in the report, and a list of all the specific data collecting activities you would need to have occur to pro duce a description or produce a choice of criteria. And I wou like you to choose a set of criteria.

Now, the idea behind this all is even what you come up with is by no means binding on the group. After we discuss this in joint session we may modify it again and may modify it several times before we produce the final report. But this is a modus of working to see that we get an output, and specif ically so that when dollars and consultants and staff are avai able to us right now, we can get to work on collecting all of this information that we really need.

Now, the group -- there are 16 of us here and we ha divided us into three groups each of which has somebody who knows something about systems technology as a method of arrivi at an output, given a set of inputs. And there is someone knowledgeable about the law in each of the three groups. And general those were the main reasons for dividing up the people as they were divided up.

I have asked John Gentile and Phil Burgess, and I would like to ask Florence Gaynor, now, if she would be with th three people who will present the results of these group dis- cussions.

The first group consists of John Gentile, Joe Wiesenbaum, Stanley Aronoff, Gerald Davey, Layman Allen, and Ruth Silver.

The second group consists of Florence Gaynor, Arthur Miller, Pat Cross, Bob Gallati, and Jane Noreen.

And the third group consists of Phil Burgess -- and obviously the rest of you, but let me say them. Juan Anglero, Guy Dobbs, Gertrude Cox and Jay DeWeese.

Have I omitted anybody in naming them?

Would you like them on the board?

MISS COX: Just go through them again.

DR. GROMMERS: We can just put them on the board and then everyone can see it.

Are there any questions anybody would like to ask now that you have heard all of this, or any other modifications anybody would like to make about this way of operating?

Guy.

MR. DOBBS: It seems to me at one time we asked that information at least on all those systems in HEW be collected. Is that right, David?

MR. MARTIN: Yes.

MR. DOBBS: I am wondering how that fact stands.

DR. GROMMERS: That is in process, and part of what you might be talking about today is whether you really need information on all of them and how much information you need on

all of them in order to produce a report by December.

MR. DOBBS: That is a function of how far along, it seems to me, people are. If that information collection is at this stage well along, that would influence at least my judgme in terms of what I felt I should do. If it is not farther along, then I don't --

MR. GROMMERS: Dave will tell you what the status c that is. In any event, list this as one of your requirements.

MR. MARTIN: I think I said at an earlier meeting that in response to a questionnaire which was sent by the Sena Subcommittee on Constitutional Rights, chaired by Senator Ervi to HEW and all or many other agencies and departments of the Executive Branch, HEW has for sometime been engaged in the process of collecting information on the basis of which to answer the questions asked by the Senate Subcommittee.

That task is almost completed. The information whi will be included in the answers to the questionnaire submitted by the Subcommittee is much less information than has been indicated to be of interest to this group.

The raw material from which the extraction was made for purposes of the Ervin Committee questionnaire is in the possession of your staff. And with some specification by the committee of what, from that raw material -- which may not exhaust your curiosity but would go a long way toward it, I suspect -- provides a mine from which a read-out on HEW

systems can be provided to you, I doubt if the read-out we are giving the Ervin Subcommittee is exactly what you want, and I have been loath to guess at what you might want from your raw material to produce something to no specification. And I hope that out of this meeting will come at least a clear-enough set of specifications so we can mine that material which we ha to your order. What we have in toto is much more than you could absorb, I think, and is much more than you would be interested in. And rather than our making a judgment as to what to provide you, it seemed relevant to wait until you defined it.

MISS COX: Madam Chairman, in all courtesy, there is a disagreement, slight disagreement here, on order.

It seems to me that if three groups work on criteria and all these recommendations before we decide what criteria, that this is doing an awful lot of unnecessary work.

DR. GROMMERS: Yes. That is not the point. We are not supposed to work on recommendations at all.

MISS COX: Today?

DR. GROMMERS: Today.

MISS COX: Okay.

DR. GROMMERS: What you are supposed to do today is select the criteria that you wish to use to evaluate the situation as you see it.

