

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

THIRD MEETING

OF THE

SECRETARY'S ADVISORY COMMITTEE

ON

AUTOMATED PERSONAL DATA SYSTEMS

Linden Hill Hotel
Bethesda, Maryland

Friday, June 16, 1972

The meeting was reconvened at 9:25 a.m., Dr. Frances
Grommers, Chairman, presiding.

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P R O C E E D I N G S

DR. GROMMERS: Good morning.

I think we are all ready to get down to business. I think all of you who are going to join us are here. I don't see Arthur but I suppose he will be here.

I understand one of our subcommittees met until midnight last night, and that seems to indicate that at least one set of you is making substantial progress -- (laughter) -- I am an optimist about what that means.

And the way the morning is going to go, we will start with these three presentations, and if it goes well and we have some time, then I would like to have Lois Elliott speak before lunch so you can have all afternoon to work together.

If the discussion goes long, then we will have Lois presenting in the afternoon.

So without further ado, John Gentile will present to you some of his thoughts about these problems.

MR. GENTILE: I was just asked to make some observations, and I was asked by Gertrude a moment ago if this was a committee report, and I don't have an answer for that because I don't know which of my observations developed in committee and which were thoughts I had before we came together.

With regard to the outline that we have submitted by the Harvard group, I have some comments on that.

DR. GROMMERS: There are those who might object to

1 us being called the Harvard group.

2 MR. GENTILE: The group who met at Harvard.

3 (Laughter.)

4 Of course the gut issue that faces me in looking at
5 that outline is: How much better off will we be after we have
6 a report that covers those things in the outline and is sub-
7 mitted and published as a document?

8 And this led me right into a review of the Secretary's
9 charter that established this group, and I was initially
10 shocked to realize that according to the charter we have a re-
11 port due on August 1, a preliminary report.

12 Is that out?

13 MR. MARTIN: It is purely a ministerial kind of
14 report of activities. It is not a substantive report.

15 MR. GENTILE: Fine.

16 I thought the next step for me was to evaluate the
17 objectives of the report for this whole Secretary's Advisory
18 Committee. And I concluded there could only be three, or at
19 least three that came to mind.

20 One is -- and I am being very candid about this --
21 that the purpose of the Advisory Committee would be to take
22 some Congressional heat off the Secretary.

23 Another is that it could serve the purpose of making
24 the public more aware of the threat to privacy.

25 And the third is that it could result or have as its

1 objective some positive steps that the Secretary could take
2 through specific policy implementation.

3 And as I looked at these three, I thought, "Well,
4 this kind of relates to the various roles that a Secretary of
5 HEW would have.

6 To implement specific policy, he is functioning in
7 the role of the manager of the largest civilian agency in the
8 federal government. To view his action as the objective of
9 making the public more aware of the privacy problem, he is
10 functioning in a different system, the system of political
11 rationality. And if we view the objective of taking the Con-
12 gressional heat off the Secretary, we are viewing him in his
13 role as a bureaucrat.

14 And I don't think these are bad terms, any one of
15 them. I think to be practical about it, any public official
16 has to be, at varying times, all of those things.

17 So I came to the conclusion that if we were to have
18 nothing more than the Secretary's Advisory Committee which re-
19 sulted in some kind of a published report, and no action was
20 taken from there on, it would have served for a short period
21 only one of these objectives, and that is, to take the Congres-
22 sional heat off the Secretary to do something.

23 But I emphasize that this would only be a very short-
24 term solution to that problem.

25 I therefore thought that it is the proper role of

1 this Advisory Committee to recommend to the Secretary that he
2 take very specific policy steps, policy implementations, con-
3 cerning the Department of HEW and all of the automated systems
4 that are affected by the policy of HEW, and that in doing so
5 he is functioning as a manager.

6 So personally I view the objective of this committee
7 as functioning in a staff position to the Secretary in his role
8 as the manager of HEW, as opposed to a political leader or a
9 bureaucrat.

10 I also recognize that depending upon the objective
11 that was selected, we could have different outputs related to
12 those objectives and related to the particular facet of the
13 Secretary's job description that we were addressing.

14 For example, if we were interested in making the
15 public more aware of the privacy problem as we had discussed
16 at previous meetings, we might want to conduct public hearings,
17 produce a TV show, write a play or a book.

18 If we wanted to just take a very ineffective position
19 of taking the Congressional heat off the Secretary on a very
20 temporary basis, we needn't do any more than just meet and
21 thrash about and have discussions and make everybody aware
22 that we are meeting and talking about these things.

23 But the output, as I see it, for this group is to
24 come up with the very specific policies that the Secretary
25 should be addressing. And these could include a set of criteria

1 that would outline minimum safeguards from the technologist's
2 point of view for any kind of a system, the use or encouragement
3 or discouragement of the Social Security Account Number, the
4 whole issue of interlinking files, which is the broader issue
5 of the common identifier, the alternatives that exist to a
6 common identifier if we assume that interlinking of files is a
7 valid thing to do, perhaps vendor specifications that should be
8 placed on manufacturers, and then the whole legal item, code of
9 ethics, legal redress, et cetera.

10 And I think one of the outputs of this group could
11 be to lay on the responsibilities to the various segments of
12 our society. As Drucker says in his "Age of Discontinuity,"
13 we have essentially a society of organizations, and we cannot
14 do all things.

15 We heard from IBM yesterday where Walt Carlson says
16 that he sees his responsibilities in the area of data security,
17 which is between the data bank and the intruder. I think that
18 is a very valid activity for the manufacturer of a computer
19 company to address. But the point I tried to make yesterday
20 was: Who is addressing that other area of confidentiality which
21 is largely administrative and should be, I think, by government
22 and management people in industry -- who is spending money on
23 investigating the administrative procedures and the internal
24 policies of organizations where 85 per cent of all infractions
25 of privacy occur?

1 And I conclude that there aren't a lot of people.
2 And I also concluded that either IBM is making an over-kill on
3 the data security, which I personally do not believe -- I think
4 it would cost that much or probably more -- or this little team
5 is so cost-effective and so capable that we can do 85 per cent
6 of the work two days a week while IBM is doing 15 per cent of
7 the work with \$40 million.

8 So I think there is an unfair allocation of resource
9 here and I think perhaps one of the products we could have is
10 making people aware, people in responsible positions, that it
11 is going to take some resources and some money and some very
12 positive action.

13 So I have outlined for you the three objectives, as
14 I see it, of this committee, the outputs which would relate to
15 those objectives, and depending upon which objective we take,
16 how we see the Secretary, in which of his many roles.

17 Another way of categorizing the things that we do
18 and say here is to think of it as contributions by various dis-
19 ciplines. For example, the legal people in our group can do
20 certain things that the computer technologist could not do.
21 And yet there is another group, the administrative or executive
22 types, who are in operations, who I don't think we have heard
23 enough from. These people also have a very significant con-
24 tribution to make. And, as a matter of fact, I see that those
25 administrative or executive people in charge of operations have

1 really 85 per cent of the concern. The computer technologists
2 and the legal -- if you would think of the little sketch, the
3 schematic that the Rand Corporation gave us, which I thought
4 was just excellent -- they just kind of outlined the subject or
5 the person, and then there is this wiggly line and the right
6 to privacy, and then comes the collector, the custodian, and
7 the data bank, and between the data bank and the intruder is
8 another wiggly line called data security, and that is where we
9 get the safeguard.

10 And somewhere between the right to privacy, which it
11 seems to me is a legal matter, and data security, which it
12 seems to me is a technical matter, there is this whole big area
13 that Rand called confidentiality, and it seems to me that that
14 is the executive group of operations people that must address
15 that.

16 And I see the Secretary in that role as influencing
17 that, as well as the legal matters and the more technical data
18 security.

19 As another category for discussion, I thought we might
20 look into a paper that was written by Willis Ware, in which he
21 addresses the question "protections against what and by whom."

22 When we are talking about policies to give us a
23 greater protection of privacy, we are talking about many things.
24 One might be: Are we talking about errors or incompleteness
25 in files? Second, are we talking about external or internal

1 intrusions? Are we talking about the organized, well-funded
2 super-sleuth, the technical guy who is listening in for emana-
3 tions? Are we talking about just real shoddy administrative
4 procedure?

5 And I think that is the one area we keep neglecting.

6 I then came to yet another categorization which I
7 call the specific issues, and then I kind of relate back into
8 our little committee, our subcommittee. And under "specific
9 issues" I think this is really going to be the meat of the
10 product of this group, in my opinion. I think we have to be
11 specific to the extent where we say yes or no we encourage the
12 extension of the use of the Social Security Account Number;
13 yes or no we think its use should be prohibited by law; yes or
14 no we think that there should be an independent regulatory
15 agency in the federal government to address privacy, security,
16 confidentiality matters; yes or no we want to interlink files
17 or whether we have to or whether there is no need for it.

18 And then I think we should come up with one page --
19 and this is what I mentioned as part of the product of our
20 committee discussion. Some members on our committee -- and I
21 agree with that group -- feel that our report should be one
22 page. This might be a little bit startling, because we have
23 been talking about outlines that are six pages. How do you
24 come up with a one-page report when you have a six-page outline?

25 But we feel that to have any impact, our findings

1 should be so reduced that they could fit on one page, and that
2 they should be very specific advice on the implementation of
3 policy to the Secretary.

4 So, as the next step of our committee we will meet
5 for one hour -- well, we will individually go off, go privately
6 off into a room and each of us will develop a one-page final
7 report, and the final report will list the very specific recom-
8 mendations. Then we hope to get together, and by the end of
9 the day today we hope to give you a final report, Madam Chairman.

10 And the rest of the effort will be sorting out -- and
11 I don't think it would even necessarily take any new writing.
12 I don't think we are going to add to the body of knowledge that
13 exists, but maybe we are going to sort it out.

14 Somebody mentioned "Hey, this looks like Section 4,"
15 and I suggested, "Why don't you write 'Section 4' of the report
16 on that?"

17 I think there has been so much done and so much fund-
18 ing in this area it would not be a proper allocation of the re-
19 sources of the committee to re-do this or re-format it. I don't
20 believe we are going to come up with anything new in the way of
21 discussions of global issues and values and judgments when you
22 consider that there are so many activities in this area going
23 on now which are very well funded. I felt that our group's
24 approach is the proper one, that we should come up with some very
25 specific policy recommendations for the Secretary. And this is

1 what we plan to do this evening.

2 DR. GROMMERS: Thank you very much.

3 The chairman will be very happy to receive a complete
4 report by this afternoon.

5 Are there any questions specifically for John to
6 his particular point that he has been making as part of this
7 presentation, that the proper allocation of our resources is to
8 be a direct and practical suggestion of implementation of policy
9 to the Secretary?

10 SENATOR ARONOFF: Just a comment on the side. When
11 Lois Elliott heard what was going on she nearly panicked because
12 she thought we were going to mail these letters to the Secretary
13 without review by the committee and I want to assure her that
14 you will have a chance to say no.

15 PROFESSOR WEIZENBAUM: Another comment along the
16 same lines. It is not the intention, I believe, to have a one-
17 page report which we may in fact come to agree on -- I doubt it,
18 but we might -- tomorrow and then we are done. I think the
19 intent is to have a one-page report indeed, but supported by
20 a small library of documentary back-up.

21 So it is not that we are done after we have put in
22 that one page.

23 MR. GENTILE: Yes; right. The purpose of the one-
24 page report would be to put it in language that an executive or
25 a lay person could understand.

1 I propose that if we were to get into a complete docu-
2 mentation of a specific aspect of the problem, whether it be a
3 legal aspect or a computer technology aspect, that we could
4 not expect the Secretary to evaluate that and say "Well, this is
5 a sound technical evaluation and analysis," or "This is the
6 proper legal thing to do."

7 I recognize the Secretary has staff but I also recog-
8 nize that he called this group in to benefit from the expertise
9 that it can contribute.

10 DR. GROMMERS: Guy.

11 MR. DOBBS: Just an observation on John's introduct-
12 ory comments which sort of dealt with alternative objectives in
13 the three areas, I guess, which I would characterize as polit-
14 ical objectives and public awareness and/or policy.

15 You know, it is in fact possible to frame policy in
16 such a way that it is a political instrument and that it also
17 serves the purpose of making the public aware.

18 MR. GENTILE: Yes.

19 MR. DOBBS: And it seems to me that recognizing that
20 those things are not mutually exclusive, one could address the
21 objective as you phrased it, of being fairly specific about pro-
22 viding Mr. Richardson with policy, but doing it in such a way
23 that in fact you also achieve the objectives of public awareness
24 and providing a fairly potent political weapon if, in fact,
25 that is a reasonable thing to do.

1 MR. GENTILE: Yes. The attitudes expressed in the
2 small-group discussion were that the political benefit that
3 could be derived from this group's action if it did nothing more
4 than just thrash about would be very short-lived, you know;
5 that people could say, "Okay, well they are doing something and
6 they have all these people meeting in the same room and something
7 is bound to come out of it."

8 Then, if nothing comes out of it, it would be no
9 political benefit.

10 Our approach is by taking some very sound management
11 posture, that although our primary objective is not to get good
12 political vibrations, that that couldn't help but happen. You
13 know, the Secretary is doing a job as a sound manager and this
14 has to be beneficial politically as well as managerially.

15 MR. DOBBS: It is not entirely clear to me that in
16 fact sound management practice is recognized as incisively by
17 the public, simply from the practice itself, as you might put it.
18 I think you have to in fact ~~very~~ carefully delivery and package
19 your message if you have the political and public awareness
20 objectives in mind. Because that one page is a much different
21 page in terms of the way you write it.

22 MR. GENTILE: Right, and I don't see this group as
23 a group deciding what is for public release or publicity, but
24 that we should address the managerial aspects of it -- and I am
25 sure there are appropriate people in the Department and in the

1 government who could package it properly for sale to the people
2 out there.

3 MR. DOBBS: All right. I just want to be sure I
4 understand where you are at. What you are saying is that from
5 your point of view, then, you would like to deliberately exclude
6 this group's efforts during the life of the group from the public
7 awareness, political image kind of role; let that be a decision
8 of the Secretary based on what we provide him.

9 MR. GENTILE: Yes. This is a personal opinion of
10 mine and not necessarily that of the group. And I think the
11 reason for that is I believe some of the things that are said
12 around this table could be very frightening to a person who is
13 not in on all of the conversations and doesn't necessarily real-
14 ize that it is essentially a brainstorming session. It might
15 be taken out of context and just kind of blown up out of pro-
16 portion.

17 DR. GROMMERS: Courtney.

18 MR. JUSTICE: I am afraid I didn't share John's view
19 on this -- to put up straw men and knock them down and take
20 the heat off the Secretary. It seems to me we can say this is
21 a legitimate response to a legitimate legislative concern over
22 a tough problem and we can satisfy that need by what we are doing

23 And clearly we are not on the publicity side going to
24 stage a TV show or write a play or write a book, but there is
25 enormous value from the committee standpoint to bringing to the

1 public's attention through whatever means -- and I would suggest
2 the committee consider public hearings to bring to the public's
3 attention -- that the federal government is working on this. A
4 year ago I worked with a committee on noise. We went around the
5 country and held hearings. You would be amazed at the output
6 from little old ladies in the park to other concerned people.
7 It got great press coverage. It gave people a chance to get
8 things off their chest, which is valuable. It did bring to the
9 public eye outside of Washington, D.C. the fact that the federal
10 government was interested in the noise problem.

11 And thirdly, it furnished some valuable information.

12 From a publicity standpoint I think it would be use-
13 ful to consider this alternative and not to limit the role
14 simply to that of a management advisory group.

15 It seems to me there are other things that could be
16 done. They are not mutually exclusive as Guy pointed out.

17 DR. GROMMERS: Mr. Siemiller.

18 MR. SIEMILLER: In addition to these hearings on
19 noise, it stimulated action by the trade union movement and in
20 practically every set of labor negotiations going on today the
21 question of noise in a manufacturing plant is being discussed
22 back and forth across the table, and definite action in many of
23 them is being taken to eliminate noise that was previously
24 thought couldn't be eliminated or was not a problem.

25 So the fall-out from it has been much greater than

1 you just described.

2 MR. JUSTICE: I am glad to hear that. I didn't know
3 that.

4 DR. GROMMERS: Layman.

5 PROFESSOR ALLEN: I hear something in what Guy is
6 saying that I would very much like to affiliate with.

7 I think some people got a country going by making
8 a declaration of independence. Maybe we have to make a declara-
9 tion of privacy, something that would really focus some atten-
10 tion on what we are concerned about.

11 MR. SIEMILLER: Didn't Arthur Miller tell us there
12 was no legal right for privacy?

13 PROFESSOR MILLER: There was not a wheel until some-
14 body invented it.

15 MR. SIEMILLER: Okay.

16 DR. GROMMERS: Bob.

17 MR. GALLATIE: I would like to reinforce Layman's
18 position and also address the problem of global issues.

19 These are very, very global issues that we are in-
20 volved in and I don't think we should back away from them, even
21 though they are big and even though many other people are
22 addressing them. Unfortunately there are probably not as many
23 people addressing them as we should have addressing them and
24 perhaps no groups as representative as this addressing them any-
25 where.

1 I find that every day we break new ground. In fact,
2 about 12:00 midnight last night I think we broke some real new
3 ground even to the point where we amazed some of the people who
4 have been in this business for a long time by wrestling in a
5 small-group context with definitions and issues. I hate to
6 think we are going to drop away from global issues.

7 PROFESSOR MILLER: If I could just drop a footnote
8 about that, this group is currently the most significant oper-
9 ation on this subject in the United States. There are other
10 people tinkering with it in a variety of what I would call rela-
11 tively microscopic contexts. But this group is charged with
12 the responsibility of recommending policy to the agency that
13 probably produces close to one-fifth of the total individual
14 reports on people in the United States. It is probably the
15 single largest producer of personalized information in the
16 United States. I do not, even in my wildest moments of paranoia,
17 believe that the FBI is as big an operation as HEW.

18 (Laughter.)

19 Even more significant than that is the fact that
20 because we are Number One and there really isn't even an Avis
21 in the field, there are varieties of other governmental in-
22 strumentalities who will look to the product of this group for
23 leadership in terms of what they then decide to do in years
24 to come. And I think it would be a gross abdication of respons-
25 ibility on the one hand, but even more significantly, the

1 opportunity to do something significant, if we viewed ourselves
2 myopically as a management consulting group.

3 DR. GROMMERS: Joe.

4 PROFESSOR WEIZENBAUM: I am enormously in sympathy
5 with the track that Guy began to put us on here ten minutes ago
6 and that other people have spoken to. It hurts me to even sug-
7 gest that we cut it off, but that is just what I am going to
8 do. I think it is premature to talk about this -- I don't mean
9 globally premature; I mean just now premature.

10 First of all, there is some disagreement in the group
11 about this particular strategy -- I don't mean the strategy of
12 the one page, but the micro-strategy here. And secondly,
13 there are other groups working. And thirdly, I think that if
14 what this small group comes up with deserves criticism -- and
15 I am sure it will -- then the time to criticize it both from a
16 local and a global perspective is when that one page is, in
17 fact, on the table.

18 I hope there will be plenty of time to discuss it.

19 Again I want to emphasize I am enormously in sympathy
20 with this kind of direction, but I think in the interest of
21 getting on with what we are supposed to be doing this morning
22 that we should postpone it.

23 DR. GROMMERS: Thank you very much. I will accept
24 the motion and we will go on to Juan's presentation.

25 MR. ANGLERO: Habla Espanol?

1 (Laughter.)

2 PROFESSOR WEIZENBAUM: We wish we could.

3 MR. ANGLERO: I hope I am not in the same position
4 as my predecessor here. I think I have more trips to make. I
5 hope these trips will be some other places, not only to Washing-
6 ton. I enjoy them.

7 I say this as a person who is an official of the
8 Government of Puerto Rico. One thing I want to clear up first
9 is that when you look at me, please, Puerto Ricans are an minority
10 in the United States but in Puerto Rico they are a majority.

11 (Laughter.)

12 So I consider myself in here representing a majority.
13 The context of what I can say should not by any means be sub-
14 ject to the interpretation of a minority reaction, a minority
15 representative reaction. That is why I would postpone the dis-
16 cussion of the degree of exposure that different segments of
17 society have in terms of the information systems. In this case
18 I do now ask for the assistance of Arthur Miller who, when I
19 brought up this point at the last meeting, complemented it with
20 a cost analysis of it, the cost implication of it. And I don't
21 think myself quite knowledgeable as to cover all the aspects
22 of this point.

23 But I have another area of concern. I don't think
24 we have covered it, although we have put our hands on it. Yes-
25 terday we had the representative of the Office of Management

1 and Budget. He talked about the responsibility of the Management
2 and Budget Office in terms of systems, in terms of data-
3 gathering. And I immediately felt that there is a great gap --
4 I feel this from the field -- in terms of who evaluates the
5 intelligence, the reason to exist of different systems. In
6 this aspect I will refer only to the public sector, because
7 really I cannot cover the private sector. I need more informa-
8 tion in order to cover it.

9 The first question I have, and one of the things that
10 I want to pursue in trying to help, as a member of this committee
11 the Secretary in taking a position, a policy position, is: I
12 don't know if there is a real need to gather information at a
13 central federal level. I don't know that. I would like to see
14 why there is a need.

15 And when I talk about information, I talk basically
16 about personal data information, because we have statistical
17 information that I recognize as a planner is essential for pol-
18 icy making, decision making in the broad sense, and for evalua-
19 tion of research and many other things.

20 But for myself, I relate personal information, ident-
21 ifiable personal information, with services or -- well, we can
22 get some other things: Surveillance, control, income tax
23 collection, something like this.

24 But from the functions and responsibilities of an
25 agency like HEW, and perhaps HUD -- and we can mention some

1 others -- that are basic service agencies, I wonder if really we
2 need or if there is a need to get personal information brought
3 together into a central or even a state level.

4 I would like to see by any means the determination
5 of this kind of need, because my assumption is that the informa-
6 tion in terms of personalized information has to be close to
7 the informant, to the service, has to be decentralized. The
8 more decentralized, the better I think we will serve the public.
9 The more centralized, I think we will not serve the public as
10 well as we would otherwise.

11 So I can go through an outline that I brought here,
12 but I think I am posing the question in a way so that I don't
13 have to go through all of it.

14 As an outcome of this, if we make this analysis and
15 we come out with a recommendation that all personal information
16 should be kept at the closest collectors and informants, maybe
17 a great part of the problem we are facing here will not exist.
18 Because the linkages to this information would be no threat,
19 because it would only be aggregated non-identifiable information,
20 just statistical information. And this would be a lot of help
21 to all of us in the decision-making process.

22 In terms of systems, I would say I recommend that
23 any agency, all agencies, specifically HEW, establish a unit --
24 this is a personal recommendation -- that would have the respons-
25 ibility to look internally at the consistency of all the systems

1 that are developed within the given agency. This consistency
2 should be in terms of administrative procedures, processes,
3 and in content.

4 This unit that will give this consistency to these
5 systems will have the responsibility of securing that they com-
6 ply with the internal consistency of the agency and that they
7 comply with the requirements of whatever regulatory body could
8 be in the government. It could be the OMB or it could be any
9 other agency that would serve as a liaison.

10 I got the impression yesterday, and the conviction --
11 if it is a good word -- that all the different agencies, SRS,
12 Social Security, and all of these, deal directly with the Of-
13 fice of Management and Budget, and there is nothing like a
14 clearinghouse or unit to see that there is internal consistency
15 of all of them. I have asked for this. I have looked into it
16 sometime before, into the organization of HEW, and have not
17 seen this kind of thing.

18 Well, this is all I have to say in these terms.

19 On the other aspect, the question I do have I will
20 pose this way: Who, in terms of economic or social level,
21 ethnic background, or anti-social behavior relationships, faces
22 the problem of invasion of privacy and confidentiality of in-
23 formation by the operation of huge and massive information
24 systems?

25 I don't have, as I told you before, the knowledge

1 of the field. I would like to know better so I would be able
2 to quantify and qualify this statement or this concern. But
3 if we find out that there is not a balanced distribution of the
4 degree of exposure, maybe, if we want clearly to have a good
5 informational system working because it is good for society,
6 and because it is good for all the different aspects of decision
7 making and management, well, why don't we devise a system by
8 which everyone is subject, every single individual is buejct,
9 to having a record in some place, and this record is kept for
10 the use of authorized personnel or persons in a unit, and then
11 all the information of these people will be there -- all the
12 information of all of us will be there, accessible to whatever
13 uses are legal and due process?

14 I don't want to get into the position, as I told you,
15 that I defend one group or the other, because this is not my
16 position. My position is to know what you call the state of
17 the art, which I don't know.

18 The cost implications -- as I asked yesterday Arthur
19 Miller, he said the cost of privacy to the under-privileged,
20 if we can say under-privileged, those who have not enough money
21 to pay for it -- it is not always the same relationship. I
22 would like Arthur to bring out this. You help me.

23 PROFESSOR MILLER: Madam Chairman, you asked me
24 yesterday about due process, and I think what Juan is driving
25 at and due process tie together somehow and I don't know that

1 this is the appropriate time for me to talk about that. I don't
2 want to intrude on your natural sequence.

3 DR. GROMMERS: You might elaborate just a little bit
4 on how that is related.

5 PROFESSOR MILLER: I can't do it without time to
6 make -- I mean even with time it might not be sensible.

7 DR. GROMMERS: We could give you five minutes.

8 PROFESSOR MILLER: In five minutes I can barely state
9 my name.

10 (Laughter.)

11 PROFESSOR WEIZENBAUM: Why don't we schedule Arthur
12 for an appropriate length of time, half an hour or an hour.

13 PROFESSOR MILLER: I don't need that much.

14 PROFESSOR WEIZENBAUM: Whatever he wants.

15 PROFESSOR MILLER: I mean I just don't want to in-
16 trude now with what is both background information I think the
17 committee should have in terms of thinking about due process
18 and its relationship to our work, and I think a lot of Juan's
19 concerns are quasi-due process in nature, in terms of the
20 unequal burden being placed on people to disclose things about
21 themselves, and the right of the government to force people to
22 disclose things about themselves.

23 I mean that is the subject.

24 DR. GROMMERS: May I ask you when we come back from
25 the coffee break? Joe will present his paper and then you could

1 take -- what would you take? Fifteen minutes or however long
2 you would like.

3 PROFESSOR MILLER: I am always pleased to follow Joe.

4 PROFESSOR WEIZENBAUM: I don't think that is a com-
5 pliment.

6 PROFESSOR MILLER: Lie at your feet?

7 (Laughter.)

8 DR. GROMMERS: Would anyone else like to speak to
9 Juan's thesis here?

10 Guy.

11 MR. DOBBS: I think Juan was sort of hit on a couple
12 of fairly deep issues in terms of his perception about informa-
13 tion use, particularly in the sense of the relationship between
14 the information that is required to actually deliver the ser-
15 vice versus the information which is required to, quote, manage
16 and administer whatever it is that is being delivered.

17 And it strikes me that a significant portion of the
18 problem that we see arises from the manager's perceived need for
19 information to control and administer, and not necessarily from
20 a perceived need for information which is really directly re-
21 lated in some sense to the delivery of the service.

22 You know, we have heard an awful lot, I think, from
23 many witnesses about the fact that a good deal of the legal
24 requirement that is laid on them to collect personal data has
25 to do with justifying whether or not somebody has got their

1 hand in the till.

2 And I think it is a fairly important kind of distinc-
3 tion between the two kinds of information to deal with, in terms
4 of their ultimate end use, because it helps to focus on where
5 the problem gets created, the kind of need that creates the
6 problem.

7 So I was sort of struck by that comment.

8 Another thing that struck me was Jaun's point about
9 where you keep information and whether information should not
10 be close to the source or the collector, I guess, "the inform-
11 ant" was the word that he used.

12 And it is the case that some of the technology that
13 we are purporting to try to develop for the next decades is to
14 try to provide a facility to do exactly that from a technological
15 point of view.

16 That is, much of the computer capability that we are
17 trying to develop is being developed in a way which says that
18 we make it possible to put the responsibility for data collec-
19 tion, manipulation and use, right back at the originator and
20 the creator where we think it belongs. Now, having made that
21 possible via technology, there are no guarantees that that will
22 in fact happen that way unless intelligent management recog-
23 nizes that that is an appropriate organizational and/or insti-
24 tutional behavior.

25 So I think it is important for us to recognize in

1 terms of Juan's comment about where information really ought to
2 be and how it ought to be used, that the problem is less a
3 technological one and much more an institutional management and
4 organizational one.

5 Those are the only comments I have.

6 MR. ANGLERO: I am glad you brought it up. The last
7 few words really brought in a good summary because that is what
8 I think, the technology of the systems.

9 DR. GROMMERS: If there are no more comments --

10 SENATOR ARONOFF: Why don't we go on and hear the
11 next presentation.

12 DR. GROMMERS: And then have coffee?

13 SENATOR ARONOFF: Yes.

14 DR. GROMMERS: All right. Then we will have Arthur
15 after coffee.

16 PROFESSOR WEIZENBAUM: Our chairman referred to my,
17 quote, presentation as a paper. I don't have a paper. But I
18 do have a number of things to say.

19 One is the differential roles that this committee
20 may play -- and indeed I think will play; I don't think this
21 committee has a single role -- and the differential roles or the
22 different roles that the Secretary necessarily plays, because
23 in fact he operates in different contexts and is a different
24 person in different contexts.

25 Surely in one of his roles he is a manager but he is

1 also a political person, and I think as such, and especially as
2 a representative of the President or of the Office of the Presi-
3 dency, that is, as a Cabinet member, he is in a position to
4 exercise leadership.

5 And I think that this committee should, among other
6 things, give him some guidance as to the kind of leadership
7 that we may wish to have him exercise in certain directions,
8 some of which I will mention.

9 Similarly, as far as this committee is concerned, I
10 think it is quite proper to look upon it as one of the roles of
11 this committee to be in a sense a management consultant firm.
12 Okay, that is one of its roles.

13 But it seems to me another role -- and I am sure there
14 are many, but another role anyway is that this committee should
15 act as an advocate for people who are otherwise not represented,
16 for example, as an advocate for, what shall I say, sanity,
17 security, safety, maintenance of civil liberties and civil
18 rights, and so on.

19 I, myself, have been worried repeatedly and my worry
20 is reinforced each time when we hear government witnesses --
21 Mr. Boyd, for example, Mr. Lowry yesterday. I am worried about
22 in effect the euphoric attitudes that I see emanating from them:
23 everything is quite all right; the job is being done; there is
24 nothing to worry about -- attitudes of that kind.

25 I can understand their presentations having this sort

1 of aura, especially because they have to necessarily be brief
2 and so on, but nevertheless I do think they reflect a kind of
3 attitude and reality that these people in fact perceive.

4 I think one of the roles of this committee as an
5 advocate for the public should be to examine the reality basis
6 of these euphoric perceptions of reality that people high in
7 the government apparently have.

8 I might just jump immediately to a specific recom-
9 mendation with respect to the advocacy role of this committee.

10 I think one of the things we might recommend, for
11 example, is that there be a permanent statutory automated
12 personal data system advisory committee of this kind established

13 ASSEMBLYMAN BAGLEY: You are talking like a high-
14 level bureaucrat.

15 (Laughter.)

16 PROFESSOR WEIZENBAUM: Well, I have no experience in
17 that.

18 ASSEMBLYMAN BAGLEY: First you have to institution-
19 alize yourself. And then proceed from there.

20 (Laughter.)

21 PROFESSOR WEIZENBAUM: Well, that may be.

22 ASSEMBLYMAN BAGLEY: Okay.

23 PROFESSOR WEIZENBAUM: All right. Now, to more spec-
24 ific problems: I am taking a very thin slice of the things
25 that concern me most, and there are lots of things I am not

1 going to say. I am not, for example, about to write my version
2 of the final report, whether it be one page or many.

3 I am concerned about essentially three things, pos-
4 sibly four. They are all interrelated.

5 One is the problem of linkages that has been talked
6 about. The other one is the problem of centralization, and the
7 third is the problem of the tendency of systems to in some sense
8 over-determine the future and to have irreversible side effects
9 in a very pervasive way over the whole society.

10 Let me talk about these more or less one at a time.

11 We have talked a lot about the universal, unique
12 personal identifier, and we almost as a code use the Social
13 Security number as characterizing that identifier. And I think
14 we have already come to understand that even if one were to do
15 away with the Social Security number as an identifier, there
16 are other universal, unique identifiers that one might think up,
17 and all of them or at least most of them are easily computer
18 manipulatable.

19 The lay public often makes the mistake of thinking
20 of a computer as fundamentally a number machine and consequently
21 the things it handles easily are numbers and everything else
22 is very difficult. In fact, a person's name, address, birth
23 date, place of birth, and mother's maiden name -- what computer
24 people would call that string of information, is as computer
25 manipulatable as any number. It is presentable in a computer

1 as something like a number and that would be a unique personal
2 identifier.

3 So I think in a certain sense the Social Security
4 number is a red herring. However, it is with us, and I think
5 just by the way that speaking to the Secretary as a political
6 person, a person who is in a position to exercise leadership,
7 one of the recommendations we might make to him is to ask him
8 to take the position that initially the Social Security number
9 should no longer be used for any purposes for which it isn't
10 used now, and that as a long-term goal, that its use for purp-
11 oses other than Social Security should gradually be phased out.

12 I am not saying necessarily that we should make that
13 recommendation. I am giving an example of a kind of political
14 recommendation that we might make to him, a recommendation which,
15 if he adopted it, would cause him to exercise the political
16 leadership which is part of his office.

17 The reason the identifier is so universally looked
18 upon as a solution to a problem is that it is recognized --
19 and I think realistically -- that there are files, whether they
20 are centralized or whether they exist in some one place, perhaps
21 even one computer system -- there are disparate files such that
22 there is a real justifiable need sometimes to go across the
23 boundaries of the file. That is what we call linking, to link
24 the two files. It may become necessary under certain circum-
25 stances to discover whether a person -- a family, say, that is

1 receiving aid to dependent children, is also in some medical
2 program. And if these two files are in fact separated somehow,
3 possibly in separate computers or separate files in a single
4 computer, then it may become necessary to cross-reference. I
5 think there are many instances where the need to do this cross-
6 reference is justifiable and necessary and I would not oppose
7 it.

8 Now, a naive appreciation of the technical problems
9 involved suggests that the only way that those files could in
10 fact be cross-referenced is if they have the same index, for
11 example, the Social Security number or this other long string I
12 mentioned, the person's name and address and so forth. And
13 that is not necessary.

14 As I say, that is a naive view. There are other
15 technical solutions, and I would very much like to propose one
16 and then talk about it, both from the point of view of linkages
17 and the point of view of centralization, and for that purpose
18 I will go to the blackboard.

19 Now, a solution that I have in mind is the following -
20 I have mentioned it once before but let me do it in a much more
21 integrated context.

22 Suppose there are a number of files -- here they are
23 (indicating on blackboard) -- in a particular system. Okay,
24 three dots mean "and so on" so there are more than three here;
25 there are many files. And this is one system. It might be a

1 file having to do with aid to dependent children and so on and
2 so forth. And each of these files is about or on a certain
3 client.

4 Clearly, unless this is purely a system to be used
5 for purely statistical purposes, clearly there has to be some
6 identifying information associated with each of these files.
7 And just for simplicity let's suppose that is a number.

8 The question is: How is that number assigned? Cer-
9 tainly one way to assign these numbers -- the easiest way is to
10 take the Social Security number of each client and make that
11 the identifying number.

12 Now, there is another file somewhere and another
13 system somewhere and other files in it, and these two give
14 identifying information.

15 And if, indeed, the Social Security number is used
16 here and the Social Security number is used here (indicating)
17 and the administrator of this system wishes to know whether
18 this particular individual is also stored in this file somewhere,
19 and indeed he wants to get hold of some of the information in
20 this file, then it is very easy to do either semi-manually or
21 even automatically. All he has to do is get the identifying
22 number that is stored here (indicating), ship it over to this
23 computer, as I say either by wire or ask his colleague over
24 at the other agency -- just communicate the number to him and
25 say "Would you please send to me the file that you have on this

1 person, if there is one, or note that you don't have the file
2 if you don't have one."

3 And again, it would be very easy to do that auto-
4 matically, both to make the request automatically of this other
5 computer, and to get the information back over wire, back to
6 this computer (indicating). So that from that point of view,
7 these two systems, even though they may exist in two separate
8 computers, appear from a certain point of view to be essentially
9 one system.

10 Now, if this is universally adopted, then it clearly
11 becomes possible to accumulate almost universal dossiers on
12 every individual stored anywhere in any of these files.

13 Well, on the assumption that it is necessary occasion-
14 ally to make this kind of linkage, and if one then disallows
15 the use of the Social Security number or some other universal
16 identifier -- I will just say Social Security number -- if one
17 makes it impossible to use the unique identifier for all these
18 systems, then the question arises, "Well then, how do you make
19 the linkage in those cases where you agree that it is justi-
20 fiable, necessary, and ought to be done?"

21 Okay, one answer to this -- and this is the answer
22 that I propose -- is that each agency of this kind assign num-
23 bers to individuals, to individual clients of the agency, that
24 are unique to that particular agency. So that for example,
let's said aid to dependent children -- it is first come, first

1 served. The first client gets 1, the second 2, and so on. It
2 has absolutely no relation to that person's Social Security num-
3 ber.

4 And similarly for this agency, (indicating).

5 So this particular client may in fact have 53 sitting
6 here and 171 sitting here. Then how do you make it match?

7 Well, what happens is that when this client walks
8 into the agency and gets the number 53, he is asked for a unique
9 personal identifier, which may be his name, date of birth,
10 mother's maiden name, whatever, or it may be his Social Security
11 number.

12 There is another system sitting here which is an
13 index system -- by "system" I mean a computer system.

14 Now, what happens when the client gets entered into
15 this system (indicating) is that the unique identifier, say
16 the Social Security number, and the number that was assigned by
17 this agency, and the agency identification -- that triplet --
18 okay, the unique identifier, Social Security number, the number
19 assigned by the agency, and the agency identifier -- that triplet
20 is sent over to this computer which is somewhere else. Let's
21 for the moment assume that it is in Canada; okay? Or that it
22 belongs to a specially created sort of pseudo-government corpor-
23 ation like COMSAT. And in this computer a file is kept headed
24 by the unique identifier, say the Social Security number, and
25 what is kept associated with this particular file are all

1 agency number pairs -- for example, aid to dependent children
2 and 53. So there is an "aid to dependent children" and then
3 "53" up there like that.

4 When the client enters this system something is added
5 to the indexing computer which is somewhere else. This may be
6 some HUD file -- so let me say "HUD 171." And when Aid to
7 Dependent Children wants to know "Does my client 53 have any
8 record in HUD?" the manager of this facility has to go to the
9 computer. And the indexing computer has no information on that
10 client whatever. All he has is indexing number and he will be
11 able to determine, "Yes, there is a HUD file and in it this
12 fellow is known as 171. And if you want that record you may have
13 it -- perhaps."

14 With this particular system it is possible to build
15 into this system automatic audit generators so that, for example,
16 even though these two pairs exist in this computer, it may be
17 that part of the program in this computer says that no one call-
18 ing from this agency for a file stored in this agency (indicat-
19 ing) may have access to that file without a court order, or
20 indeed that no one from this agency may have access to this
21 file at all, court order or not.

22 And if, in fact, this particular agency that keeps
23 this index computer has been created by the Congress in an
24 appropriate way, it may even be -- oh, for example, it may be
25 in Canada -- it isn't even subject to subpoena. There are some

1 legal problems here that are perhaps difficult.

2 And another thing that can happen as the result of
3 this is that an audit trail is produced and by law certain as-
4 pects of that audit trail may be periodically, under certain
5 circumstances, communicated to the individual concerned so that
6 an individual may be told that such and such an agency made an
7 inquiry but in some other agency. That may inform you, among
8 other things, that such a record exists at all, which you may
9 not have known.

10 There are some terribly complicated problems here in
11 detail. I just want to give you the general idea.

12 MR. GENTILE: May I ask a question?

13 PROFESSOR WEIZENBAUM: Yes.

14 MR. GENTILE: In order for the decentralized file-
15 keeper to get the word into this bank in Canada, doesn't he
16 have to have that Social Security Account number in his file?

17 PROFESSOR WEIZENBAUM: No, he gets it from the
18 client as the client approaches the system.

19 MR. GENTILE: And never records it in his file?

20 PROFESSOR WEIZENBAUM: And he is by law forbidden
21 to store it in his file. And one of the functions of a perma-
22 nent automatic data processing personal system advisory commit-
23 tee or commission or what not might be to audit such systems
24 to make sure that the kind of management practices that are
25 necessary for this are in fact followed.

1 Now, even if they are not, you see, in order to vio-
2 late this system what becomes necessary at the very least is a
3 conspiracy involving a number of people who ordinarily cannot
4 be assumed to have common interest.

5 For example, suppose this fellow (indicating) vio-
6 lates the management restriction and in fact stores the fellow's
7 Social Security number in his computer which he ought not to
8 do, and attempts to bypass this system (indicating) by com-
9 municating to his colleague over here the Social Security number.

10 Well, his colleague over here would find that very
11 odd, "What is this fellow doing, communicating with me directly
12 at all?"

13 Furthermore, "How did he know this fellow's Social
14 Security number?"

15 And finally, for this fellow to make use of it, he
16 has to store the Social Security number. That makes it diffi-
17 cult but by no means impossible. As Walter Carlson said yester-
18 day, and as many of us have said, absolute security cannot be
19 bought. But if you make it necessary to widen the conspira-
20 torial network to make this work, and furthermore fix it so
21 that the actors in the conspiracy have no easily identifiable
22 component, then it is very likely that the system will be very
23 safe.

24 DR. GROMMERS: Joe, what prevents someone with that
25 list from just keeping a file of punch cards with the Social

1 Security number on it at home?

2 PROFESSOR WEIZENBAUM: The question is what good is
3 it going to do him? With the appearance of small and cheap
4 computers it is quite possible that an employee of this agency
5 will keep a small reel of tape at home on people in whom he
6 is very interested and that on that tape, in fact, he will have
7 a Social Security number.

8 Again, suppose he then wants to find out about this
9 fellow in some other agency?

10 Well, the other agency must have in advance cooper-
11 ated in violating both the management rules and in fact in also
12 having stored the Social Security number here, as I have said.

13 MR. GALLATI: I am a little disturbed about your
14 basic assumption. I recognize the wonderful methodology which
15 is necessary in certain cases but your basic assumption is
16 this Agency X has a right to inquire from Agency Y without the
17 permission of the respondent.

18 PROFESSOR WEIZENBAUM: No, no, that is wrong. I am
19 not making that assumption. I am glad you are calling atten-
20 tion to it.

21 What I am saying is that there is a large network pre-
22 sumably of computer systems that may be interlinked in funny
23 ways through such an indexing computer. Each one of these
24 links, potential links -- let's take this one, for example (in-
25 dicating), which is between this system and that system

1 (indicating) which has some authority. What this heavy line
2 says is that this system may make certain inquiries about this
3 system. And whatever that authority is, that authority is
4 coded in this index computer.

5 Okay, now if this fellow makes an improper inquiry
6 of this fellow (indicating), then this computer will catch it
7 here. And not only will it say "No, you can't do it," but a
8 record will be established that the attempt was made.

9 Suppose, for example, that this agency may inquire
10 of this agency (indicating) for individual records on individual
11 clients but only under court order. Okay, now this fellow in
12 fact makes an inquiry of this fellow through the indexing com-
13 puter but in the absence of a court order. Not only will he
14 not get the information, but a record will be established that
15 he made the inquiry and by law that record will go to certain
16 places and the manager of this facility will be asked, "How
17 come?"

18 That will discourage him.

19 Well, let me go on and just elaborate on this a
20 little bit and talk about centralization and decentralization.

21 DR. GROMMERS: Can I just ask you one other thing.
22 Aren't you making assumptions about what laws will have to be
23 created in order to govern this?

24 PROFESSOR WEIZENBAUM: Sure.

25 DR. GROMMERS: And isn't it possible if we had these

1 laws we don't really need the computer technology to do the same
2 thing?

3 PROFESSOR WEIZENBAUM: I think it is a chicken-and-
4 egg problem. The fact that the computer generates its own
5 audit trail, and the fact that the monitor of the law needs
6 to store the law, if you like, only in the index computer, that
7 the management rules are fundamentally stored as program in
8 the index computer in one place, and in a certain sense auto-
9 matically enforce themselves, I think is a big advantage.

10 I would agree with what I take to be Juan's position,
11 that if a computer is not necessary -- well, first, if the
12 information shouldn't have been kept in the first place it
13 shouldn't be kept; and secondly, if a computer isn't necessary,
14 let's not have a computer by all means.

15 This is on the assumption that there are certain
16 computer systems that are in fact necessary for all sorts of
17 reasons -- and I believe there are -- and furthermore that link-
18 ing under certain circumstances is justifiable and necessary
19 which again I believe is true under certain circumstances.

20 This is now designed to insure two things -- or let
21 me put it the other way -- to discourage centralization purely
22 for the reason of making linkage so on and so forth efficiency.
23 The more efficient you make it in a certain sense, the more
24 dangerous you make it, up to a point.

I remind you, for example, in a safe deposit bank

1 you get a key and the bank keeps a key. When you go to your
2 box the bank manager puts his key in and you put your key in.
3 That seems on the surface awfully awkward but you do it anyway
4 in the interest of safety.

5 Here there is a price associated with it and there
6 is a cost-benefit analysis that can be made and I believe that
7 the cost-benefit analysis in terms of civil rights, civil liber-
8 ties, privacy and that sort of thing will very much come out in
9 favor of this kind of a scheme.