MISS COX: But once you get groups working on these

criteria, then there is a key group thinking just about existing literature and what else I need for this criteria. And I don't think we are prepared to do that. You are saying these further studies will come after the groups -- I don't --

DR. GROMMERS: Well, you know right away -- at lea I feel that there is really a group consensus that you wish t evaluate systems according to whether or not confidentiality is preserved or not.

MISS COX: Yes, that is one that we have decided.

DR. BURGESS: The task of the work groups are on t right-hand side.

MISS COX: She says "choose a set of criteria with which to evaluate the situation." Now I have it clear.

DR. GROMMERS: You are going to work through this several times. You are going to iterate. You are going to s out with a set of criteria. Then you will look at what syste are you going to look at to evaluate and you say, "I forgot those criteria. I will include it on my list."

MISS COX: You are turning it around.

DR. GROMMERS: This is so we can get started and from there go on.

MISS COX: And again you may find that you need some further study on certain situations after we decide on ou criteria that we are going to settle down on and so something about.

DR. GROMMERS: Yes, and we will continue to expand the criteria, the data we would like to collect, and the situation -- the part of the system we want to cover, until we run out of time to do so, I presume.

MISS COX: This can go on and on.

DR. GROMMERS: Yes. We have to have a report by a certain date.

MR. GENTILE: Madam Chairman, are there special rooms we can work in?

DR. GROMMERS: Yes, 113, 115, and the Linden Room. The Linden Room is right down by the coffee shop.

(Discussion off the record.)

DR. GROMMERS: And we have these rooms available.

DR. BURGESS: Staff often feels they intrude and I, for one, like to see staff intrude freely and openly. I think the power of a group like this is really the quality of the staff and especially as we break up into smaller groups the way in which information and experience gets passed among group by staff. And I would hope there would be no constraints on staff participation in discussions.

DR. GROMMERS: No, and Tom, we will have a list for you. We have a number of new staff who have joined us who I am sure you will find will be very, very helpful.

The first meeting, the rest of the afternoon session if you will meet without staff, the purpose is to really get

to know each other on a committee level. Some staff will be here this evening. Find them at dinner and feel free to invit them to come and join you. If they would like to be at each of the three different groups, they can move around among the three groups.

We will reconvene tomorrow morning at nine o'clock.

I would like by ten o'clock on Friday evening three pages from each of the committees and we will type them up and reproduce them.

And what wants to be written down there is perhaps a section of the outline, marked up as to what you wish to include. It can be the whole outline and it is a question how we get that amount of material covered.

(Discussion off the record.)

Let me just say again what I would like to get written, because that way we will communicate among the three groups at the main meeting.

I would like to have a written indication of how muc you want to address in the report.

I want a written indication of specific data-collecting activities you would like to see occur, and a writte list of the criteria you are going to use to evaluate the system and why you want those criteria.

Then when we meet on Saturday we are going to talk about the identifier in some detail on Saturday morning and Dav

would like a decision of the committee on Saturday as to what other data we want in order to arrive at a recommendation abou the identifier. We do need to address the identifier question in this report.

(Discussion off the record.)

DR. BURGESS: Could I just ask one other question. In a very significant way this outline does focus into a way of thinking about this. That is, the problem is defined in te of a single or a set of automated personal data systems that exist, and there are other ways that might be cut. You know, somebody might say the problem might be to consider a trend in society that will call for a federalized system of welfare payments, and the matrix of problems gets cut a very different way that way. Or you may define it as trends with respect to the increasing use by the private and public sector both of the Social Security number.

Would it be disruptive of any of us in these groups to consider alternative ways to take a cut?

DR. GROMMERS: No, this is just what we hope you wi do, just what we hope you will do. It had to include something about an information system, something about the person who is in the system, and something about the person who has designed the system. But which way you cut that, I think, would be ver significant in terms of what our report looks like.

This is just why I hope we will get three different

points of view from the three different groups, and I will hop that staff will be cautious about bringing the ideas and working ways of one group into another group. I would like to have really separate attempts at this.

There is coffee here.

(Whereupon, at 4:55 p.m., the meeting was adjourned to reconvene at 9:00 a.m., Friday, June 16, 1972.)