10 I am not suggesting that it be this very scheme. So
11 what this buys you is both a certain amount of security and the
12 possibility of decentralization.

13 Let me say another word about it in a more global
14 way.

15 It seems pretty clear to me, but I would again ask
16 the chairman that I would very much like to see five or so
17 representative systems, actual data systems operating in the
18 government today, but without having seen them it seems rather
19 clear to me that there must be systems, for example, say in
20 the -- let's just take two systems, one in the general health
21 delivery area. So here is Health (indicating on blackboard) on
22 the one hand. And let's take another one, say the Administration
23 of Criminal Justice -- I will just say "ACJ."

24 There must be systems such that no civil libertarian
25 would argue there are certain sub-areas of these areas which

1 should be able to communicate with one another very readily
2 without the need of going through some third controlling system.
3 You know it may, for example, be that some health system having
4 to do with cardiology and another health system having to do
5 with cancer, each keeping records on individual patients,
6 ought really be able to communicate with one another without
7 having to go through some third supervisory system. I say it
8 may be. That may be a good example or it may not be; I don't
9 know. But surely there are such examples.

10 And similarly in this area (indicating on blackboard)

11 In those circumstances it can be a very simple admin-
12 istrative agreement to use the same number, not the same Social
13 Security number but the same internal number.

14 So this particular scheme doesn't make that unnec-
15 essary.

16 But now I think one of the things we want to do is
17 to build a very high wall between health information systems
18 and criminal justice information systems. We want to build a
19 very high wall to make it very nearly impossible to cross this
20 wall at all.

21 But I say "very nearly" -- not altogether impossible.

22 It may be that some catastrophe could be averted if i
23 in fact, under certain circumstances, this wall can be crossed.

24 Well, the kind of thing I have in mind, then, is to
25 have an index computer which, with very tight controls, makes

1 crossing this wall possible, but with very, very tight controls
2 which are built right into the system, which leave very visible
3 audit trails, and which require very considerable authority to
4 get at.

5 The only other thing I want to say about this scheme
6 which obviously has to be spelled out in a 40-page document or
7 something of that kind, is that I don't want you to think that
8 there are, say, a thousand such systems and here is one indexing
9 computer that supervises them all. The other thing that is pos-
10 sible, and that indeed I would recommend, is that certain sys-
11 tems be supervised, if you like by some indexing computer.
12 Certain other systems are supervised by another indexing com-
13 puter and certain others by still another. So again you have
14 a family of such things. Again this touches on the whole de-
15 centralization question.

16 This family in turn is supervised by a higher-level
17 indexing computer and on this basis one could build a whole
18 pyramid -- let me put it this way.

19 We have already agreed, I think, or I have argued
20 anyway, that this computer contains no information about the
21 individual. All it contains is index numbers.

22 Now this computer (indicating) doesn't even contain
23 index numbers which actually appear in some file. All it
24 contains is index numbers of other index computers, you see,
25 and so on up the line.

1 So it isn't true that if you could get hold of the
2 super-super computer up on top, you have everything. Again
3 what would happen under these circumstances is that an enormous
4 conspiracy of people who don't have any common interests would
5 have to be created in order for someone who does have access
6 to the great big computer upstairs to actually find out one bit
7 of information about a single individual.

8 Well, that is the sort of thing I have in mind.

9 DR. GROMMERS: We would like to keep on going for a
10 long time on this, but I think we do have to --

11 PROFESSOR WEIZENBAUM: I don't want to -- I promised
12 that I would say something about linkages, centralization,
13 and then the other question of over-determination, irreversi-
14 bility, and pervasiveness.

15 I just want to at least touch on that topic because
16 I think this is one topic that again should appear in the report
17 to the Secretary at one time or another.

18 DR. GROMMERS: Would you be willing to talk about
19 that after the coffee break?

20 PROFESSOR WEIZENBAUM: Okay, I will stop; I will
21 stop.

22 DR. GROMMERS: What we will do is have coffee now and
23 hold the questions so everybody keep thinking of what you want
24 to ask Joe and then Joe and Arthur can talk after coffee.

25 (Whereupon, a short recess was taken.)

1 DR. GROMMERS: Before we go back to questions for
2 Joe, Dave would like to have your ears for a minute.

3 MR. MARTIN: You have probably noticed that this morn-
4 ing we put at each member's place two new informational inputs,
5 one a rather interesting, I think -- I haven't read it -- study,
6 I guess you could call it, by the Institute for the future, a
7 speculation on the nature of economic losses arising from com-
8 puter-based systems in the next 15 years.

9 And the others are three pieces which I have obtained
10 for us from Joe Wilberding, which recently got publicity in
11 connection with a Jack Anderson column in which the function of
12 this centralized information system to serve the insurance com-
13 pany was written up in a kind of colorful way.

14 ASSEMBLYMAN BAGLEY: I saw it.

15 MR. MARTIN: Wilberding sent these things down. We
16 also have a copy of his testimony before a Congressional commit-
17 tee of recent vintage which we will send out to you in due
18 course by mail, and one other piece which is Xeroxable which we
19 will send you. It hasn't any direct relationship to presenta-
20 tions at this meeting. It is good background for and presumably
21 will tie into subsequent presentations.

22 MR. ANGLERO: I have heard that probably by next
23 month IBM will have a seminar in Poughkeepsie, New York. It is
24 oriented toward managers of what we have been talking about
25 here. Is there any possibility, if what I have heard is true,

1 to have some people of ours there? It will be a couple of days
2 at least. And afterwards they could give us some input.

3 MR. MARTIN: I will look into that.

4 DR. GROMMERS: We are going to go right away into
5 questioning of Joe. We will have about 20 minutes of questions
6 and discussion, mutual exchange, back and forth. He said he
7 would rather not present anything more formally.

8 After that, Arthur will talk to the point about due
9 process that I raised with him the other day.

10 Who would like to ask one of his burning questions of
11 Joe?

12 Juan.

13 MR. ANGLERO: I have a question. In the presentation
14 that you have made in which the decentralization has been de-
15 picted, which I like, you brought this barrier between specific-
16 ally two systems. I will ask you to clarify that, whether that
17 barrier, the best barrier that could be built, could be estab-
18 lished between where the systems have accrued personal informa-
19 tion, but as far as that barrier is built, also instead of
20 having a barrier make an issue to exchange statistical informa-
21 tion systems. At this moment they are so confused that you can
22 get nothing well enough to be useful.

23 PROFESSOR WEIZENBAUM: Well, I am going to use some
24 heavy technological talk for just a moment, but you can all go
25 away then and you can use it at home when you get there.

1 One of the great inventions of mankind is a diode.
2 And what a diode is -- you all use them many times. It is a
3 filter, in effect, that permits things to pass one way, but not
4 the other. And it is used in electricity. So you have a diode
5 here and pump electrons here and they go through, but if you
6 pump them the other way they don't go through.

7 There are lots of examples of that outside of elec-
8 tricity, too.

9 Well, this wall, from the point of view that you have
10 just stated -- this is a wall that makes it very hard to link
11 personal information on individuals to one another, very hard,
12 perhaps very nearly impossible, under some circumstances.

13 At the same time it is virtually transparent to
14 statistical information.

15 Suppose, for example, that I am in the health business
16 and I am making up statistics about how many people smoke, par-
17 ents have had cancer and they have venereal disease, say. I am
18 making up statistics like that and now I want to compare my
19 population curves with some files in the criminal justice system.

20 So I walk over -- not through a computer. I just
21 simply walk over to the criminal justice system and say "I would
22 like to have your files."

23 Of course, there have to be some law about it; I am
24 simplifying it. But the files have nothing on them that per-
25 mits me to identify individuals. So consequently I can get at

1 those files quite safely.

2 Again I am making it much simpler than it really is
3 but the principle is there.

4 I can now get at these files for statistical purposes.
5 They don't have a Social Security number on them. They don't
6 have anyone's name on them. It is impossible for me to tell
7 what 171 in this file means. I just can't tell.

8 MR. DOBBS: And also you want to explain very clearly
9 that that virtue that you have described becomes a vice in that
10 you don't have the same population.

11 PROFESSOR WEIZENBAUM: All right, suppose I am a
12 researcher and want to find out whether there is a relationship
13 between a certain kind of vitamin deficiency and rates of learn-
14 ing, say, and to find out about the vitamin deficiencies I
15 want to go to a health system, and to find out about rates of
16 learning I want to go to some educational system.

17 It turns out there is a wall between them and the
18 only way I can bridge them is through the index computer.

19 In order to make the association -- in this case
20 the statistician might advise me that merely statistical tech-
21 niques as has been testified -- but in this case the statis-
22 tician might advise me they are not sufficient, I really need
23 individual by individual in order to make the study.

24 Well, now I go to the appropriate agency and say,
25 "Here is my purpose, here is what I want to do. I don't need

1 to know names of individuals. All I need to know is which in-
2 dividuals in that file are in fact the same individuals in this
3 file. I want to link them together without ever knowing who
4 they actually are."

5 It may turn out that I develop a sub-population of
6 people who have a Vitamin B deficiency and whose IQ seems to be
7 growing by leaps and bounds -- this is a new kind of medicine --
8 (laughter) -- and now I want to find out whether the education
9 of the parents -- whether there is a library in the home; does
10 that have anything to do with it?

11 Now I need to go to some kind of HUD thing or Census
12 statistics and so on.

13 So again I make this request and say, "I have this
14 population" and go through the index computer and they deliver
15 me a third set of files which I link up. I still don't know the
16 name of a single individual in that file.

17 MR. ANGLERO: Would you go for a central data li-
18 brary, instead of bank, to have all this information, statistical
19 information, stored, to be available to anyone who needs it?

20 PROFESSOR WEIZENBAUM: If you present it to me that
21 way and you want a quick answer, if I had to give a quick
22 answer, I would have to say no. And I would much rather take
23 a very long time to study why it is needed and what my attitude
24 toward it would be.

25 My attitude -- it is just an attitude -- my attitude

1 is that when you start accumulating a lot of information, es-
2 pecially about people, that the burden of the proof that he
3 needs it should be on you, that it shouldn't be up to me as
4 the advocate of the public to show that you don't need it. The
5 administrator or the creator of this library should have to
6 demonstrate to me that it is needed, useful, necessary, or what-
7 ever.

8 And one reason for that is -- this gets me into the
9 sort of thing I was going to say before we broke -- is that
10 these large systems engender effects which are not always easily
11 foreseeable. And once these effects are engendered, very
12 often the consequences are irreversible. You can't go back.
13 And it pays to be very careful.

14 MR. GENTILE: Joe, you clarified something for me at
15 the break which I thought was worth sharing with the rest of
16 the group.

17 For example, if those two files that are down at the
18 decentralized level had little or no need for being segregated
19 by that big barrier, you mentioned that it could be appropriate
20 to have the same number in each file.

21 For example, if we had a personnel file in state
22 government and also a payroll file and we had to relate them,
23 what concerned me initially was that I don't want to go through
24 all those networks to relate two files that are so inter-
25 dependent. And your comment was that instead of having one

1 numbered 53 in one file and one 171 in the other, perhaps they
2 could both be 53, helped me understand.

3 PROFESSOR WEIZENBAUM: But that particular thing is
4 not an accident, but the result of a conscious decision, whereas
5 the use of the Social Security number universally is fortuitous.
6 That then becomes a conscious decision.

7 I made one other remark to you that I think might be
8 helpful to everyone.

9 We talk about this indexing system that is generating
10 audit trails and so on, and another thing it can, of course, do
11 is just in general monitor what is going on. Among other things
12 it can monitor traffic between two systems. And if it is dis-
13 covered that two systems have a very high rate of communication
14 with one another and that almost never are any serious barriers
15 imposed like the need for a court order to actually obtain the
16 information, then that might very well be an indication that
17 the separation of these two systems was a mistake and that those
18 two systems should in fact be joined.

19 I wouldn't suggest that that should ever be done
20 automatically, but this then can be called to the attention of
21 a supervisory commission which could look at the situation and
22 say, "Yes, it would be harmless to join these two systems," and
23 so on.

24 MR. GENTILE: And that commission or supervisory
25 group really throws it back into the management or administrative

1 arena, granted that it should be guided by certain statutory
2 regulations.

3 PROFESSOR WEIZENBAUM: Sure. I would think that that
4 advisory group or whatever it is called would, in an important
5 sense, be an advocate for the general public, would have on it
6 civil libertarian lawyers, for example, computer people, and
7 systems types, and so on -- but not government employees or
8 employees of agencies like this. It would have to be an outside
9 group.

10 Guy.

11 MR. DOBBS: I have a three-part question, Joe, which
12 really relates to the index number and the user interface with
13 that number.

14 Number one, is it the case that I potentially would
15 have to have a number and remember a number for each one of
16 these systems as an individual that I would come in contact with?
17 Is that the case?

18 PROFESSOR WEIZENBAUM: Well, yes and no. Let's go to
19 a very specific example. You are a veteran and you go to some
20 agency of the Veterans Administration in order to get educa-
21 tional benefits, say, and they assign you number 53, which some-
22 how turned into my favorite number today.

23 Now, do you have to remember number 53?

24 MR. DOBBS: Yes.

25 PROFESSOR WEIZENBAUM: And then in some other context

1 you get still another number, and so on.

2 I would hope -- although I am not very optimistic
3 about it -- that the actual contact point between individuals
4 and these government agencies be a sufficiently small sort of
5 outfit that you can tell them your name and they have a little
6 local file and they say, "Oh yes, he is number 53 in our system."

7 That doesn't hurt anybody for them to keep that
8 index.

9 MR. DOBBS: Okay.

10 PROFESSOR WEIZENBAUM: So they may ask you what is
11 your number and you might say, "I don't know," and they can
12 find it.

13 MR. DOBBS: I have two more in the same vein.

14 So you are saying that that difficulty could be over-
15 come by procedural means?

16 PROFESSOR WEIZENBAUM: In many cases.

17 MR. DOBBS: That leads me to the next part of the
18 question which is that in the event these numbers are known to
19 the individual or can be made known -- there is clearly no
20 reason from a systems point of view why I would not know my
21 index number in each of the systems.

22 PROFESSOR WEIZENBAUM: There might be. I don't know.
23 Some outfit might decide for good and sufficient reason that
24 you ought not to know that number.

25 MR. DOBBS: All right.

1 PROFESSOR WEIZENBAUM: I don't know.

2 MR. DOBBS: All right. Suppose, on the other hand,
3 that I do. Is it the case that now the combination of the dif-
4 ferent numbers that I have across all systems, viewed as a
5 collection, do in fact identify me for the universe of data
6 that is being carried on me? Is that not the case?

7 PROFESSOR WEIZENBAUM: It would have to be more than
8 that. Let's take 53 and 171 and others. You are talking about
9 the concatenation which starts out 53171. In order for that to
10 mean anything it would have to be accompanied by the code
11 number of the agency, which you probably don't know.

12 MR. DOBBS: Okay.

13 The third question is: Would you have any legal
14 restrictions and/or sanctions against the use of that index
15 number by some other activity which may not have been authorized
16 for its initial assignment?

17 PROFESSOR WEIZENBAUM: Oh yes, I think so. I think
18 that in order for this scheme to work, that number -- there
19 is the agency number or the data file number and then your
20 number in it and they shouldn't be used for anything else.

21 MR. DOBBS: But how? You see, we have come full
22 circle.

23 PROFESSOR WEIZENBAUM: How so?

24 MR. DOBBS: In the sense of the problem we have with
25 the Social Security number. If, in fact, you are going to say

1 that for any of those numbers it is against the law for the
2 Bank of America to in fact use that same set of digits to
3 identify me, if that is the kind of thing you are going to say,
4 that kind of thing is possible to say about a Social Security
5 number.

6 PROFESSOR WEIZENBAUM: Oh no, there is a very great
7 difference. First of all, there is the whole psychological
8 business that the Social Security number is already a national
9 number and it is widely known that almost everyone has one,
10 whereas let's suppose there are in fact lots of veterans in the
11 United States. California is full of them.

12 (Laughter.)

13 MR. DOBBS: That is where they drop them off on the
14 way home.

15 PROFESSOR WEIZENBAUM: You are talking about the Bank
16 of America and you are in California; okay?

17 So there is a whole population, you know, a very
18 large population that is filed in some sort of Veterans-FHA
19 mortgage loan something or other, where they have this contact
20 with the government. And let's suppose that is all in one sys-
21 tem and your FHA-Veterans mortgage number is 171. And there
22 are lots of people like you.

23 Nevertheless, it would not be to the advantage of
24 the Bank of America to make use of that number because there
25 are so many people who don't have that number.

1 And similarly with any of these systems. These are
2 very disparate services distributed over very disparate seg-
3 ments of the society, and it would not be in the interest of
4 the Bank of America or the corner grocery store or the Registry
5 of Motor Vehicles to use any one of these numbers in the same
6 sense --

7 MR. DOBBS: I don't agree with that at all. In fact
8 if I were in that kind of environment, one of the things I
9 would try to do would be to require my consumers, the people I
10 deliver services to, to in fact supply me with as many of those
11 numbers as they could. And I would base my internal processing
12 and indexing scheme on the use of that number in such a fashion
13 that I could distribute to those different people selective
14 kinds of services, a perfectly legitimate thing for me to want
15 to know.

16 PROFESSOR WEIZENBAUM: You are a very nasty man and
17 by statute I would forbid you from doing that.

18 MR. DOBBS: All right. That is what I am trying to
19 get at.

20 PROFESSOR WEIZENBAUM: Which one of them? That you
21 are a nasty man?

22 (Laughter.)

23 MR. DOBBS: I pass.

24 PROFESSOR WEIZENBAUM: I think Arthur had something
25 to add to that.

1 PROFESSOR MILLER: I was going to say in many in-
2 stances the use by a private organization of a Social Security
3 number is tied to a particular governmental function. The use
4 by a bank is that it is not the SS number but a tax identifica-
5 tion number because they must report. Traditiona-ly the Bureau
6 of Motor Vehicles justify the use of the SS number either in
7 terms of a locator service or in terms of a linkage to a law
8 enforcement system.

9 So I agree with Joe that you would bar the corner
10 grocery store. You might allow certain number extractions to
11 complete a short linkage, not through the Social Security but
12 his 53 or 171.

13 DR. GROMMERS: Stan.

14 SENATOR ARONOFF: I just wondered while you had the
15 floor here on your presentation if you would spend a few minutes
16 expressing that which I think you, by this stage, believe we
17 all know but maybe we don't, and that is your basic fears that
18 led you to these recommendations.

19 It starts off from your comment at the committee.

20 PROFESSOR WEIZENBAUM: With the chairman's permission.

21 DR. GROMMERS: That is why you are here.

22 PROFESSOR WEIZENBAUM: Yes, it starts off with the
23 observation I made earlier about the absolute euphoria exhibited
24 by the government people we see before us, and our own lack of
25 consciousness, very often, as to the implications of what we

1 might be doing, and our own assumption, which surely must be
2 based on the very basic theory held by many humans that every-
3 body is just like us, that since we are all such good people
4 and don't mean anybody any harm, then surely everybody also is
5 good and doesn't mean us any harm. And that may, in fact, be
6 true of today's administration -- although that may be hard to
7 support (laughter) -- but we surely have no guarantees that it
8 will be true of all future administrations.

9 And I can't help but speak from my own experience.

10 There was probably no sounder-based, in the legal
11 sense, democracy governed by people with great culture and so
12 on than the Weimar Republic, and in a perfectly legal way
13 Germany was turned into a very nasty society.

14 So these things can happen.

15 So the basic distrust comes in part from simply --
16 I shouldn't say "distrust" -- the basic discomfort comes in
17 part from the vision that it may be possible for nasty people
18 sometime to make use of then existing systems to do a very
19 great deal of harm. That is part of it.

20 Okay, the other part is the thing I have alluded to
21 earlier, namely that systems, and especially large systems,
22 engender consequences which are not easily foreseeable and
23 which, when once entrained, are very often irreversible, even
24 with the best intentions.

25 If you will stop the record.

1 (Discussion off the record.)

2 PROFESSOR WEIZENBAUM: Back on the record.

3 What I am trying to say with this little example is
4 that here we have an example, I believe, of a rather minor
5 technological development as these things go, you know the
6 launching of one particular computer line, and in the ways of
7 the world that is not a very big event, which, however, had
8 consequences which are no longer reversible, at least with
9 respect to that line, except at very, very great expense.

10 And what happens then, instead of trying to reverse
11 it, trying to un-do it, which is admittedly very hard, you patch
12 it. You do something else and that something else in turn has
13 the effect of embedding in even more concrete the mistake that
14 you made initially.

15 And I am very much afraid of taking very, very large
16 steps -- and I fully agree with Arthur Miller, more than I can
17 say, that this may very well be one of the last opportunities
18 to avoid making some very gigantic mistakes in this very import-
19 ant area, and that this committee, consequently, has a very
20 crucial function to play.

21 DR. GROMMERS: Could you give one example of a
22 second order or third order consequence of such a mistake,
23 really concrete, of what might happen?

24 PROFESSOR WEIZENBAUM: Of course this has the prop-
erty that if you could think of it in advance you could avoid

1 it.

2 But let me just try to say something about this.
3 This may not be terribly convincing but you have caught me cold.

4 We heard from Mr. Boyd that in this welfare computer
5 system that he is talking about, one of the things that would
6 happen with that system is that if a welfare recipient began
7 to earn more money than is currently recorded in his system,
8 then the Social Security system would report that to the Welfare
9 and they would then go back to the client and get their \$30
10 back, or whatever.

11 And I asked him -- and I think Mr. Dobbs asked him --
12 "How is this going to happen?"

13 Well there is some confusion about it, but the ulti-
14 mate resolution that I understood was that the Social Security
15 file, that is, the client's file in the Social Security system,
16 would be marked by a single bit which says in effect, "This
17 guy is in the Welfare system," and then there would be an
18 additional computer program in the Social Security Administra-
19 tion computer which would look for that mark, and when it en-
20 countered one, would extract that man's current income, compare
21 it to his income as reported a month ago or a week ago, how-
22 ever often these things are done, and if there was in fact an
23 increase it would then report it to the appropriate Welfare
24 administrator.

25 That sounds very innocent, but what will in fact

1 have happened if that is allowed to happen is that the Social
2 Security file will have become contaminated by one fit of in-
3 formation that is completely extraneous to any purpose of Social
4 Security.

5 Now, one might say that a single dyptheria baccili
6 induced into your body is, after all, just one. But you may
7 die. Now, the legitimization of this kind of contamination of
8 a file, beginning with that, it seems to me establishes a prece-
9 dent which may very quickly get us down the road where this sort
10 of system (indicating blackboard) that I have described here,
11 even if one ten years later agrees it is a very good idea and
12 that is what we should have done in the first place, no longer
13 becomes possible because the files will have by that time become
14 so contaminated with so much -- so mixed up with so much in-
15 formation extraneous to the purpose of the other that they can
16 no longer be taken apart.

17 And that is the kind of thing I have in mind.

18 MISS COX: Joe, I would like to throw a specific
19 question to this decentralized concept with the index.

20 As a statistician I am very much interested in col-
21 lecting a lot of data and I didn't think about these things,
22 but since I have been on this committee you have got me very
23 concerned about invasion of privacy. And supposing I filled
24 out Internal Revenue Service and Census and Credit Bureau in-
formation, and now I have used Medicare, and they have a record

1 there that I have high blood pressure, which has since been
2 proved isn't true, and I want to take out some insurance.

3 Now, how can I go through these hierglyphics and
4 get to the fact and make a correction if I find it is being
5 used and has a detrimental effect? If it gets to insurance it
6 would keep me from getting insurance or I would have to pay a
7 higher rate.

8 Do they get this Medicare record?

9 How can I as a private citizen get a correction in
10 this complex, diffused system?

11 I like the system. I don't like the data bank con-
12 cept too much. I like the system and, as you said, from a
13 statistical analysis point of view there is no worry about pri-
14 vacy because most of what we want is bulk data or without ident-
15 ification.

16 But now, as a private citizen, informer, how do I get
17 these things corrected, traced through that system?

18 PROFESSOR WEIZENBAUM: I have to say I don't know.
19 It is not that I can really tell you here.

20 MISS COX: Just for instance.

21 PROFESSOR WEIZENBAUM: However, it seems to me that
22 this sort of a system should make it easier than it is at present.

23 MISS COX: Would it be easier than a data bank?

24 PROFESSOR WEIZENBAUM: Yes. And again this ties
25 right in with what I have just gotten through saying.

1 If you have a system that in fact stores a lot of
2 stuff that is disparate with respect to itself, you know, a lot
3 of miscellaneous stuff all tied together, among them that you
4 have high blood pressure --

5 MISS COX: A doctor has to give something in order
6 for you to get your money.

7 PROFESSOR WEIZENBAUM: But now this is in some in-
8 formation bank and it is together with a lot of other stuff
9 that is going to be harder to find and harder to correct than
10 if it is more clearly identified.

11 However, that is not what I am getting at.

12 Let's start at the point where your insurance company
13 inquired as to your medical condition. With this sort of a
14 set-up, that inquiry would have left a trail.

15 MISS COX: Would have what?

16 PROFESSOR WEIZENBAUM: That inquiry would have left
17 a trail.

18 MR. GALLATI: Not only left a trail; it might have
19 been prohibited.

20 PROFESSOR WEIZENBAUM: Yes, but suppose it were al-
21 lowed. Suppose you signed a waiver to the insurance company.
22 So now it left a trail. And perhaps you don't want to allow
23 it, but suppose you did allow it and it left a trail. That
24 trail, among other things, gives you a very direct pointer as
to where that information is. It isn't just somewhere in the

1 government or somewhere in the NIH system. The very fact that
2 this trail was left provides you not only with the information
3 that the insurance company looked and that they got the inform-
4 ation, but it tells you where they got it.

5 MR. SIEMILLER: Wouldn't it be better that they had
6 a law that made it mandatory if there was an inquiry of that
7 kind that the subject, himself, get a print-out of the informa-
8 tion?

9 PROFESSOR WEIZENBAUM: Yes. One could take extreme
10 positions. One extreme position is to have one huge computer
11 system in Chicago where everything -- because it is in the center
12 of the country --

13 ASSEMBLYMAN BAGLEY: Hayes, Kansas.

14 PROFESSOR WEIZENBAUM: Where everything is stored
15 about everyone with Social Security number and that is cheap
16 and efficient and that is one extreme.

17 Then if you adopt this system another extreme posi-
18 tion is that every attempt to make a link is recorded and ulti-
19 mately reported to the affected individual.

20 MR. SIEMILLER: With a charge to the one asking for
21 the information.

22 PROFESSOR WEIZENBAUM: That, I think, is an extreme
23 position. It is useful to examine extreme positions to find
24 out what is wrong with them. I think that would result in
25 everybody being flooded with so much mail they would ignore

1 these things and that would defeat the thing, I think.

2 However, I think it is perfectly possible to identify
3 certain things as being sensitive, hence reportable to indi-
4 viduals on a once-a-month basis or in some cases as soon as
5 the inquiry is made and so on. So I think some idea like that
6 is feasible.

7 MR. SIEMILLER: The position of the American Trade
8 Unions is that any inquiry into a data bank should be made
9 available to the individual, and we don't consider that extreme.

10 SENATOR ARONOFF: I would just like to take the
11 example you gave of the secondary consequence. I realize you
12 were forced to give it immediately, but even if you use the
13 system that you have, that you have described there, wouldn't
14 you feel that a linkage was appropriate for the welfare agency
15 to look at the Social Security question to see whether there
16 is an overpayment or not?

17 You have concluded that it has been contaminated.
18 Now let's take your system and make a policy decision, and
19 wouldn't there still be that linkage in that case that would be
20 appropriate?

21 PROFESSOR WEIZENBAUM: Now you see, there is a big
22 difference. Now we are making a policy decision. That policy
23 decision -- if the decision goes that we want to do this --
24 we may not, but let's suppose it goes that way. Then that de-
25 cision is an encoding that is stored in one computer somewhere.

1 It can be changed, can be removed, can be made more strict or
2 less strict. But it is a decision that we consciously made.
3 We know how and where that decision is implemented and we can
4 un-do it.

5 MR. DOBBS: It is extremely critical, that dif-
6 ference between the deliberate policy decision which you ask
7 him to make and the way in which that information is currently
8 being dealt with in the system he described. The decision to
9 put that indicator where it is was essentially a technological
10 decision --

11 PROFESSOR WEIZENBAUM: Without asking anybody.

12 SENATOR ARONOFF: I got the feeling that was a
13 deliberate policy decision that was made by Congress.

14 PROFESSOR WEIZENBAUM: No, no, the decision as I
15 understand it -- I don't think it is crucial to our discussion.
16 I don't care where the decision was made but wherever it was
17 made -- and whether it was made with reference to the repre-
18 sentatives of the people or not, I don't know, but the decision
19 was apparently to have the Social Security Administration report
20 to the Welfare Administration that a person's income had gone
21 up. That was the decision.

22 However, the decision to put that bit into the Social
23 Security file, which seems to me to be a socially and politi-
24 cally very significant decision -- that decision was made by
25 a technologist without asking anybody.

1 Now, Congress can change its mind and can say, "No,
2 we don't want Social Security to tell Welfare anything."

3 Now, suppose they do. Can you take that bit out?
4 Does anybody even know it is there?

5 DR. GROMMERS: There is one problem. There is a
6 great deal of research that has been done into how you actually
7 program the law. And difficult as it is to make clear state-
8 ments of law, it is more difficult to get that into computer
9 form. So I do think there might be some problem in codifying
10 in computer programs the policy.

11 MS. CROSS: You started out describing this as a
12 sort of governmental system and only as we have talked about it
13 have we identified it as the private sector. I am wondering
14 about your indexing systems. Would you limit that to govern-
15 ment? If so, where do states and local governments come in?
16 Where is this master-master index that leads to the other index
17 files?

18 PROFESSOR WEIZENBAUM: Well, I think the scheme in
19 general is a good idea. If that is true, then it deserves a
20 lot of study and investigation and so on, and questions such as
21 that will turn out to be important. Some questions, probably
22 this one, will turn out to be difficult and involve policy
23 making and so on.

24 And I don't think such questions should be answered
25 in any serious way off the cuff, especially going into some

1 record which one may read thinking there was a lot more wisdom
2 here at the time than there is.

3 MS.CROSS: Because it is possible for an entrepreneur
4 to set up his own indexing system that will give access to your
5 system?

6 PROFESSOR WEIZENBAUM: With permission. Each such
7 access as the result of a conscious decision.

8 DR. GROMMERS: How would you feel about a system
9 where rather than a report being sent to an individual, a
10 report was being requested on him that it printed out on his own
11 console or teletype which he had at home as part of his active
12 computer and data set --

13 PROFESSOR WEIZENBAUM: How I would feel about it would
14 depend entirely on the purpose of the system, the purpose of
15 the inquiry, the identity of the inquirer, the nature of the
16 data that is being inquired, how that data was acquired, to
17 begin with. Is it, for example, data that you put into the
18 system or that you allowed to be put into the system under some
19 sort of guarantee of confidentiality and I happened to be a news-
20 paper reporter interested in constructing a scandal? That
21 question cannot be answered in the absence of all those details.

22 ASSEMBLYMAN BAGLEY: Somewhere along the line we are
23 going to have to get practice. This is fine and it is an educa-
24 tion for some of us, esoteric though it may be.

For those of us who are in a position of voting

1 budgets and voting powers to governmental agencies -- Stan and
2 I, I guess, have to stand up to this one -- what you need to
3 consummate the concept that you are talking about is a political
4 diode built your way to make the political system work, to in
5 turn appropriate -- and nobody has really talked in terms of
6 dollars, but \$3 billion or \$4 billion to build the system that
7 you are talking about.

8 Not only does that diode have to produce that kind
9 of money, but you are going to have to have a reverse diode
10 that keeps all of the political forces that would oppose that
11 kind of a system from coming into play, i.e., every existing
12 agency that owns a computer and wants to do its thing.

13 I have had -- and I think I mentioned this at our
14 meeting a couple of months ago -- one example of trying to do
15 this sort of thing, very simple, audit trail, just a record of
16 who requested what information from the Department of Motor
17 Vehicles. The Department testified this would cost \$5 million.
18 Five million dollars isn't a lot of money but there is one
19 department and they pull the figure out of the air, even --
20 let's stipulate to that for the sake of argument -- but just the
21 mention of the \$5 million made the problem go away in the mind
22 of the particular committee that was listening to the proposal
23 at that time.

24 Now, I am not negating the ultimate consequences of
25 a dictatorial society taking over through the use of a computer

1 some day, but what I am saying is let us, if we are going to --
2 and maybe this afternoon as we discuss specifics a little more --
3 let us also realize the political practicalities. We couldn't
4 recommend, I would say, right off the top of my head right
5 now -- we could not recommend to the Secretary that it be his
6 posture that we have a total protective system or a partial
7 protective system the likes of which you have defined, because
8 that would be a totally impractical recommendation.

9 MR. GALLATI: May I speak to that, please. We al-
10 ready have this type of system design demonstrated and in opera-
11 tion right now in the criminal justice system. And it is very
12 practical, very economical, and it works.

13 PROFESSOR WEIZENBAUM: Yes, I second that.

14 MR. GALLATI: I would like to make one other comment,
15 if I may, while I have the floor.

16 PROFESSOR WEIZENBAUM: Please do.

17 MR. GALLATI: Joe, you said that the Social Security
18 number was a red herring, and I would like to take strong excep-
19 tion to the use of your words only. I think you meant red
20 flag, that it has alerted us to a tremendous problem. And I
21 think in the same context we could consider the whole business
22 of computerization also as a red flag. It obfuscates some of
23 the basic issues by thinking in terms of a microscopic way, but
24 it is the thing which has set off the chain of events which
25 causes us now to consider for the first time in the history of

1 the government the right to privacy as a right which should be
2 protected by government. To that extent it is a red flag, not
3 a red herring.

4 PROFESSOR WEIZENBAUM: I accept your amendment.
5 Yes, I second that, too. That is right. Both of the things
6 you say are correct.

7 I object -- I don't mean emotionally -- to the use
8 of the word "esoteric" in this case and I think that has been
9 spoken to. This is not esoteric. It is eminently practical.

10 ASSEMBLYMAN BAGLEY: I didn't mean from a practical
11 sense, but from the sense of passing bills all over the country
12 in Congress. In dealing with the mentality you are dealing
13 with it is esoteric.

14 (Laughter.)

15 MR. DOBBS: I just find it so hard to rationalize.
16 You missed the last meeting. If you could have heard that guy
17 describe the two billion bucks they are going to spend I don't
18 see how you could so cleanly say that madness is not among
19 us in the land.

20 PROFESSOR WEIZENBAUM: You took the words out of
21 my mouth. Mr. Boyd spoke about \$2 billion very, very easily.
22 There was no problem about \$2 billion in the first place. In
23 the second place, I go back -- I really should say in the first
24 place, because it is a major point. I go back to what I
started with, that is, our role of advocates is one side of

1 the coin, and our addressing the Secretary in his role as a
2 political leader and as a Cabinet member in some sense repre-
3 sentative of the President. That this sort of thing will not
4 be easy to attain politically, I full agree. But leadership
5 has to be exercised. I think it is a very late hour. I think
6 this particular committee and this particular opportunity we
7 have here may be the very last one, and we've got to decide
8 what we think is in the interest of the country and in the
9 interest of the society, and then we have got to persuade the
10 leadership in the Executive and the Legislature, state and fed-
11 eral, to then exercise the political leadership which may be
12 necessary to implement it, however difficult that may be.

13 ASSEMBLYMAN BAGLEY: Let me just respond.

14 DR. GROMMERS: You can respond but I would like to
15 get Arthur to present one other side that really has not been
16 brought out in the discussions at all, which I think will illus-
17 trate some of the reasons why Joe's concern has certain kinds
18 of legal foundations.

19 ASSEMBLYMAN BAGLEY: Just to clarify my point, though,
20 I am trying to think of some short-range progress that this
21 group can make, and perhaps it ought to be in two paragraphs,
22 I and II. Paragraph I can be the ultimate technological
23 solution which I submit technologically is not esoteric. And
24 II can be some short-range solutions, i.e. legal rights to
25 access and things like that, which we should also have in mind

1 because they are the most easily attainable.

2 DR. GROMMERS: They are also primary. Without them
3 you are not going to be able to operate your system anyway.

4 The point that I have asked Arthur to clarify, cer-
5 tainly for me and anyone else who shares my understanding of
6 due process: As I understand it, due process applies to crim-
7 inal activities but not to anything else. And if you could
8 elaborate on that and add anything to that, and why that is rel-
9 evant to what we are doing, I think it would be very helpful.

10 PROFESSOR MILLER: The next few minutes is sort of
11 a combination of "a little knowledge is a dangerous thing,"
12 and "brain surgery self-taught."

13 (Laughter.)

14 I am not a constitutionalist, although I am increas-
15 ingly forced into that area of the law because of the ramifica-
16 tions of this subject.

17 MR. SIEMILLER: A strict constructionist?

18 PROFESSOR MILLER: I am a non-constructionist or a
19 non-conformist.

20 MR. SIEMILLER: Okay.

21 PROFESSOR MILLER: You may recall at our first meet-
22 ing when I gave you the 25-cent global tour of the law, I
23 voiced the personal opinion that as far as the law was con-
24 cerned the most fruitful area to start mining this might be
the whole concept of due process, what do we mean when we say

1 "the information-gathering, storing, dissemination process must
2 be governed by concepts of due process"? And I think Bill Bag-
3 ley in a sense has just given a perfect example of one such
4 concept of due process, namely a right of access on the part of
5 the citizen.

6 Okay. What do we mean by due process?

7 I think Frances is probably right, we should have
8 some common understanding of what due process really means
9 because it means a lot of different things in different con-
10 texts, as all legal concepts do. And there are lots of lawyers
11 in the crowd, and forgive me for being superficial and very
12 cryptic, but I don't think we want to get engaged in a 30-hour
13 course on due process.

14 Due process in the constitutional sense is a re-
15 straint built into the Fifth Amendment and the Fourteenth Amend-
16 ment of the United States Constitution. And it says basically
17 three things.

18 It says you can't be deprived of life, liberty, or
19 property. Some of you may think that should be "life, liberty
20 and the pursuit of happiness." That is in the Declaration of
21 Independence and not the Constitution. You have no Constitu-
22 tional right to be happy.

23 (Laughter.)

24 Okay, life, liberty, and property.

25 By whom?

1 Well, the Fifth Amendment says by the United States.
2 The XIV Amendment says by the States.

3 You can't be deprived of life, liberty or property
4 by the United States or the States without due process.

5 Okay. What is life, liberty, or property? You know
6 what life is. Liberty rarely shows up in the cases. It is one
7 of those words like "republican form of government" which is
8 also guaranteed to us by the Constitution.

9 ASSEMBLYMAN BAGLEY: Small "r."

10 MR. MARTIN: Mores the pity.

11 (Laughter.)

12 PROFESSOR MILLER: That nobody wants to fool around
13 with. Nobody knows what a republican form of government is,
14 including the present administration. Nobody knows what liberty
15 really is. So we sort of ignore liberty. Life we can under-
16 stand, leaving to one side the whole fetus-abortion property.

17 Well, that is simple. This (indicating) is property,
18 and that (indicating) is property. What else might be property?
19 To get more abstract, a piece of stock or a bond or a copy-
20 right, or goodwill. They are all forms of property, even though
21 we can't see them, really, we can't feel them. Nonetheless,
22 constitutionally they are property.

23 Now we come to the toughest part of this segment of
24 what we mean by due process.

25 Yesterday we heard Mr. Benner say -- and I think he

1 was reinforced by Mr. Lowry, "When somebody wants Social Secur-
2 ity, he is asking for a benefit. He is asking for the govern-
3 ment to do something for him."

4 Now, if you translate that, what Mr. Benner may be
5 saying is, "The right to Social Security or MEDICARE or a var-
6 iety of other things that we call governmental benefits, part
7 of the welfare state, that is not property."

8 In other words, once you say "that is a benefit;
9 you have no right; we will give you that at our discretion,"
10 you are in effect saying to that man, "You have no Constitu-
11 tional right to it. It doesn't qualify for property under the
12 Fifth or XIV Amendments."

13 Now, 50 years ago that clearly was the case. It
14 clearly was the case. Today I am not so sure. I don't want to
15 get involved with the Warren Court versus the Burger Court,
16 because I trust you all realize that what is property ultimately
17 is a question that the Supreme Court has to decide. It is the
18 final arbiter of what the word "property" in the Fifth and
19 XIV Amendments have to say.

20 So let's forget the Warren Court and the Burger
21 Court for the moment.

22 Charles Reich wrote a book called "The Greening of
23 America." I think it is a terrible book. I think it is a
24 fraud. I think it is the most unread book in the United States.
25 It is on a lot of shelves but I don't think it has been read --

1 maybe pieces in the New Yorker have been read but the New
2 Yorker, through wisdom I don't understand how they got, only
3 printed the best parts of the book. Before Charles Reich
4 wrote "The Greening of America," he wrote something in the
5 Yale Law Journal which I think history will prove to be far
6 more significant than "The Greening of America." Charles Reich
7 is a great, brilliant law professor who some say has gone off
8 the track.

9 (Laughter.)

10 Okay. Reich's article in the Yale Law Journal is
11 a very powerful argument that the Constitutional concept of
12 property must be read in light of mid-20th century society and
13 that property does indeed embrace new forms like governmental
14 benefits. But we don't know he is right, and we won't know
15 until the Supreme Court tells us that he is right.

16 I am just marking areas for you. I am trying to stay
17 out of value judgments.

18 Okay. Let's talk for a minute about column 2. We
19 know what the United States is and we know what a state is.

20 Now, are these the only organizations that we can
21 claim are violating our Constitutional rights?

22 The answer is no. The United States has a lot of
23 agencies. If HEW does something to take away our property,
24 the HEW is the United States. We can all understand that a
25 federal marshal beating somebody to death is, among other

1 things, a violation of due process. Why? Because it deprived
2 him of life. The marshal was acting for the United States, and
3 it was done with the third column, which I will talk to in a
4 couple of minutes.

5 In other words, it is not just Mr. Nixon or the
6 Congress; it is all of their minions. Like it is not just Mr.
7 Reagan or the State of California. It could be Mr. Alioto
8 or some --

9 ASSEMBLYMAN BAGLEY: More likely Yorty.

10 (Laughter.)

11 PROFESSOR MILLER: Or some stupid cop in San Jose.

12 Now, much more important than these obvious satel-
13 lites of governmental institutions are the organizations that
14 act like states. For example, a political party in a state in
15 which you must register to vote in the primary by party affili-
16 ation is acting like a state in terms of your ability to get in
17 and vote at the primary. As a result, it is embraced by what
18 is called state action.

19 ASSEMBLYMAN BAGLEY: But not the Moose Lodge. I
20 don't want to interrupt you but that is a good example.

21 PROFESSOR MILLER: That is the other end of the spec-
22 trum, Mr. Bagley, which I was going to come to in a minute.

23 There are limits on those organizations that can be
24 brought under the Fifth and XIV Amendments as acting in a state
25 capacity. In other words, if the state action is so attenuated

1 that the court is capable of saying, "This isn't somebody acting
2 like a state," there is no due process violation at all.

3 Now, the case Mr. Bagley referred to is the case
4 that was in the news last week. A black man in Pennsylvania
5 was denied access to the Elks Club. The Elks Club obviously
6 is not a state organization in any sense. Nonetheless, the
7 black man argued that the Elks Club had a state-granted liquor
8 license, and because it was a licensee of the state, arguably
9 it was affected by the processes of due process and acting like
10 the state.

11 The Supreme Court rejected that.

12 All right, what is due process?

13 Due process is a broad concept of fairness, reason-
14 ableness. Embraced in it is a concept of equal administration
15 of law, which in the XIV Amendment is expressed as "equal
16 protection of the law."

17 Here again, like property, "Was it the United States
18 or a state?" ultimately the Supreme Court will tell us what
19 constitutes due process.

20 Now, my own personal, personal view is that a lot
21 of what HEW does, and of course a lot of what a wide variety
22 of federal, state and local agencies do in terms of information
23 gathering, use, and dissemination, falls within this concept
24 of due process, and that arguably the right of access of a
25 citizen to see a file maintained on him by a United States

1 instrumentality when that file is used to make decisions about
2 him which may or may not affect his property, is a violation of
3 due process if he cannot gain access to that file and have a
4 right of confrontation with that file, and if he is denied
5 procedural avenues to insure the accuracy of the file and the
6 rationality of decisions about him made on the basis of that
7 file.

8 That is a personal view -- a personal view. I could
9 cite cases that have their own emanations that would support
10 me, but nonetheless it is a personal view.

11 Even if those principles of access, rights of
12 correction, rights of reasonableness in the linkages and the
13 movement of the data, the right to know and be assured of fair
14 and due process collection procedures and expungement procedures
15 even if none of that, zero of it, is constitutional, we still
16 must ask ourselves the question, even though we cannot claim
17 that these procedural rights of the individual to monitor and
18 make rational the flow of data about him -- even if none of
19 that is constitutional, nonetheless, shouldn't he have them as
20 a matter of law? Because Congress has infinite power to legis-
21 late policy that is not constitutionally based, just as a
22 matter of good common sense or good judgment.

23 So we have to approach this legally on a two-tiered
24 structure.

Now, look what happens. We have bunches of easy

1 cases, the Sheriff beating up on a citizen, the guy denied the
2 right to vote in an election. Those are easy due process cases.
3 The tougher cases start in terms of whether or not to get
4 Social Security itself legitimate to force the potential bene-
5 ficiary to subject himself to information practices that are
6 unfair or unequal. That is Juan's point in part.

7 Is it not possible in this macro system Mr. Boyd
8 described to catch the welfare cheat -- is it not possible that
9 in the proposed regulations on privacy and confidentiality
10 under H.R. 1 which you have in your folders, in which you will
11 see a total preoccupation with moving data and a total absence
12 of consideration for insuring confidentiality through procedural
13 consequences -- isn't it possible that the weight of these
14 information practices are (a) distributed unequally among the
15 population, falling most heavily on underprivileged people or
16 welfare, Medicare beneficiaries? And also isn't it possible,
17 even if you don't want to go to the equal administration or
18 equal distribution of the information game, that deeply embedded
19 in these information-gathering and use procedures are sub-
20 procedures that are just unfair?

21 For example, a man comes on Medicaid -- I will take
22 the example I used yesterday because the example I gave you
23 yesterday was real. A man is entitled to Medicaid assistance.
24 He has a heart attack. And it so happens the attack is trig-
25 gered in a compromising situation -- or any situation. The

1 law -- and this is all that Congress has enacted -- is that that
2 man is somehow entitled to medical payments because that is
3 the more or ethic of the society in which he lives. We don't
4 want him to die of the heart attack because he can't get medi-
5 cal assistance because he can't pay for it.

6 What happens then? A file is created on him by the
7 doctor. Did we really intend, or might it not be a violation
8 of due process then to say, "The government has got to foot the
9 bill for that. The government has a right of cost justifica-
10 tion for that. That, in and of itself, opens up the entire file
11 to the governmental auditor"?

12 Or would it be fairer to say, either in the Consti-
13 tution or as a policy matter, "Only that portion of the medical
14 jacket essential to cost justification need be forwarded to
15 Washington or be opened to the HEW inspector on his annual tour
16 of St. Mary's Hospital in Baton Rouge, Louisiana" and that the
17 rest of that in a sense is part of his property that can't be
18 taken from him by the United States without due process?

19 You can continue to shade off on this spectrum.
20 Gertrude gave us a magnificent example. Is it appropriate to
21 say that in order to get Medicare you then open yourself up to
22 private insurers that may either increase your premium or deny
23 you insurability status?

24 Now, I personally don't believe that is what Congress
intended, even though you could write handsome regulations that

1 would seem to tolerate it. Is it a violation of what we con-
2 stitutionally would call due process? I doubt it. Is it just
3 lousy policy? You bet it is -- a personal value judgment.

4 Way off on the spectrum a Medicare patient is admitted
5 to a hospital. Is it proper that that hospital put up a plaque
6 on that patient's door saying, "Medicare"?

7 Now, there is no property right there admittedly.
8 Government isn't doing anything; it is a private hospital. It
9 is not unconstitutional. In my view it is lousy judgment. It
10 is a type of stigmatization that is totally unnecessary, cannot
11 be justified really in terms of any significant policy of hos-
12 pital administration.

13 To move you back quickly on the spectrum, suppose
14 the Medicare patient is admitted to the hospital and the hos-
15 pital -- and this is a live issue in a hospital I am familiar
16 with -- the hospital is a busy hospital and gives unequal
17 treatment to the welfare patient and to the private patient.

18 I move you back on that because, to me, it is at
19 least a violation of the Medicare statute. I have no doubt
20 about that. And indeed, might be raised to the status of life.
21 The hospital is acting as a governmental unit in effecting the
22 welfare or Medicare policy.

23 I don't know about you, but it violates my sense
24 of fairness and equal administration of the law, and decency.

25 Okay. I throw this all out to you because in a real

1 sense I think Joe and I are being complementary this morning in
2 the sense that Joe gave what I find to be a very attractive
3 technologically-based system that minimizes the odds of in-
4 trusion. I like -- because I am a lawyer and not a technolo-
5 gist -- I like to think of the legal vehicles for effectuating
6 the same objectives.

7 And I think one of the groups was working on sort of
8 a check list of procedural due process-type rights that anyone
9 caught up in the system should be entitled to. And in my lim-
10 ited judgment, that would be a very powerful mechanism.

11 And this, in a sense, is a sort of personal projec-
12 tion of some things that I have been thinking about.

13 ASSEMBLYMAN BAGLEY: Very good; very good.

14 PROFESSOR MILLER: I will answer questions if there
15 are any.

16 DR. GROMMERS: Arthur, is due process set up orig-
17 inally -- maybe I don't have that correct -- the Constitution
18 gives due process for any kind of offense, any kind of policy --

19 PROFESSOR MILLER: The citizen-state relationship is
20 always affected by the due process concept. The simplest example,
21 Frances, of a non-criminal application of due process is that
22 the Feds can't come and grab your house without a due process
23 known as condemnation and eminent domain and you have a right
24 of equitable compensation.

25 In other words, due process is not strictly a criminal

1 DR. GROMMERS: So the point you are really making
2 is that it has not yet been applied by the courts to these
3 questions but could be?

4 PROFESSOR MILLER: Might be; might be.

5 MR. DeWEESE: I think we should also point out the
6 fact that even though the Constitution might not protect these
7 due process factors they can also be established by statute.
8 That is really the key. I think what Professor Miller was
9 saying is that these due process rights have not been founded
10 under the Constitution but that wouldn't stop the Federal
11 Government from establishing it by a statutory act to whatever
12 extent that it cared to.

13 PROFESSOR MILLER: In other words, I guess my strat-
14 egy -- if you will forgive me that jargon word -- is I would
15 hope in a civilized society that a lot of what Charles Reich
16 wrote in his article would be adopted in time as constitutional
17 doctrine.

18 On the other hand, I think we should think long and
19 hard about the possibility of recommending to the Secretary
20 that concepts of due process be advocated by him as part of a
21 statutory scheme.

22 For example, we heard Mr. Boyd present H.R. 1 at the
23 last meeting. And this, to me, is again this preoccupation
24 with one-half of the picture. H.R. 1, as was reinforced yester-
25 day, is absolutely weighted down with procedures and devices

1 for gathering information and using information and sharing in-
2 formation, but is absolutely silent at the moment in terms of
3 protection.

4 And it strikes me that H.R. 1 would be enhanced from
5 everybody's perspective if it contained a section which said,
6 "Everything done" -- I can't frame it off the top of my head,
7 but a section that addressed itself to the obligation of the
8 administrator of the welfare system to pursue what I would call
9 due process or procedural safeguards to make the people secure.

10 MR. DEWEESE: Also I think we heard a gentleman
11 yesterday talk about a due process right under the Federal
12 Reports Act clearance process that sort of went to efficiency
13 considerations. And I think the same due process could be
14 built into that act, that went to efficiency and budgetary
15 considerations, that went to privacy.

16 PROFESSOR MILLER: Let me add a personal observation.
17 This is a morning of gut-spilling, so to speak, by a number of
18 us. I would hope that it is somewhat apparent to everybody in
19 this room that privacy is falling between the stools. Mr.
20 Carlson told us yesterday, well, they are big on confidentiality
21 and security. For whatever reasons, that is their bag. OMB
22 told us yesterday that they are big on accommodation on inter-
23 governmental data collecting activities and rationalizing.

24 And if somebody raises the privacy issue they will
25 think about it, but they don't raise it on their own. Okay.

1 That is his bag and that is what the Federal Reports Act says.
2 I can't fault him for that. I can fault him for other things
3 but I won't fault him for that.

4 Mr. Boyd gave us the brave, new \$2 billion computer
5 which is going to catch the \$46 Welfare cheat. I leave to the
6 side any cost-benefit analysis of that, but the total effect is
7 we have guys who are looking out to their legislative membrane,
8 you know, what is their bag, what is their area, and nobody out
9 there wondering about privacy and the legitimacy of data collec-
10 tion and data utilization from the citizen's perspective.

11 MR. SIEMILLER: Including the citizen out there.

12 PROFESSOR MILLER: Including, unfortunately, the
13 citizens out there.

14 And one of the reasons I am honored to be here and
15 one of the reasons I will do anything I have to do between now
16 and December is because I honestly believe that we are the
17 shock troops. We are the first group to think about that in an
18 organized way, and we are at least in part -- not completely but
19 in part, charged with the responsibility of thinking of that un-
20 covered area.

21 MR. DAVEY: You might be interested in a case that
22 occurred a couple of years ago when I was with Credit Data
23 Corporation. We were given a subpoena by the Internal Revenue
24 Service to get some particular records and we refused to do
25 this and fought it through several levels of the court process.

1 Finally the company which had required this did not wish to
2 pursue the matter any further. But I feel the next step was
3 the Supreme Court. When we were independent, we felt that it
4 was worth while to take it right up as high as we possibly
5 could go. And it was essentially based on the same arguments,
6 as I understand it, that Arthur has been talking about, using
7 due process. But unfortunately we compromised at the last
8 point. And I think that the method of compromise was that we
9 would give the information to Internal Revenue Service but they
10 would have to pay for it.

11 (Laughter.)

12 It was very, very disappointing.

13 PROFESSOR MILLER: Jerry and I are very good friends
14 but I will never forgive his company for quitting the field a
15 year before the stewardship of the Supreme Court shifted.

16 MR. DAVEY: It is very unfortunate.

17 MR. DOBBS: On property and the potential of informa-
18 tion being defined as property, you know, in this legal sense,
19 isn't it possible that in the collection of information, cer-
20 tain kinds of data bases are in fact treated as a capital
21 assets for many businesses, many companies, and in that sense
22 enjoy a certain kind of legal protection? That is, if I steal
23 some of it, I believe there is recourse.

24 PROFESSOR MILLER: Guy, you have just given me a
25 thought that I have never really graphically composed in my

1 head. A mailing list or a dossier in the hands of the owner
2 of the mailing list or dossier will be fully protected by the
3 law as property. But the individual whose information profile
4 is in that dossier may not have the same constitutional right.

5 MISS COX: But this is our property.

6 MR. DOBBS: That is precisely the issue and I wonder
7 if there is a way to approach it legally from that point of
8 view. In other words, does the fact that the collection does
9 have that definition of property provide any precedent?

10 PROFESSOR MILLER: Sure, sure, Guy. As I said before,
11 without getting into the details and writing a brief, I could
12 make all the argument, but I think discretion is the better
13 part of valor, and if we think certain things are right, it may
14 be appropriate to recommend to the Secretary that he think
15 about asking the Congress to legislate those.

16 ASSEMBLYMAN BAGLEY: Here is a precedent. A Congress-
17 sional act a couple of years ago, ~~probably~~ totally ineffective,
18 but somebody got the solace of passing it. It says you can
19 have your name taken off a mailing list if you are mailed
20 solicitations for pornographic literature.

21 MISS COX: Oh, can you?

22 ASSEMBLYMAN BAGLEY: You can by Congressional law.

23 PROFESSOR MILLER: You can go to the post office and
24 say you think it is obscene and say "I want to be taken off
25 that mailing list."

1 MISS COX: But trash mail --

2 PROFESSOR MILLER: No, if I get turned on by ads for
3 potato peelers, I can go to the post office and say, "I don't
4 want this obscene stuff any more," and if they send me another
5 potato peeler ad --

6 MISS COX: We need to know our rights.

7 PROFESSOR MILLER: Everybody should go to law school.

8 MR. GALLATI: Can I ask you about your discussion of
9 three major areas in which due process applies. You have the
10 word "property" and made passing reference to "life," but
11 avoided "liberty."

12 PROFESSOR MILLER: Simply because the courts really
13 have never focused on it.

14 MR. GALLATI: In other words, you despair perhaps of
15 the right of privacy becoming a constitutionally protected
16 right?

17 PROFESSOR MILLER: All of the cases dealing with
18 privacy as a constitutionally-based concept -- and I think I
19 said this the first session -- all of the cases arguably are
20 cases in which another right that is expressed in the Consti-
21 tution is involved, like search and seizure, or speech, or
22 assembly. Thus far, we have never gotten the Supreme Court,
23 except as you know in a dictum in the Griswold case, to suggest
24 in the famous language that the Bill of Rights has emanations,
25 and the emanations embrace a right of privacy, perhaps through

1 the Ninth Amendment, which reserves to the people the -- maybe
2 liberty does, too.

3 MR. GALLATI: Suppose we do propose legislation and
4 suppose the legislation is passed and so on, it might be up-
5 held as a result of the emanations.

6 PROFESSOR MILLER: That is right; that is right,
7 although I would think there is no problem of constitutionality
8 of any legislation we would propose, because it comes under
9 other powers of the Congress to legislate.

10 MR. SIEMILLER: In other words, it has full and com-
11 plete powers unless it is prohibited by the Constitution.

12 PROFESSOR MILLER: Yes. And I don't think the
13 Supreme Court is going to declare unconstitutional a Congres-
14 sional declaration that this should be done to protect privacy.

15 DR. GROMMERS: Bill.

16 ASSEMBLYMAN BAGLEY: After Arthur let me try to put
17 in perspective the point I was trying to make, the practical
18 point -- it was simply this: There are two spheres of solu-
19 tions here, overlapping, if you will. It is simply going to be
20 easier, because you are not contending the powerful intransi-
21 gence of agencies -- agencies are omnipresent and omnipotent
22 in government. The biggest lobby in any legislature is the
23 combination of existing agencies. They pervade the whole scene
24 They are there all the time. It will be a lot easier if we
25 are going to make practical suggestions to establish legal

1 rights than it is to tell a hundred thousand different agencies
2 of state, local, and federal government that they have to plug
3 in in a certain way or plug out in their computer system. It
4 is just a fact it is going to be a lot easier.

5 And that was my point in saying let's not get totally
6 entranced with the technology and lose sight of the legal prob-
7 lems and the legal solutions that Arthur has just covered.

8 PROFESSOR MILLER: It may well be that you would want
9 to think about pursuing multiple recommendations, technological
10 proposals, legal proposals, to sort of bridge the presentations
11 this morning, and in effect to recognize some of the practical
12 facts. It may also prove to be the case that if the legal
13 regulations come across by the Congress, then a lot of the
14 suggestions Joe has made this morning become the most rational,
15 practical way of administering the law of the land as declared
16 by Congress.

17 ASSEMBLYMAN BAGLEY: Yes.

18 PROFESSOR MILLER: Ironically, and I hope everybody
19 understood this, the agency -- the head agency among agencies
20 is OMB in this area. And it is within OMB's power, in effect,
21 to promulgate regulations dealing with everything Joe said
22 this morning. OMB has already promulgated regulations that go
23 to the whole spectrum of questions involving computer procure-
24 ment by the government, recognizing linkage questions and com-
25 patibility and all the rest.

1 ASSEMBLYMAN BAGLEY: I hereby offer to go lobby Cap
2 Weinberger, an old friend of mine. That is the practical aspect
3 see.

4 (Laughter.)

5 MR. DOBBS: It is the case that in addition to the
6 Office of Management and Budget the GAO is extremely concerned
7 about this issue amongst other technological issues, as is
8 the National Bureau of Standards, and there is pending legisla-
9 tion to give them a whole lot of bucks to deal with the tech-
10 nology from the viewpoint of standardization within government
11 agencies, and there could be, in terms of certain kind of broad
12 scale technical representations, some inputs to those kind of
13 deliberations.

14 PROFESSOR MILLER: You might also add the Office of
15 Telecommunications policies.

16 DR. GROMMERS: John.

17 MR. GENTILE: I wanted to make one comment about
18 Joe's presentation.

19 Granted that it is technologically feasible, and
20 granted that it would take a number of years, if you accept
21 that, to implement that, do you feel we are safe in the interim

22 PROFESSOR WEIZENBAUM: I am a lot more humble than
23 I appear.

24 MR. GENTILE: It's a good thing.

25 (Laughter.)

1 PROFESSOR WEIZENBAUM: Touche.

2 Anyway, that is another thing -- I don't think one
3 can be sure about it in an offhand way. That is something that
4 would have to be -- not just would have to be, has to be
5 thought about.

6 There are a lot of great social plans that would
7 work if you could only get from here to there without killing
8 yourself. Whether this is one of them or not, I don't know.

9 MR. GENTILE: Earlier today you mentioned the 360
10 series and that it has created some irreversible patterns on
11 society, and I wonder, while we are subscribing to that concept
12 which I happen to believe is an excellent concept, would we
13 lose the whole war? Would it be too late? Would we be in an
14 irreversible situation?

15 MISS COX: But it could be a long-time goal and
16 prepare interim operations headed toward it.

17 MR. DEWEESE: Could I speak for a moment to the
18 problem of a short term versus a long-term goal. I feel very
19 strongly that a very important part of the privacy problem
20 is a psychological phenomenon. I think in large measure right
21 now in this country an equally important danger to the loss
22 of actual privacy is the feeling on the part of many people
23 in this country that their privacy is currently being invaded,
24 whether it is or not. And I think that this committee repre-
25 sents a concern on the part of the President and the Secretary

1 to do something about this feeling of a concern on the part of
2 the average citizen. And I think it is important to us to com-
3 municate that concern to the American people. And that is why
4 I think as a short-term goal, as a short-term procedure, we
5 should start to begin on a program of public hearings at variou
6 points around the country. And I don't think we can communicat
7 this concern by continuing to meet in this Maryland fortress
8 and talking to various federal bureaucrats. I think we have to
9 get out where the people are and communicate the concern of
10 the administration.

11 MISS COX: We had better clear our own thinking
12 first.

13 MR. DeWEESE: We are moving in that direction but I
14 think as the gentleman pointed out this morning, there is a
15 need to communicate this to the public. And I would like to
16 make a motion at this time --

17 DR. GROMMERS: This is not in order at this time for
18 something like that, because we are going to be talking about
19 that Saturday.

20 MR. DeWEESE: Okay. I will stop now, then.

21 DR. GROMMERS: David wanted to say something.

22 MR. MARTIN: Before we break for lunch, which I
23 gather we are about to do, I would like to make a few comments
24 about the Welfare reform operation and Jerry Boyd, because,
25 without meaning at all to disagree with anything that has been

1 suggested about things we should think about and so on, first
2 of all, Jerry did not have the chance at the last meeting, for
3 lack of time, to describe the present situation in Welfare Ad-
4 ministration, to which the proposed Welfare reform proposal is
5 addressed. He submitted to me after the last meeting for dis-
6 tribution to you, which we will do tomorrow, a paper which was
7 written not too long ago which seeks to describe the situation
8 as it is now, with all its need -- with all the characteristics
9 that the plan he described may have to arouse concern and a
10 sense of need for attention and improvement.

11 I think it is important that it not be considered
12 in isolation from that which now exists. In other words, if
13 that is bad, compared to what? Compared to something better
14 you might do? And also compared to what is. So this paper will
15 attempt to give you a picture of the situation as it is now,
16 which has a lot of characteristics that I am sure most of us
17 would agree are no less invidious and unpleasing than whatever
18 anyone sees to be the worst of the characteristics of the system
19 Jerry was describing.

20 Secondly, a number of statements have been made about
21 decisions that have been made. Joe spoke of a decision to
22 add a bit to the Social Security file. Nothing was decided.
23 A planning group was created recognizing there is a tremendous
24 amount of work that has to be addressed long before the legis-
lation goes on the books in order to be ready to implement it,

1 assuming the legislation is passed. So a planning group is
2 hard at work, led by Jerry Boyd -- and his bag -- I think that
3 is a nice way to put it, the way Arthur did -- his bag is to
4 do that planning job. It is not to address whether or not he
5 or anyone else in the administration likes the legislation.
6 The rules of the game on the planning were: Let's assume we
7 have to implement H.R. 1 as passed by the House. There are a
8 lot of things about H.R. 1 as passed by it that I think the
9 administration would like to see changed and a lot of things
10 other people would like to see changed and God knows what, if
11 anything, the Congress is going to produce in it for a dram-
12 atically changed welfare system.

13 But in order to have a basis for some kind of
14 advance effort to be done, this planning group was established
15 to design a system which would be capable of implementing
16 legislation in, for purposes of the planning effort, the form
17 in which one finds it in H.R. 1 as passed by the House.

18 One of the reasons that a number of us felt it
19 would be useful to have Jerry Boyd come was to give you a tast
20 of the planning stage of what, after all, will be, if it all
21 comes off, the largest computerized system that HEW has at
22 least, and maybe that any federal agency has or that exists
23 in the world.

24 I think it would have been unconscionable for this
25 committee to ignore the existence of that planning operation,

1 and I assume that the committee will want to come back in a
2 very intensive and interested way to looking at that planning
3 operation if the Welfare reform legislation goes through, which
4 will be known before this committee ends its work.

5 My judgment, for what it is worth, shared I think
6 by the chairman with whom I have discussed this, is that it
7 isn't worth going back to that very intensively until we see
8 that there is a need or an opportunity to be useful about it.
9 If the legislation dies, I am not sure how much it will repay
10 effort by the committee to look at a planning effort related
11 to this kind of artificial environment. I think the lessons,
12 if any are to be learned about that planning effort, have been
13 drawn out and I don't mean to suggest in any way they aren't
14 good lessons by Arthur and others, and the comments.

15 But I felt it important to make these statements to
16 you. I realize how fluid the situation is and, in a sense,
17 how artificial Jerry Boyd's role is, granting that at any
18 stage in the process it is likely to be as narrowly focused and
19 as functiona-ly limited as you perceived it to be, because as
20 Arthur said that is his bag.

21 One last comment about the condition of the legisla-
22 tion.

23 It is the assumption, I think, in many people's
24 minds that the existing provision in the Social Security Act
25 of which I believe you have had a copy as part of your volumin

1 materials, which stipulates absolute confidentiality except as
2 deviated from through regulations issued by the Department, of
3 any Social Security information is intended -- and I guess
4 by language is by H.R. 1 extended to all information activities
5 contemplated under the Welfare reform legislation. That is not
6 to say that it might not be useful to think about amending
7 the legislation in terms of a right of privacy.

8 But I think what you see reflected here is the assumption
9 tion by everybody who has been involved in working on this
10 legislation that a very strict confidentiality provision is
11 enough. And Arthur is in a sense in many ways asking if it is
12 enough. But it is, Arthur, that people feel this is an exposed
13 and totally open situation. It is that people assume -- and
14 I think they are right as a matter of what the statute or the
15 bill says -- that the section on confidentiality in the Social
16 Security Act will apply and I think everybody has a lot of
17 confidence on what there has been on Social Security data,
18 looking backward.

19 PROFESSOR MILLER: That is not my point. I recognize
20 1106 will apply. But that draft set of regulations which will
21 come under H.R. 1 or one of its future manifestations contains
22 not a word about procedures to enforce confidentiality. It is
23 a total statement for the utilization of the data and contains
24 elaborate exceptions to confidentiality. One of the exceptions
25 interestingly, is -- in other words, confidential data may be

1 disclosed in order to be used in a regulatory or investigative
2 or prosecutorial proceeding involving the recipient of the
3 benefits, in other words, the cheat. Ironically, there is no
4 exemption to allow records to be used for an investigation or
5 prosecution of somebody who has breached confidence.

6 I mean that is the one-sidedness of it. There isn't
7 a single word in those regulations about procedures to reinforce
8 the confidentiality procedure.

9 MR. MARTIN: You may have studied those more than I
10 have, Arthur. Let me say, however, not to dispute the need to
11 look more carefully -- and there may be lots of lurking issues.
12 But you start with a statute and a regulation mirroring the
13 statute that says "everything is confidential, except" -- and
14 you have certain exceptions in the law that have been added to
15 reflect one, an administrative determination and, two, a Con-
16 gressional determination about information regarding aliens,
17 and then a series of, I think, rather careful and rather sharp
18 defined exceptions in the regulation, made to permit limited
19 deviations from a blanket policy that nothing gets out.

20 This is in addition to those and it must be con-
21 strued within the context of that total blanket of confidential
22 ity.

23 PROFESSOR MILLER: Agreed, but nowhere is there a
24 provision of reinforcing it to make sure nothing gets out. It
25 is nice to have on a gold tablet a principle, but I am cynical

1 enough to believe you have to back it up with a bayonet some-
2 times, and where in hell is the bayonet?

3 MISS COX: It seems to me at the top of that planning
4 when you put in "Confidential" you have to give it due process
5 there, in the planning, not after it gets confused and people
6 you have some protection for a person to know what is being
7 done with his confidential material. And where else does it
8 belong? We are salvaging now a lot of things and it ought to
9 be, in future planning, in the planning.

10 DR. GROMMERS: I think what Gertrude is saying --

11 MISS COX: The same thing that Art is saying.

12 DR. GROMMERS: -- and what ART is saying is that we
13 as a committee, ought to be involved in seeing these things
14 get in H.R. 1 rather than wait after H.R. 1 comes through in
15 some accepted form and then try to change it. Is that not the
16 feeling of the committee?

17 MISS COX: Yes, it is our view.

18 PROFESSOR WEIZENBAUM: That is right, but it doesn't
19 go far enough. I think that what the committee ought to do is
20 to so, if I may use that word, so educate the Secretary that
21 he would automatically put in H.R. 1, that he would be alert
22 similar failings of this kind in whatever legislation comes
23 across his desk for comment.

24 It can't be done one at a time. An attitude has to
25 be established such that these things happen quite automatica

1 DR. GROMMERS: Juan.

2 MR. ANGLERO: I think it is clear that the time
3 is now, and we have had a lot of examples where there are amend
4 ments to laws after they are approved and it is very difficult,
5 if not impossible.

6 But I would like to take the example of H.R. 1, of -
7 what did you say? -- as only to insert there the respecting of
8 privacy and this. This is making a great decision and establish
9 ing a policy about all the planning aspects in terms of data
10 gathering, in terms of uses of the data, in terms of levels
11 of accumulation.

12 There is a great deal of decision made if it is
13 approved and is implemented as now has been proposed.

14 I will tell you I am the contact man in Puerto Rico
15 with H.R. 1 and Boyd's office, and I feel very strongly that at
16 this moment we will lose too much of the input that we are
17 having in terms of social planning if we get this into a cen-
18 tralized information system. And if we are going to duplicate
19 it by establishing our own system of data gathering because
20 we will not have access, because it will be in such a way put
21 into a central place, that, as far as we don't have access to
22 Social Security information, statistical information, we will
23 never have any sort of personal information. We have there
24 built into it at this moment --

25 MR. MARTIN: Let me draw a quick picture on the

1 board because I may have confused more than clarified. Nothing
2 I said was addressed to what Juan was talking about.

3 Let's say here is HEW, to be oversimplified, and
4 it is dealing in this instance directly -- it rarely does --
5 with people who are Social Security beneficiaries (indicating
6 on blackboard.) It is proposed now that it deal with people
7 some of whom may be the same Welfare beneficiaries from whom
8 certain information will be gathered.

9 There is now a control, if you will, or a declaration
10 of Congressional policy that all the information that comes into
11 HEW incident to its relationships with these people may not be
12 disclosed except as the Secretary decides that it may be dis-
13 closed and except for two instances that the Congress has said
14 it shall be disclosed, which for these purposes I won't go into
15 because they are minor details.

16 Now, in connection with adding legislation, giving
17 HEW authority to deal with this new customer, their blanket
18 rule of confidentiality is intended to be continued as to any
19 information that results from these transactions, except as
20 the Secretary makes exceptions.

21 Now, I think what Arthur is talking about -- and it
22 is a generic kind of consideration -- may be in addition to
23 whatever limitations you put from above on the collector and
24 user of data, the government organization, it may be desirable
25 to establish rights for individuals so that the system is subje

1 to two forces for the benefit of the values that Arthur has
2 been alluding to, namely, a force of regulations, if you will,
3 of limitation on the system imposed by Congress, and a force
4 stemming from the rights given to individuals to impact on the
5 system from here (indicating).

6 And I think this has not been thought of at all (in-
7 dicating), there is no question it hasn't been thought about,
8 giving rights to individuals, the whole due process notion.
9 Maybe it hasn't been thought through carefully enough and I am
10 sure lots more attention needs to be given to it. But what has
11 been thought of in a very limited way at least is the existing
12 protection of information that applies to the Social Security
13 beneficiary is intended to be continued for this beneficiary
14 (indicating). Now it happens that the particular mode -- and
15 this is where Juan is going -- of design of this way of dealing
16 with this customer involves some new exchanges of information
17 with IRS, where the railroad retirement program, with any other
18 income paying sources on the government, in order to check
19 the accuracy of the information in this transaction. And to
20 the extent that one is saying that these linkages should be
21 constrained in ways that serve to protect the individual inter-
22 ests of individuals, I am not addressing that. All I am saying
23 is that this umbrella is intended to be applied across that
24 whole information process. That is the theory of the legisla-
25 tion. I am not saying it is sound. I just want you to

1 understand what it is, that is all.

2 MISS COX: But it is going down and not up.

3 MR. MARTIN: That is right. The individual has no
4 rights now -- interestingly enough he does have a right in the
5 Social Security system which is somewhat unusual. You can get
6 a little card from the Social Security system and mail it
7 every day in the year asking for your wage record.

8 MISS COX: But we don't know what you are doing
9 with the data.

10 MR. MARTIN: Well, you do know, because the Social
11 Security Administration has made that abundantly clear that
12 regulation which indicates what the data flows are, and there
13 will be no less certainty about what is being done with the
14 data under the proposed scheme. You may object to what is
15 being done --

16 MISS COX: You may have all kind of confidentiality
17 coverage of wrong material. I mean the material is not correct.

18 MR. MARTIN: In so far as it is a wage record, you
19 have an opportunity. I think the Social Security program is
20 almost unique in this respect. The basic decision which gives
21 the property right you have in property in Social Security is
22 your wage record. And you can get that information and if it
23 is inaccurate you can write in and say, "You forgot I was working
24 elsewhere" and they will correct it.

25 MR. GALLATI: They will be informed that my file is

1 flagged, though.

2 MR. MARTIN: In the design stage, a peak at which w
3 got from Jerry Boyd, evidently the technical way in which it i
4 proposed to make possible the kind of record comparisons which
5 H.R. 1 compels -- and maybe it shouldn't; I am not arguing tha
6 on its merits -- is to add a bit to the Social Security record
7 And maybe that is a very bad way to do it but it is not decide
8 to be done that way. That is the way the plan at the time we
9 heard about it has in mind doing it. I think that is well
10 within the possibility of being altered by impact from this
11 committee or whatever.

12 PROFESSOR WEISENBAUM: When I talked about a de-
13 cision I meant such a decision and its implication.

14 MR. MARTIN: The situation is very fluid and don't
15 despair completely.

16 PROFESSOR WEISENBAUM: It won't be fluid for very
17 long.

18 MR. MARTIN: You are right. If the bill goes throu
19 things will start moving fast and I think there will be oppor-
20 tunity for the committee to make very real impact on a very re
21 and important decision.

22 ASSEMBLYMAN BAGLEY: One comment before in our own
23 minds we think of the subject here as being something horrible
24 that we just instantaneously want to change.

25 Again, we must consider the realities of the

1 Congressional and political world. Assume, if you will, that
2 there are ma-y things -- and I won't go through them -- that
3 H.R. 1 does. It makes uniform a payment schedule, prevents
4 mass migration or tries to non-motivate migrations, increases
5 levels of benefits four-fold in some states. In order to do
6 those things and in order to sell that kind of a concept to
7 Congress and to the public, there also is the concomitant
8 component which says, "We are going to have enforcement, and
9 don't worry, these cheats ain't going to rip you off any more.
10 We are going to put these welfare cheats under the Mann Act
11 so nobody can protect them."

12 If H.R. 1 has enough good ingredients -- so we have
13 an enforcement mechanism you don't like, but please appraise
14 that mechanism in light of the good ingredients and not go
15 out of here and say, "We are going to screw up H.R. 1" because
16 I don't think you want to do that.

17 MR. DOBBS: I hear you, Bill, and I understand. I
18 think the problem is one of balance and perspective. And I
19 don't think anybody here has expressed any apprehensions about
20 the intent of the bill in terms of the benefits.

21 The difficulty, the things we are groping with, is
22 that what we have heard would lead us to believe that the
23 designers, planners and formulators have, in fact, focused on
24 a particular area, and in fact the enforcement area, in a way
25 which potentially is not only damaging from the issue of

1 privacy we are struggling with, but is potentially damaging
2 in the sense that the greater cost of the system in that area
3 may in fact inhibit its ability to perform effectively all the
4 good things that you would like to have it perform -- just from
5 a sheer design point of view. And that is the thing, you
6 know, which I think you are hearing more so than our trying to
7 throw out --

8 ASSEMBLYMAN BAGLEY: -- the baby with the bath-
9 water.

10 MR. MARTIN: Let me extend Guy's comment. We had
11 a very interesting discussion about the concept of the legis-
12 lation and one observer said the objective of this legislation
13 is to get people, if possible, into a state of having to rely
14 on the welfare system, being able to take care of themselves.
15 This was a psychologist. He observed maybe the key to that is
16 inducing a sense of self-esteem on the part of this segment of
17 the population so that it will be motivated out of a sense of
18 self-reliance to be self-reliant. Jerry asked the psychologist
19 are you designing a system with its heavy underlying premise,
20 for whatever political reasons, that these are people, the way
21 the system is designed, who cannot be perceived as having self-
22 esteem? How can they in that kind of system develop self-
23 esteem and isn't the whole design of your system likely to be
24 self-defeating of your ultimate objective to get? That is
25 along the lines Guy is saying.

1 DR. GROMMERS: Another thing is you want to look at
2 it in terms of net cost rather than the order of a first-order
3 system that is detracted from by the social costs of the second-
4 and third-orders of the system that you should be looking at
5 over time.

6 MR. SIEMILLER: Does the chairman have a watch?

7 DR. GROMMERS: Are you hungry?

8 MR. SIEMILLER: I have always been one who went by
9 a schedule and I would like to adhere to it.

10 DR. GROMMERS: Well, this schedule was made for
11 slippage.

12 MR. SIEMILLER: Most of them are. You run a meeting
13 by the seat of your pants -- excuse my terminology -- not
14 necessarily.

15 (Laughter.)

16 DR. GROMMERS: The hem of my skirt.

17 We will meet back here at two o'clock.

18 MR. SIEMILLER: You are out of your mind. That is
19 only 40 minutes.

20 DR. GROMMERS: We are going to have a very brief
21 presentation by Lois and some discussion after that so you can
22 have a long time to work this afternoon.

23 (Whereupon, at 1:20 p.m., a luncheon recess was
24 taken until 3:00 p.m.)

AFTERNOON SESSION

1
2 DR. GROMMERS: I think about everybody is here that
3 didn't get in for lunch late, so I thought we would start with
4 Lois.

5 When we have finished Lois' presentation and the dis-
6 cussion about it, we will break up again into the working groups
7 And if we can have the outline of what you are doing by this
8 evening in my box in the hotel --

9 DR. BURGESS: We have been trying to communicate via
10 the boxes and the hotel is not very efficient in turning the
11 little red light on.

12 DR. GROMMERS: I see. It is not to get them to me.
13 It is to get them in --

14 MR. MARTIN: They can just leave them at the desk
15 in your name.

16 DR. GROMMERS: Just leave them and they will be typed
17 up tonight. And I don't mean a full report. Some of you have
18 promised a full report. But we can get out what I asked you to
19 give me.

20 What we really want from you by the end of the evening
21 is the list of your data collecting activities. You realize
22 the reason why this is so important is because David is going
23 away for a few weeks. He wants to be able to organize staff
24 activities so you can have this data collected to the extent
25 that staff will help us. Another thing I would like to see on

1 it is the criteria.

2 (Discussion off the record.)

3 DR. GROMMERS: If I can have that in my name by ten
4 o'clock, then we can see to it that they are typed up for dis-
5 tribution for tomorrow morning. And tomorrow morning we can
6 kind of amalgamate what people have done and have a discussion
7 of what will be the tasks of the individuals on the committee
8 for the next few months, whether we have hearings or whether we
9 have some other kinds of procedures.

10 With that, Lois, would you like to describe for us
11 some of your work with the data systems.

12 MS. ELLIOTT: I will be happy to but I will largely
13 not be describing my work. I would like to make that very clear

14 I would like to proceed to tell you what I know
15 about the migrant system and then address what I see as some
16 of your concerns and try to point out some of the mechanisms
17 which are already in place within the Office of Education. Then
18 it may be easier for you to address questions to me.

19 However, if I fail to make any point clear, a
20 specific point, please interrupt me.

21 Unfortunately, I didn't think I could explain this
22 system to you without helping you confront the organization of
23 the Office of Education because that is one of the key elements
24 in this entire activity, and it is a very practical point.

25 The Commissioner sits here (indicating on blackboard)

1 There are deputyships. I think I may have missed one but the
2 ones relevant to the migrant system are Administration, School
3 Systems, and Development. The migrant system is monitored in
4 the Bureau of Elementary and Secondary Education. I belong to
5 the Bureau of Education for the Handicapped, by the way.

6 Just for future reference, because you will hear the
7 names come up at other points in time, the National Center for
8 Educational Statistics is located in the Deputy for Development
9 And this is one of those four statistical centers that Tom
10 McFee referred to as having great expertise in the areas of
11 statistical data collection.

12 The Assistant Commissioner of the National Center for
13 Educational Statistics is Dorothy Gilford. Dr. Gilford, in
14 addition to her role here, represents the Commissioner as head
15 of the Data Acquisition Task Force. But in this role she represents
16 this level (indicating) and there are separate representatives
17 to this committee from the National Center.

18 Another group that you will hear me refer to much
19 later, although I will try to be brief, is the Office of Program
20 Planning and Evaluation which is located within Administration
21 and is really quite separate.

22 I guess it might be appropriate for you to know that
23 I represent the Bureau of Education for the Handicapped on the
24 Data Acquisition Task Force. My other responsibilities are
25 working with lots of these other parts of the Office of

1 Education on matters of concern to this Bureau and sometimes
2 on matters of concern to them (indicating) as well.

3 My first contact with the migrant information system
4 was in December 1970 when I attended a briefing about it because
5 I was interested. That was before the formation of the Data
6 Acquisition Task Force, and in all honesty I should tell you I
7 was in a different position at that time. I don't remember
8 that I even had heard of forms clearance procedures at that time
9 but I can tell you that I was very familiar with the HEW pro-
10 cedures concerning confidentiality because I had worked under
11 these out in the field for some years prior to that time.

12 And so at the briefing, when the forms which are use
13 in the migrant system -- and you all have a copy of this in
14 your folder -- were shared, our Bureau was particularly inter-
15 ested in some of the types of information which are included
16 in this form. And in that context I would draw your attention
17 to the data cells under the screening exam record.

18 Notice that there are specific cells for recording
19 the fact that a child has had a physical examination, that he
20 has had a visual test, an auditory or hearing test, that he
21 has been seen by a dentist, or has had a test for tuberculosis.
22 And on those same lines -- these are about two inches down
23 from the top right here (indicating document) -- if the data
24 of that test is indicated there, the recommended treatment is
25 coded -- and there is a code abnormal or normal for educational

1 purposes. Whether or not treatment has been instigated is indi-
2 cated here.

3 At that time, December 1970, I can tell you our
4 Bureau was absolutely delighted to see that these types of data
5 were of concern to the developers of this system. I am not
6 sure you are aware of how many school children who are not
7 from migrant families proceed through 8 or 12 years of public
8 school education without ever having had a hearing test or
9 their vision tested.

10 As the system was utilized -- and I am of that par-
11 ticular area -- if the child's record did not have indications
12 that a test had been run, the next school he went to was sup-
13 posed to pick it up. So in general, at that time we were quite
14 pleased.

15 When David asked me about a week ago, I guess, if I
16 would report to you concerning the migrant system, I met with
17 the Project Officer and had my second contact with the system.
18 I had not dealt with it during that intervening time. And of
19 course I was totally shocked and surprised to find that the
20 form has not been through Forms Clearance and does not contain
21 the OMB number or an Office of Education number on it.

22 I spent a fair amount of time talking with the pro-
23 ject officer and what I would next like to do is to tell you
24 exactly the information that he gave to me. I need to tell you
25 something, however, about the Project Officer.

1 I learned that he was from the State of New York and
2 that he had originally been involved with the system during its
3 developmental phases when he was still responsible to the State
4 of New York. That is an important point in regard to this sys-
5 tem, because according to him in 1968 the State Directors of
6 those states with migrant programs banded together to try to
7 develop a uniform school record. The purpose concerned the
8 problems they were having in providing educational services
9 to the migrant children. In other words, they were showing up
10 at a school with no information in hand about them. And it
11 would take several weeks before appropriate placement tests
12 had been given, and they were losing time, it was felt.

13 And so I understand that this system was originally
14 designed by the direct action of the states and put into place
15 on a manual basis. And I believe that it was continued in that
16 form for -- and now I am not sure whether it was two or three
17 years, but for some period of time.

18 It worked in the following manner: When a child
19 was in a school and then left that school, the school sent his
20 record to the State Department of Education in that state, the
21 migrant office. And the next school that he showed up in asked
22 the child, "Where did you go to school last?" and, depending
23 upon the state in which that school was located, they wrote to
24 that state and asked that the records be transferred.

25 I am told that it was approximately this same form.

1 The only problem that was encountered with that procedure was
2 the time delay. Many times between four or six weeks passed
3 before the records were sent to the new school, and in some
4 ins-ances by that time the child had already gone off to an-
5 other school and so the whole process was started over.

6 I am also told that the states requested the U.S.
7 Office of Education to withhold a certain amount of money from
8 the portion of Title I which is earmarked for the migrant pro-
9 gram, the total educational service program, and again the stat
10 requested that the U.S. Office set up a type of automated syste
11 that would speed up this information transfer process.

12 At the present time this computer-based system is
13 operational in the 48 mainland states. There are 130 computer
14 terminals, and I was told that there are 302,685 children cur-
15 rently in the data base.

16 The way it works is the following: When a child
17 shows up at a new school, the school telephones -- and I will
18 come back and fill this in in a moment to tell you a little
19 more about that -- it phones the school code number to its
20 terminal operator, plus the name, the age, and the sex of the
21 child that has just appeared on the premises. And if, with
22 that information, name, age, and sex -- and it has just occurre
23 to me. I didn't ask whether that is date of birth or age, but
24 with that information the school will receive, presumably withi
25 four hours, but at the latest the following morning, a minimum

1 core of information about the child.

2 Now let me tell you whtt happens. The terminal
3 operator punches into the system the code of the school and the
4 name, age, and sex, and then some four hours later the terminal
5 prints back if -- now, there are two conditions to be fulfilled
6 that the school's code number is in the system as an approved
7 requester of information and that the child is in the data base
8 The print-out consists of the following pieces of information
9 at the present time: Reading, mathematics, and urgent health
10 information. I must quickly tell you that as of July 1 the
11 reading and the mathematics test information will be just that,
12 test information. It will be coded by the name of the reading
13 test or mathematics test given, and the grade equivalent score
14 if that is what is in the system. If it happens to be raw
15 score, that is what will be spit out, but that will be known.

16 The urgent health information in most instances
17 refers to physical disabilities, such as the child has had
18 rheumatic fever and should not be in a gym class with strenuous
19 activity.

20 I am also told that these are the only pieces of
21 information that go back to the keyboard operator, the terminal
22 operator. At that same time that the computer center completed
23 the search and provided that information, everything that is on
24 the form is printed out on the form, and the following morning
that is picked up and mailed to the requesting school. So the

1 contents of the total form, I am told, go back to the school in
2 which the child is currently located.

3 I was also told that each day between 4,000 and
4 5,000 such records are mailed.

5 I have asked several times and several different
6 people, and every one assures me that this system is not a his-
7 torical record. In other words, the form defines the maximum
8 number of data entries which are maintained either on the tape
9 or on the computer membrane, and that once you have had six
10 screening type examination records -- notice there are six pos-
11 sibilities for it -- when the 7th comes along, the earliest
12 one of the six is thrown out and not retrievable.

13 In most instances, though, that is not six items.
14 It is really only the test data where there are six possibilities.
15 On all other lines there are four possibilities.

16 I asked about safeguards for guaranteeing privacy
17 and confidentiality and I was told the following.

18 The first I have already mentioned to you, that the
19 terminal operator receives only the limited core data, and I
20 was also told that this comes back in a printed code form, in
21 other words, by line number and column number and so forth. So
22 that it was felt that the passing janitor or whoever would not
23 be able to interpret that.

24 Secondly, only schools with established codes may
25 request the information.

1 Thirdly, I was told that in most instances it will
2 be only the school principal and a school clerk who will know
3 what the school's code number is. And there seemed to have
4 been procedures developed in which the terminal operator has a
5 schedule for dealing with the school clerk, and it was felt tha
6 in at least many schools there would be only one person whose
7 voice would become identifiable who would be feeding this in-
8 formation in and out.

9 And fourthly, that the full record is mailed to the
10 requesting school only.

11 You will notice that there are three copies in this
12 form and I inquired about that and was told that all three cop-
13 ies go to the school. I was told that the computer center does
14 not maintain any copy of this, and that what is most usually
15 done is that the school office will keep one copy, the class-
16 room teacher will get the second, and the school nurse or
17 whatever type of health arrangement there is will get the third

18 I asked who might have authority to review the
19 records and was told that the practices of the school define
20 and determine the answer to that, in other words, that the
21 record is sent back to the school and whatever ongoing prac-
22 tices would apply to confidentiality would also apply to this.

23 I then asked whether there had been prepared a set
24 of guidelines to help school administrators deal with this
25 issue and was told that these are in preparation; that they

1 have not yet gone through the final review process. And I
2 asked would we please be assured of receiving copies, and that
3 was agreed to, but I have not seen this.

4 A point which may seem minor to you but I think is
5 a useful point to illustrate some of the interactions between
6 the federal and the state governments: It was pointed out to
7 me that beginning in, I think July the system will move to a
8 dedicated computer. And at that point in time, because they
9 will have a larger memory storage for the program, it will then
10 become possible -- and I must indicate to you that I don't
11 have detailed information on what this will look like -- for
12 each of the 48 states to determine what it considers the
13 critical and urgent information which it wants back within that
14 next four hours.

15 And so at the present time, whereas it is only read-
16 ing, math, and health data, there will be provisions for the
17 state's defining their own missions.

18 I am pinpointing that issue because it is one you
19 might want to come back to later. There is a great deal of
20 states rights activity which is taking place in the educationa
21 area, and I see situations occurring where the federal govern
22 ment does not appear to have clear authority to dictate certai
23 practices to the states.

24 I asked about examples of the impact of this. What
25 difference does it make that this system exists? And of cours

1 I think the first answer has to do with trying to place the
2 child in the classroom or in the school program in which he
3 will be able to accomplish and achieve the greatest amount
4 during whatever period of time he has in that school. But I
5 was given another example which I thought might be of interest
6 to you, and I am sorry I don't have the print-out copy to give
7 to you, but I will be getting it for you.

8 There are summary data, the over-all statistics
9 which are compiled each month by the computer center, and these
10 are compiled there at the national level and at the state level.
11 As I understand this, this tends to be more a count of who had
12 what test, who was transferred to where, and not a frequency
13 tabulation of how many children have reading scores of this
14 level or that level or whatever.

15 And it was mentioned that during the month of March
16 the national summary reported of those children who had had
17 tuberculosis tests, three were recorded as positive instances.
18 And so the project officer said that he had then gone to the
19 state summaries, which are still in aggregate state information
20 and by going through those was able to determine the three
21 states in which those three children were located. They could
22 all have been within one state, of course. He didn't know it
23 from the national printout. He said he then contacted the
24 migrant program coordinator in each of those states and asked
25 that that person would deal with the aggregates which he gets

1 I believe on the basis of the computer terminal. These are not
2 at the level of the individual children -- and then investigate
3 to see if medical treatment had been instigated. It was found
4 in one of the cases treatment had not been instigated but it was
5 put in place.

6 He said that was a very clear indication of a bene-
7 fit that a given child had received which was not explicitly
8 related to his reading achievement or his mathematics achieve-
9 ment.

10 Now, at the same time, after talking with the projec-
11 officer, I inquired of the person who works most directly with
12 the Data Acquisition Task Force to question why had this form
13 not been put through Forms Clearance. That individual -- not
14 Dorothy Gilford but another person who spends a lot of time
15 with that system -- indicated that he did not know about the
16 migrant information system, had never heard of it, and was
17 astonished, felt that something had been missed, and promised
18 to check on that.

19 Last evening I talked with him and with Dorothy
20 Gilford and let me share with you what I have learned.

21 First of all -- it is quite clear it was not re-
22 ported to the Data Plan. And it is, in fact, the responsibility
23 of the Monitoring Bureau to report that. In this instance no
24 one else in the Office of Education had reported it, but most
25 important -- and this comes back to a point I made to you

1 yesterday, Arthur -- there had been no complaints received
2 from the outside world. In other words, as far as we are
3 aware at the present time -- and I must stress that condition --
4 no one in the states had complained to the Office of Education
5 about this form.

6 Dr. Gilford feels that it was probably an inadvertent
7 omission and she asked me to please tell you that she has al-
8 ready found two other inadvertent omissions, and that she
9 thinks that one of the reasons that this has happened is because
10 the Data Acquisition Plan got started in full force during the
11 late summer and the fall, and will simply take a while to catch
12 up with every possible instance.

13 I am told there is some sentiment that data collec-
14 tion forms which are requested by the states and retain all
15 of the information in the states may be exempt from the OMB
16 ruling. I don't know the answer to that. The Office of Edu-
17 cation is checking the answer to that. But I can report to you
18 that Dr. Gilford feels very strongly that whether or not such a
19 form is exempt from the federal reporting, that it is not
20 exempt from the Office of Education's Data Acquisition Plan
21 and she promises that it will be so included.

22 She also asked me to share with you that it is not
23 an easy matter -- you don't just plunk it down instantaneously.
24 The procedure for having it incorporated in the Data Acquisition
25 Planning at this point in time is that it must be passed by a

1 panel of deputies, the head of these levels (indicating on
2 blackboard) who are joined in that decision-making process by
3 a representative of the states. And in the other two instance
4 in which an exception has been dealt with quite recently, that
5 committee of deputies did not give approval and returned it fo
6 further information, and I really cannot provide you with the
7 other details on that.

8 My impression is that your second concern addresses
9 the issue of confidentiality and privacy. And it may be appro
10 priate for me to call to your attention that the regulatory bod
11 for that aspect is not in OMB at the present time but is estab
12 lished by HEW regulation, and I am sure that the staff could
13 provide for you copies of the booklet which establishes the
14 policies for this. It is a system of assurances which are
15 completed either at the institutional level on a general basis
16 or specifically for a particular contract grant or activity.

17 At the present time the contracting procedure is
18 being tightened so that any contract or grant is going to have
19 to carry a notation that human subjects either are or are not
20 involved, and if they are the date of the assurance that has
21 been filed. So this is being tightened through the contractir
22 and grants office as well as through the other procedures.

23 I think a third thing which would relate to your
24 interest is the Office of Education handbook on pupil account-
ing. There is an older version of this handbook which is

1 currently in the process of revision. It will contain several
2 chapters addressing confidentiality and privacy of pupil record
3 systems.

4 Several weeks ago I asked the project officer for
5 that, if he would try to obtain copies for this group. The
6 anticipated completion date for that revised handbook is Decem-
7 ber or January, and he is very interested in having input from
8 this body and we will simply have to work out a procedure for
9 accomplishing that.

10 Finally, I spoke this morning -- that is why I was
11 called from the room -- with the person in the Office of Progr
12 Planning and Evaluation who is responsible for evaluating the
13 programs at the elementary and secondary level. And he sug-
14 gested that I share several things with you.

15 OPP&E had conducted a limited inquiry into the mi-
16 grant program last year, and they, themselves, had some concer
17 about missing data and so on. I am told that the General Ac-
18 counting Office has been investigating the migrant program,
19 and have raised some questions about work-scope performance.
20 And that aspect is still being investigated.

21 But the feature which I think will please you most
22 is that Senator Mondale introduced into the Higher Education
23 Bill which is now on the President's desk for signature, a
24 requirement that the entire migrant program be evaluated and
25 that this report go to Congress no later than December '73.

1 And he asked could the people on his staff responsible for
2 planning that evaluation please meet with me next week because
3 he is very interested in hearing more about your concerns.

4 DR. GROMMERS: Thank you very much, Lois. I think
5 Arthur has a comment.

6 PROFESSOR MILLER: I have a number of things to say,
7 most of them harsh. None of them are directed at you.

8 MS. ELLIOTT: I understand.

9 PROFESSOR MILLER: But I really --

10 MS. ELLIOTT: Oh, I left out one important thing.
11 May I interrupt you with one important thing because it relates
12 I am sure, to what you are saying.

13 Dorothy Gilford suggested -- may I tell you I have
14 been asked by the chairman to stop as quickly as I can. I had
15 a set of action plans I was going to suggest to you as a group
16 as possibilities. The first one I should mention is that it
17 is felt that the Data Acquisition Committee would be a repre-
18 sentative group of the Office of Education to which this com-
19 mittee could address a specific set of questions or a specific
20 set of concerns. And you may want to consider that in your
21 remarks, Arthur.

22 PROFESSOR MILLER: I start with just the personal
23 observation that it is rare that I feel the rage I feel right
24 now. Okay? So everything I say is colored by a personal sense
25 of outrage.

1 The August 20, 1969 issue of Computer World contained
2 the following story, datelined Little Rock, Arkansas:

3 "A National Data Bank with records of 300,000 migrant
4 worker children is being set up here."

5 The system is then described.

6 "The data bank is being set up by the federal pro-
7 grams of the Department of Education under a \$426,000 grant from
8 the U.S. Office of Education."

9 The system is further described.

10 October 1, 1969 of Computer World: "At a September
11 5 meeting the Committee on Student Record Transfer of the
12 National Conference of Directors of Migrant Education issued
13 a policy statement that said, 'The information disseminated will
14 be available to the U.S. Office of Education, the state educa-
15 tional agencies'" and so on and so forth.

16 "Lee Lopez, California Director of Migrant Education,
17 and chairman of the Committee on Student Record Transfers,
18 said that California would release information from the data
19 files to anyone who had access to individual school records" --
20 your point about confidentiality being pitched to the level
21 of the participant state.

22 "In particular, Lopez said that he would release
23 information to persons identifying themselves as prospective
24 employers, and that he would include derogatory information
25 such as negative character traits."

1 Now, I have just quoted from Computer World a story
2 three years old. The Computer World series on the Migrant
3 Worker Data Bank I think had five installments, all of them
4 highly critical of the lack of any procedural safeguards and any
5 control on data input and data extraction.

6 The content of those articles from Computer World,
7 which obviously the Office of Education didn't read or didn't
8 take note of, is also set out in Senator Ervin's first set of
9 hearings on governmental data banks. They are reprinted in
10 this little book (indicating) dated 1971.

11 In my file in Ann Arbor I have copies of letters to
12 people connected with the Arkansas operation, with carbon copies
13 to people at the Office of Education. But apparently in total
14 good faith it is now reported to us that no one ever raised
15 these issues before.

16 To me, that indicates a number of things, among
17 the chief of which is -- and this is part of the euphoria syn-
18 drome that Joe described this morning -- we cannot simply rely
19 totally on the goodwill and self-operation of governmental
20 administrators to insure that minimal standards of privacy be
21 maintained in these operational systems.

22 I draw the curtain on that.

23 Second, the legal status of this Data Bank is at
24 this time totally obscure to me. I cannot tell yet whether it
25 is a OE data bank or whether it is a data bank created by

1 federal grant to the University of Arkansas. That is terribly
2 significant, because on that distinction turns the question of
3 applicability of the existing HEW regulations regarding confi-
4 dentiality. On that distinction turns the question of whether
5 state governmental instrumentalities, going from state legis-
6 lators at one extreme to law enforcement agencies and public
7 health agencies at the other extreme, have the power to sub-
8 poena the files maintained in Arkansas or have the power to
9 order a principal in Modesto, California to extract from the
10 Little Rock bank the file on Student N, J, or Z.

11 Now, I draw the curtain on phase 2, which is that
12 the obscure legal status of the bank renders totally unpredict-
13 able questions of the ability to enforce federal notions of
14 confidentiality and privacy.

15 Third, here is another example of privacy falling
16 between the stools. OE, for good and valid reasons, established
17 an automated personal data system to improve the lot of the
18 migrant worker children population. With that I have no quar-
19 rel. However, they did not think that it was part of their
20 affirmative duty at the very outset to create rules that
21 would assure due process in the handling of information with
22 regard to those children.

23 More than that, however, we are told by Lois --
24 and I only mention her name not either in vain or disrespect,
25 but she brings us the information -- "that because of what Bill

1 Bagley would term the political realities and the constant ten-
2 sion between federal government and state government" the whole
3 question of access to these data banks is left to state stand-
4 ards.

5 Now, I submit to you that a state does have the right
6 to determine its own levels of confidentiality with regard to
7 information created by that state. But by definition, most of
8 the information on this form was created by other state govern-
9 ments, and that information should not be left to the mercies
10 of the lowest common denominator in terms of confidentiality.

11 More than that, the whole system operates only by
12 virtue of federal money, and I would argue states rights be
13 damned, the United States Government has established, through
14 its funds, a federal data system for good and valid national
15 policy reasons, and it has an affirmative obligation to create
16 standards of confidentiality and access and input and proced-
17 ural due process that apply horizontally across the board.

18 I personally believe that the migrant worker child-
19 ren data bank is a classic example of people who wish to do
20 good but who have had, in a sense, telescopic vision and have
21 not seen the implications of some of the data recorded on this
22 transcript being opened up five or ten years later because
23 some moonlighting teacher in California can set into the system
24 or some lawyers in California can come to a principal in the
25 school district, or some legislative committeeman in Arkansas

1 or Tennessee or Idaho wants to go back in and check the record,
2 not only of the student, but you look at this data and it tells
3 a hell of a lot about the family, where that family has been,
4 the health of that family in a sense, and a lot of raw informa-
5 tion about scoring, because on the form there is a lot more
6 than just reading, writing, and arithmetic.

7 And if somebody says to me "Why are you knocking
8 your head against the wall?" it is because systems like this
9 can be created by well-meaning people who just don't look be-
10 yond the simple objective they are trying to achieve.

11 I criticize no one in this room, Lois. Please under-
12 stand me.

13 DR. GROMMERS: Arthur, could we just push that a
14 little bit further?

15 SENATOR ARONOFF: How much further can you push it?
16 (Laughter.)

17 The advocate of the over-kill.

18 DR. GROMMERS: I would like somebody, if not Arthur,
19 to spell out what might happen to a child or an adult at that
20 time if ten years later a California teacher does go into the
21 record.

22 MS. ELLIOTT: May I inject one comment? I neglected
23 to put in my statement that I was told that there are two
24 different systems, one for current students --

25 DR. GROMMERS: Can I just interrupt you so I get an

1 answer to that question while the fire is hot.

2 MS. ELLIOTT: Well, what I am trying to tell you is
3 that I think in order for an accurate answer to be forthcoming,
4 you would have to ask that either I or the project monitor more
5 completely direct himself to the question of: Are data really
6 available five years later.

7 DR. GROMMERS: I am really addressing myself to the
8 question that Joe has been bringing before you all ever since
9 the meeting started, and that is the connotation of that
10 tertiary part of the matter. I really wonder what could happen
11 to a person. Could he be deprived of property, of economic
12 gain, of liberty? Could he be put in jail for this?

13 PROFESSOR MILLER: Oh, I could compose a way out
14 hypothetically. And I hate to make policy by anecdote -- I
15 think it is bad business -- but there is data on here which, if
16 revealed to someone not professionally trained in interpreting
17 it, could lead to adverse decisions being made about the former
18 child, now late teen-ager or early adult, applying for a job,
19 applying for credit, or applying for insurance.

20 Understand, I am not and rarely am ever talking
21 about malevolence, conspiracy, evil people. I am talking about
22 neglect, sloppiness, people who in the crush of modern society
23 use the crutch of the record to make decisions about people,
24 the people who through their own myopia, say, "I am not sure I
25 want to employ a migrant worker teen-ager. That is unstable

1 business."

2 In other words, it is conceivable that the very mot-
3 ivation behind this data bank, namely, "for God's sake let us
4 deliver services to an underprivileged segment of our society,"
5 might actually get twisted around and by the very fact of being
6 in the system he is deprived of an opportunity.

7 DR. GROMMERS: The point I am groping for here to
8 bring out is really the data has much greater connotations
9 than each of the facts separately looked at, and particularly
10 over time, when old data is looked at under the light of new
11 circumstances, it changes character. And I would like somebody
12 to be able to talk to this, probably a semanticist. Perhaps
13 Layman may help us. Someone may say to you, "This child did
14 have a bad score on the MMPI and isn't he therefore an unstable
15 and bad person?" The answer is he had that under a certain set
16 of circumstances which are no longer --

17 PROFESSOR MILLER: Right. Look at the notation
18 under "Understanding directions." The child is marked poor
19 because in the formative years of his life English was not his
20 native tongue. And the directions were being aimed at him
21 in English. But it is totally irrelevant when he reaches 18 --
22 but it is too late.

23 DR. GROMMERS: And furthermore, it is really not
24 there, either, the fact that he spoke Spanish at that time or
25 whatever he spoke.

1 PROFESSOR MILLER: That is correct. And maybe it is
2 inferrable from the name, but maybe either the evaluator won't
3 draw the inference, or maybe it is not inferrable from the
4 name.

5 MS. CROSS: It is there, though. It says "Native
6 son."

7 DR. GROMMERS: Taylor.

8 MR. DeWEESE: One other thing we should consider,
9 too, is the fact that all this information on the card is
10 exactly what happened to the child; there are no mistakes,
11 and so forth.

12 If I, myself, had a poor test score, let's say in
13 the 6th grade, that information because it is not kept in an
14 automated system is, for all intents and purposes, lost if any
15 subjective comments were made about my creative capabilities
16 or other things in elementary schools. I think the problem als
17 is that when you put this information in a data system that is
18 permanent you raise new issues that I think we should consider
19 as a group, even though the information, itself, may be
20 accurate, even in the context.

21 DR. GROMMERS: This is another example of what Juan
22 is looking for, the discrimination against one group or another
23 for a good reason.

24 PROFESSOR WEIZENBAUM: I happen to agree with that
25 point to the nth degree. But I will not say that this data

1 bank is bad or data shouldn't be collected for the schools,
2 but at least that the boy when he reaches 16 is in the same
3 position as others.

4 DR. GROMMERS: Joe, isn't this one of the things you
5 are speaking to when you say data systems take on a head of
6 their own, or the group of data taken together and out of
7 context in time and place has a different meaning for differen
8 sets of people at different times?

9 PROFESSOR WEIZENBAUM: That is right. And I think
10 last time -- maybe it is every time we meet I say this, that
11 there are some very subtle issues here that we should at
12 least try to understand, even if we can't really come to grips
13 with them.

14 You know what others just talked about is in a cer-
15 tain sense not very subtle. It is right there in front of us
16 if we just want to see it. I think that accounts to a large
17 extent for the emotional component, the rage that accompanies
18 it.

19 But there are some other subtle things that may,
20 you know, sympathetic as we may be, mislead us.

21 For example, there is the whole idea of problem and
22 solution. If you think of a mathematical problem, or an
23 engineering problem, then you might go to someone and he will
24 solve that problem for you.

25 Now, we use the word "problem" unfortunately to

1 talk about, for example, the problem of drugs or the problem of
2 family, unemployment, as if it is the same kind of thing, that
3 is, you go to an expert and he thinks about it for a while and
4 then he has methodology which he then applies to the problem,
5 and then the problem is solved.

6 It turns out these are different kinds of problems.
7 The subtlety I have in my mind here of the trap we may fall
8 into is to come to believe that something we can do here by
9 virtue of manipulating or creating systems of the kind I de-
10 scribed on the blackboard before, or by persuading the Secretary
11 to encourage legislation, and by persuading legislators to
12 legislate according to that persuasion and so on -- that we
13 will then have solved the kind of problems that Arthur has just
14 addressed himself to.

15 Well, that isn't so, because there is a much more
16 fundamental pathology underneath that which I think we have to
17 understand. Arthur used the word "telescopic vision" but I
18 would prefer the word "tunnel" vision, the tunnel vision of
19 various government administrators and so on, and other experts
20 who have a hand in this.

21 If we look at other areas of our life, and especially
22 in the government, we see the same phenomenon, and it is very
23 much harder to cure.

24 I think one of the principal lessons, independent of
25 how one may feel about this administration's or any other

1 administration's handling of the war in Indo China, quite inde-
2 pendent of that, if you look at the Pentagon Papers what you
3 see there is a number of experts in foreign policy and military
4 policy and economic policy and so on -- each of them given a
5 task to do, pacification of villagers, securing of workers,
6 economic aid, or whatever it is. Each of them is given a task
7 to do and each of them with his expertise solves the problem
8 and no one steps back and looks at the whole picture in context
9 and asks whether the whole thing makes sense at all. And you
10 wind up with things like, "We had to destroy the village in
11 order to save it."

12 DR. BURGESS: How do you interpret these analogies,
13 Joe?

14 PROFESSOR WEIZENBAUM: Let me just finish. What
15 Arthur is saying in effect is we may come to a situation where
16 we have to destroy the migrant child in order to educate him.

17 DR. GROMMERS: Destroy him later, education him today.

18 PROFESSOR WEIZENBAUM: Yes. What I am asserting, to
19 come right down to what we are here talking about, when we talk
20 about the political and the leadership role of the Secretary
21 of Health, Education, and Welfare and of the President and of
22 the Executive Branch generally, and the Legislative Branch, this
23 leadership role has to be played out in a way such that the
24 whole context is dealt with, not just the question of confiden-
25 tiality and privacy as a public-technical problem that has

1 technical solutions.

2 That is why I think it is so terribly important that
3 we don't look upon this committee entirely -- although I think
4 it is appropriate in part -- as a management consultant firm.

5 I think it is an educational role that we should
6 play, first of all to ourselves and ultimately to the Secretary
7 and to the government and then to the people. I know these
8 are big words, but nevertheless I believe them.

9 DR. BURGESS: What is the distinction you want to
10 draw between the kinds of problems, the engineering problem and
11 this?

12 DR. WEIZENBAUM: I am saying that some of us as
13 technological experts may be able to come up with technological
14 structures that tend to serve our sense of confidentiality,
15 privacy, and all of that. Some of us as legal experts may tend
16 to come up with legal structures that tend to serve these same
17 goals and so on. But if we do that separately, if we each think
18 of our own area of expertise in solving a problem in some con-
19 text of technique and technology and methodology, then we may
20 wind up with something that looks good, just in the very sense
21 that this particular system looks good until you step back and
22 look at it in a larger context and you may find you have done
23 much more harm than good.

24 And again, as I said earlier this morning, the ef-
25 fects of that may turn out to be irreversible. All of a sudden

1 you discover it is too late.

2 MR. SIEMILLER: Well, aren't you saying that in
3 reality you need the legal requirement to do a certain thing,
4 and if you have the legal requirement we have the available
5 technology to put it into effect.

6 PROFESSOR WEIZENBAUM: I am saying something a
7 little bit -- perhaps a lot deeper than that. Before the legal
8 requirement you have to have the moral and ethical recognition.
9 If the legal requirement, if the legal structure, is simply an
10 exercise in methodology as opposed to an encoding of a deeply
11 felt moral ethic --

12 MR. SIEMILLER: You are saying it won't work.

13 MR. ANGLERO: I would say that we should go further
14 and have the technology and the legal aspects to serve really
15 what the problem might be, or what services are trying to do.
16 I would not like to say that we are thinking first in the law
17 and technology, and third in the problem as such. Because we
18 don't know what the problem is and until we really can grasp
19 and can see it like an X-ray, something like that, we would
20 be somewhat limited to put any kind of legal or technology lim-
21 itations to it.

22 The other side, I would like to ask Miss Elliott if
23 there are any other parallel systems, parallel data banks,
24 created through the Office of Education for the rest of the
25 community of the United States?

1 MS. ELLIOTT: For which part?

2 MR. ANGLERO: For the rest of the community.

3 MS. ELLIOTT: There is only one other program of
4 which I know, and it has been funded by our Bureau. But that
5 support is going to end. I think you will get a sense of how
6 I feel about this. And the people involved have been urged
7 to convert it into a sample system rather than an attempt at a
8 universal system. But the data bank, itself, includes deaf
9 children in schools. And it includes name, hearing scores,
10 some test information -- reading tests are certainly in there --
11 speech discrimination scores. I honestly can't remember off-
12 hand the other parts of it.

13 Off the record.

14 (Discussion off the record.)

15 MS. ELLIOTT: Back on the record. I need to make
16 very clear that that data bank is in no way hooked up with
17 educational services that those children receive. It exists
18 as a research vehicle and I think that even on cost-benefit
19 aspects alone one can question quite thoroughly whether a re-
20 search survey needs to include the total population.

21 MR. ANGLERO: But do you have any other examples --

22 MS. ELLIOTT: I can give you another example. I
23 had some of the forms here yesterday. There is a type of system
24 I would be happy to talk more about another time, if you would
25 like. The guaranteed student loan system does maintain a data

1 bank on everyone who applies and receives a guaranteed govern-
2 ment loan to attend college or university.

3 And the information comes to the U.S. Office of
4 Education after the loan has been granted. In other words, the
5 first indication that the U.S. Office has is the fact that the
6 student has received the money. And the forms -- I am really
7 sorry I didn't bring them back today but they include the
8 Social Security number as the identifier, the institution that
9 the student will attend, the address, and I think that is about
10 all. The U.S. Office uses this in the following manner. It
11 has a contractor who keys in this information. There are rost-
12 ers which are set up by the university and the entire rosters
13 go out to the separate universities who are simply asked to
14 indicate yes or no that student is in school. And when these
15 things come back to the U.S. Office, then they are separated
16 out and in any cases of students with guaranteed active loans
17 who have left the school, that information is forwarded to the
18 financial institution which holds the loan.

19 It is my understanding that the reason that this is
20 done is that there is a time limit after departure from school
21 in which a student must begin to repay the loan. And there is
22 another form which -- I would have to check. There is a dif-
23 ferent procedure for learning that a student has left, is
24 graduated.

25 So what this is doing in effect is indicating those

1 students who have left school and have not reported this to
2 the loan institutions.

3 I asked the project officer in that case, "Who else
4 has access to the information?" and I was told emphatically
5 "No one." I was also told that the contractor has been on that
6 particular job for 7 years, and I was told they were very
7 pleased with his performance and they felt it was secure.

8 There are two other systems within higher education.
9 One of them was set up for the NTEA fellowships, and performs
10 a similar type of function. The other one concerns Upward
11 Bound, which is a program in higher education, and as I under-
12 stand it begins serving children or young people from selected
13 population groups while they are still in secondary school and
14 then follows them on into high school.

15 I think I need to do further homework on that system
16 because I haven't gotten it straight yet but I will be happy
17 to share with you what I find out when I understand it.

18 DR. GROMMERS: Phil.

19 MR. DeWEESE: Who gets the facts on the guaranteed
20 loan program, whether you are under \$15,000?

21 MS. ELLIOTT: That, as I understand, is purely a
22 matter between the student and the investment house. There is
23 a brochure which tells the student for each state the one office
24 in the state that can provide him a list of the financial insti-
25 tutions which participate in this. But I am told there is an

1 emphatic effort that a student is never directed to any partic-
2 ular financial institution so it is purely a matter between
3 the bank or the savings and loan and the student.

4 MR. DeWEESE: Yes, but on a guaranteed loan program
5 you sign a waiver that you allow the IRS to turn over your
6 records. I assumed when I signed that I was giving HEW author-
7 ity to check with IRS, and not the bank.

8 MS. ELLIOTT: It is my understanding that that is not
9 the case but I will be happy to check it out for you.

10 DR. BURGESS: Just a short comment. I guess my
11 reaction to your presentation about the migrant workers' data
12 bank is much like Arthur Miller's. And I think that the larger
13 kind of problem is one where we have lots of institutions in
14 society, and not just at the federal level but at all levels,
15 and foundations in the quasi-public sector who intervene every
16 day in the lives of individuals in communities under condi-
17 tions of absolutely no accountability at all. And I think
18 that Joe Weizenbaum's comment really brings to the surface
19 the underlying basic issue, and that is, whether there is an
20 absolute right or a relative right to privacy that an individual
21 or group of individuals might have with respect to social
22 interventions by governmental instruments or quasi-public
23 mentalities.

24 And I guess that I think, as far as the committee
25 is concerned, that that issue really is a basic one that some

1 place we are going to have to resolve. Because Joe has said
2 or implied his view in any case in that regard, I would just
3 like to say that I think I would come down on the side that
4 these kinds of social interventions by public and quasi-public
5 institutions are what public policy is all about. They are
6 going to continue and the more we value planning and rational-
7 ism, the more that kind of intervention is going to take place.

8 But if that kind of trend is correct, and if a fore-
9 cast of that kind of trend continuing is correct, then the
10 problem of accountability is one which has to be squarely faced.

11 So I would hope that the committee would not come
12 to the conclusion in the future, unless we are all persuaded
13 by evidence to the contrary -- at least my preview would be I
14 would hope the value of this kind of data and the collection of
15 this kind of information for improving public policy and for
16 improving the lives of individuals could be seen, and that that
17 might, on the other side, be balanced by appropriate safe-
18 guards and effective mechanisms and procedures, including
19 statutory definitions of privacy that would allow this kind of
20 activity to continue for the social good it creates without
21 involving the real and potential social deprivations and the
22 other deprivations that are very much a part of the absence of
23 any accountability mechanisms.

24 PROFESSOR MILLER: I am on the same wave length.
25 Just a small observation, that the cost of providing

1 accountability and security for this system would have been
2 virtually minimal. I mean the system could have functioned
3 without restraint really, and the ability to secure this system--
4 it is child's play.

5 MS. ELLIOTT: May I ask a question for information.
6 Arthur, in your book and now you have quoted people who are,
7 to one degree or another, associated with the system. But do
8 you have evidence of breaches of security? I think that would
9 be very helpful to me to go back to the U.S. Office with.

10 PROFESSOR MILLER: Lois, since the committee was
11 formed I have been requesting the formation of sort of field
12 groups, to go out and look at systems as they operate. And in
13 the deep recesses of my little mind has been the personal hope
14 that I would be permitted to go look at this system and talk
15 to these people.

16 MS. ELLIOTT: I am sure I can arrange that.

17 PROFESSOR MILLER: Because I say again I do not think
18 policy making should be done by anecdote. I mean if I went
19 to Little Rock in the summertime and discovered five breaches
20 or no breaches, I think my attitude would be about the same
21 as to what should or shouldn't be done. I can't give you chap-
22 ter or verse at this time.

23 Could I just ask you a question?

24 MS. ELLIOTT: Yes.

25 PROFESSOR MILLER: What is the status of Project

1 Talent?

2 MS. ELLIOTT: I think it would be better if I checked
3 and gave you an answer. I believe I remember that there was a
4 proposal in for a continuation of it. I honestly do not know
5 with certainty what decision was made about that.

6 PROFESSOR MILLER: Project Talent, for the group --
7 let me quote from an author, a slight acquaintance of mine.

8 "Project Talent is an effort financed by the Federal
9 Office of Education and begun in 1960 with the testing of
10 approximately one million high school students. In addition to
11 academic testing, the teen-agers were required to complete
12 personal information, activity and interest inventories. The
13 resulting data have been computerized and fed back to the school
14 guidance counselors."

15 That is all I know about Project Talent, and who
16 knows whether this is right. I am really just asking.

17 MISS COX: There have been some evaluations but I
18 don't know where those reports are.

19 Can you tell me where Head Start is? Is that Office
20 of Education?

21 MS. ELLIOTT: No, Head Start is primarily in the
22 Office of Child Development, which is an agency that reports
23 directly to HEW.

24 DR. GROMMERS: I think it is in the Children's
25 Bureau.

1 MS. ELLIOTT: No, there is no longer a Children's
2 Bureau. The old Children's Bureau was split into two sections,
3 one became the Office of Child Development.

4 MISS COX: Where is that office?

5 MR. MARTIN: It is in the Office of the Assistant
6 Secretary for Administration and Management.

7 MISS COX: It is not in here.

8 MR. MARTIN: I don't know what you are holding.

9 MISS COX: This is out of your book.

10 MR. MARTIN: I can't see it.

11 MISS COX: In the same connection, it is rather
12 disturbing in Talent and some of these others that the hundreds
13 of thousands of dollars go in without this over-checking and
14 without evaluation.

15 Now, of course it is years since I was on a NIH
16 committee and we howled and howled about this and the granting
17 of funds, but there still is very little of the real evaluation
18 going on.

19 MS. ELLIOTT: I think I can tell you that the OCD
20 people have a research division and a component of that directly
21 concerned with evaluation. It is of sufficiently recent origin
22 that I doubt that any of their work would have been --

23 MISS COX: I know an awful lot about that, but it is
24 a question of the planning. I mean I happen to be called in
25 as a consultant to that very project.

1 MS. ELLIOTT: Oh, I see.

2 MISS COX: And I am a little -- by this time I am
3 not quite in the status that you are emotionally about it --
4 (laughter) -- but I have been on it since December, but again
5 so much goes back to the over-all planning for protection and
6 evaluation. I mean that comes at the early stage before the
7 project is started, not after you have put millions of dollars,
8 really, into a program. It should be before the program starts

9 And that is my theme song. You have one. You know
10 you have to have something that is your special --

11 DR. BURGESS: -- song and dance?

12 MISS COX: I mean I am in the salvage stage and try-
13 ing to make it appear as evaluation.

14 PROFESSOR MILLER: What Joe, I think, referred to as
15 patchwork this morning.

16 DR. GROMMERS: Are the members of the committee
17 familiar with the book called "Pygmalion in the Classroom"?
18 This was a research study and I am only familiar with it because
19 I have read about it. Arthur, are you familiar with it?

20 This was a group that went out to California and
21 said that Harvard had a new test that solved all prediction
22 problems of children's performance in the future. And they
23 gave this test as well as the ordinary Binet, and I don't know
24 exactly what other tests, to a large group of children and
25 then divided them up into two equal cohorts and told the

1 teachers of one group of children that these were the children
2 that the Harvard Test had shown were going to do tremendously
3 well in a number of areas and the other group, which were in
4 fact equal, were going to do very poorly or not well at all.
5 And then they did a number of tests at a later date and showed
6 a very large statistical difference in the performance of these
7 children --

8 MISS COX: Because of attitude toward the children?

9 DR. GROMMERS: Well, I presume. I, myself, have not
10 read the analysis of why they thought the differences had
11 occurred.

12 Another parallel thing is called -- well, it is a
13 study that was done of retarded children in an institution where
14 the IQs of these children was found to be 80 and a bunch of
15 them were left in the institution and an equal group of them
16 were put outside in ordinary home situations, foster homes I
17 believe. And they were re-tested later and there was probably
18 a 40 IQ point difference among the IQs of the children on the
19 average who remained in the institution and were treated for-
20 ever as a retarded child and those that were brought out into
21 the real world. And one of those children actually went on
22 to college and got a college degree and he had had an IQ of
23 80 on a record which might very well have been in this migrant
24 worker's population.

25 These are the only two studies that I know of that

1 purport to give some evidence of what we are talking about.

2 MS. ELLIOTT: May I say something in response to
3 that. I think those are both important issues but I see them
4 as being very different issues.

5 In the one case there was an effort made to equate
6 groups, and then to, by dint of a few words, see what impact
7 those few words had on the performance at a later time of those
8 children.

9 In the other situation, I think it would be impos-
10 sible, of course, after the study was completed, to have looked
11 thoroughly at the performance measures given while the kids
12 were still in the institution.

13 There are lots of data -- I can find large recom-
14 mendations of it for you -- that will show that the environment
15 in which a child exists has a tremendous impact upon his de-
16 velopment, his achievement in many different scopes.

17 DR. BURGESS: But, Lois, the point is --

18 MS. ELLIOTT: The point is that the test may not
19 have been valid in part.

20 DR. BURGESS: No, that is not the point. The point
21 is precisely the one you made, that environment may have a
22 lot to do with how the child performs, and part of that en-
23 vironment is information about him which creates expectations
24 about him on the part of the teacher. That is the point. And
25 none of us are immune to the formation of attitudes based on

1 bits of information about the attributes of another person
2 that affect the way we behave toward him and therefore the way
3 he responds to us and to some task situation that he may be in.

4 And the question is -- the issue is: Should this
5 information be -- leaving aside the question of whether it
6 should be collected at all, because I think there are all kind
7 of reasons it ought to be collected -- but should it be dif-
8 fused to people who aren't trained to understand and evaluate
9 and interpret the total meaning.

10 MS. ELLIOTT: I don't think there is any question
11 about that.

12 DR. BURGESS: But it is. That is the point. It is
13 diffused.

14 DR. GROMMERS: In fact, Sartre might say that that
15 is the only reality.

16 Joe.

17 PROFESSOR WEIZENBAUM: I am always the one --

18 DR. BURGESS: Is this the same speech? May I get
19 a drink of water? Or is this a new one?

20 PROFESSOR WEIZENBAUM: Yes, you may get a drink of
21 water. I am always the one who talks about the subtle issues
22 underlying things. It is often hard to come up with a concrete
23 example. I know about this Pygmalion project. I had forgotten
24 that was its name.

Let me get at it this way. In universities there

1 are usually committees that watch over so-called experiments
2 performed on human subjects so if you want to run some sort of
3 psychological or physiological experiment using students as
4 subjects, for example, you first have to go to the committee
5 and the committee decides whether there is informed consent,
6 is it possibly harmful to the people being used as, quote,
7 subjects when used or not.

8 Let's look at that Pygmalion. Clearly that is an
9 experiment for a very, very good purpose to make a very, very
10 good point. In fact, it is an experiment on human subjects,
11 the subjects being the students in that California School system
12 we were talking about.

13 In fact, we can see that half of those subjects were
14 severely damaged by that experiment.

15 That is a subtle issue. You applaud the wonderful
16 result. You say, "Isn't that good social science research.
17 Here is a really counter-intuitive result, good methodology and
18 all that." But underneath it is the question of who consented
19 to this other, this half of the population of the children to
20 be damaged.

21 DR. BURGESS: When Harvard or MIT professors do it
22 nobody has to consent.

23 PROFESSOR WEIZENBAUM: At MIT we do have committees
24 of this kind and worry about it. All I am trying to point
25 out is here is a very specific example of a subtle issue that

1 is just under the surface of what is being done, and it is very,
2 very easy for that particular issue to escape the attention of
3 the system designer, of the designer of the experiments, of
4 the evaluator of the experiment, of the granting agency if there
5 is money involved, and so on.

6 It is a rare opportunity to give a very specific
7 example.

8 DR. BURGESS: If I could follow on that, Joe's refer-
9 ence to the experimentation with human subjects is an important
10 one, I think, because the annals of the behavioral sciences are
11 full of examples where human subjects have routinely been mis-
12 treated in some dramatic and very damaging kind of way, and
13 in other ways that violate reasonable notions of ethical re-
14 search behavior. And once again, if that were a problem of
15 malevolence it would be easy to solve but, as Arthur points
16 out in so many things he says, in the case of behavioral science
17 research oftentimes it is that people haven't thought that
18 what impact they are doing may have on subjects in experiments.

19 And I think it is relevant to the work of this com-
20 mittee -- in fact, one of the things we might ask for, Frances,
21 is a copy of some copies of any of the background material that
22 was prepared by NIH because, so far as I know, the committees
23 that have been established across the country on experimenta-
24 tion with human subjects in universities are primarily a result
25 of -- except for the exception of a few enlightened universities

1 that had this before -- the result of NIH requirements two
2 years ago that all experimentation with human subjects had to
3 meet certain standards with respect to procedures, assurances,
4 and so on.

5 And I think the reason why that is important and
6 why the background documentation for that decision, if it is
7 available, might be useful to us, is because the NIH require-
8 ments require affirmative kinds of actions on the part of the
9 universities, that is, the notion of implied consent on the
10 part of the subject isn't sufficient. One has to meet certain
11 standards in his research procedures that will guarantee that
12 human subjects will not be subjected to certain kind of research
13 procedures.

14 DR. GROMMERS: You are suggesting we might be able
15 to extend that whole reasoning to --

16 DR. BURGESS: I am thinking that here is an example
17 in a very small part of this problem, but one which from other
18 things I have seen from NIH anyway, would suggest that some
19 very careful thought went into it. And I would think that
20 we might all learn something from at least reading some of the
21 background materials that preceded the decision, the docu-
22 mentation of that decision.

23 MISS COX: Is there a similar document for any of
24 the other groups in HEW, do you know? The Office of Education --
I haven't seen the most recent one, but previous ones on

1 Title I and III were very loose.

2 MS. ELLIOTT: It is a department-wide policy which
3 is monitored for HEW by a particular individual at NIH. But
4 it is HEW-wide.

5 MISS COX: By an individual?

6 MS. ELLIOTT: Well, it is a group. Let me tell you
7 the name of the group. It is called the Institutional Rela-
8 tions Section, Division of Research Grants, NIH. But it is
9 that group which monitors this policy, protection of human
10 rights, for all of HEW, for the Office of Education.

11 MISS COX: All of HEW?

12 MS. ELLIOTT: Yes.

13 DR. GROMMERS: But only for experiments, not for
14 setting up data banks.

15 MS. ELLIOTT: I am not so sure of that. I think that
16 is the way in the past it has been interpreted but I didn't
17 think that is the way it is beginning to be interpreted.

18 MISS COX: I haven't seen the recent one.

19 DR. GROMMERS: We will see if we can get that. Staff
20 tell me it has already been ordered. That is how fast staff
21 is prepared to respond to the requests of the committee for
22 data collection.

23 Layman.

24 MS. PALLER: I think there are some problems even
though that pamphlet exists, because it requests that things be

1 kept in confidence and there is an assumption, since a federal
2 agency is making these requirements, that promises of confi-
3 dentiality can be made and that they will be backed up by HEW,
4 which everybody knows is not the case. There is no statutory
5 protection for people making promises of confidentiality. So
6 that isn't really a solution. It just puts the burden on the
7 researchers and on the institutions to protect privacy and
8 confidentiality.

9 DR. GROMMERS: Layman, do you have something?

10 PROFESSOR ALLEN: I was troubled, Joe, by your
11 comments about Rosenthal's experiment, because I think the case
12 points up the complexity and difficulty of that issue of trying
13 to test whether, in effect, saying to the teachers and identi-
14 fying children in her or his class that were late bloomers --
15 that was the stimulus. And to try to identify why that made
16 a difference -- to characterize not telling the others as being
17 a deprivation that is being heaped on them when you don't know,
18 and that is the very topic under investigation, and you will
19 never find out any other way -- this is not to say that research
20 should not be done considering carefully the interests of those
21 involved, but if we are going to learn whether given stimuli
22 have effects, it doesn't mean that that kind of research
23 can't be done.

24 MR. SIEMILLER: Yes, but who should select the
guinea pigs? And as Joe said, 50 per cent of these people were

1 guinea pigs that were damaged and somewhere along due process
2 a lawsuit should go in.

3 DR. BURGESS: The engineers use us for guinea pigs
4 when they build super highways through the centers of our
5 cities.

6 MR. SIEMILLER: It is not the same thing. I wouldn't
7 agree there is any connection whatsoever. If you don't want the
8 super highway you can move. But if you miss out on education,
9 you are sunk. And to destroy an opportunity has no connection
10 between an engineer building a super highway and a child having
11 an opportunity or having a stimulant to learn something.

12 DR. BURGESS: I suppose lots more people's lives
13 are irreparably damaged by the work of architects and engineers
14 of the last 50 years than by behavioral research.

15 MR. SIEMILLER: Perhaps that is true but that
16 doesn't justify anybody being damaged, the fact it has happened.

17 PROFESSOR WEIZENBAUM: I think Layman put his finger
18 on it. He is quite right. The whole point is that it is a
19 very difficult and complex problem. That is the point. And
20 it may very well be that in the Pygmalion project the greatest
21 care was taken and that if I, say, had known about it in
22 advance and afterwards that I might have approved of the whole
23 thing. It might very well have been done very carefully. I
24 really don't know. I am not criticizing that particular
25 project.

1 What I was using that project for is -- as I say,
2 it is a relatively rare opportunity to vividly illustrate a
3 possible side-effect that may not have come to your attention
4 immediately. It is one of these subtle things.

5 These guidelines which, by the way, are widely known
6 at MIT and I imagine at most universities and which were very
7 welcome when they came out, say among other things here -- and
8 I am grateful to have it pointed out to me -- if the risks to
9 the individual are outweighed, by the potential benefits to
10 him, this is one of the criteria that should be used. And it
11 is only one, not the only one -- or by the importance of the
12 knowledge to be gained.

13 Notice the "or." There is a subtle value judgment.
14 "The importance of the knowledge to be gained." Important to
15 whom? Not necessarily to the individual who is the subject --
16 perhaps to society at large and now there is a value judgment
17 about what knowledge is important, how important it is, how
18 much damage one is entitled to do under that paragraph, and by
19 virtue of the importance of the knowledge to be gained. I am
20 not saying anything about evil people, just as Arthur was not,
21 not at all. I am simply calling attention to the fact --
22 and Layman has underlined it, and I am glad he has -- that
23 these are terribly complex issues and that if we look only at
24 the surface structure of all the things we are talking about,
25 we are going to miss these somewhat more subtle points, and

1 that is where the real dangers are, just underneath the surface
2 and way below, not at the surface.

3 DR. GROMMERS: I just want to add one thing about
4 the idea that these children were badly damaged. In fact it
5 is not that somebody set up a new experiment and they knew
6 what the answer would be or even that they had a hypothetical,
7 but they just did what is being done. And they controlled it
8 in order to see what the effect was.

9 In fact, this migratory worker data system functions
10 like the prediction of a later bloomer. They simply set up a
11 way to measure what happened.

12 PROFESSOR ALLEN: In that respect the fact that
13 negative low-performing information is being communicated more
14 carefully about this population might well be setting up that
15 kind of expectation on the part of those instructing the child-
16 ren and that prediction might be fulfilled.

17 DR. GROMMERS: I think that was one of their points.

18 PROFESSOR WEIZENBAUM: Let me just say in smaller
19 groups and at coffee-break time or some other time -- I don't
20 want to take the time of the meeting -- I can give an example
21 of a psychological experiment that was performed and won a
22 prize as one of the great psychological experiments of all time
23 by the American Psychological Association. And it is abso-
24 lutely incredible what that thing did to its subjects.

25 DR. GROMMERS: At any rate we could take example

1 from this that in fact experiments are going on that one is
2 not viewing as experiments, such as the data bank children, and
3 may be indeed having these kind of effects, even if they are
4 not being observed.

5 DR. BURGESS: There is one recommendation for this
6 committee that sort of falls out of this discussion and that is
7 that the migrant experiments and the Pygmalion were performed
8 by Harvard professors.

9 PROFESSOR WEIZENBAUM: Milgrim was not. He was at
10 Yale.

11 (Laughter.)

12 DR. BURGESS: He must have been influenced by
13 Harvard.

14 DR. GROMMERS: I think we have had a very interesting
15 and stimulating discussion today from the wonderful contribu-
16 tions of the various speakers. I think we will break up now
17 into our working groups.

18 Do we have any other particular information? If you
19 could just get your lists and criteria, put my name on it, and
20 leave it at the desk by 10:00.

21 We have three flip charts which you will have in
22 your meeting rooms so you can make big diagrams if you want to.
23 John, your group in Room 115; Phil, your group in the Linden
24 Room; and the third, Florence's group, could meet here in this
25 ROOM.

1 (Discussion off the record.)

2 DR. GROMMERS: I'm sorry. I am not hearing what is
3 going on.

4 MR. GENTILE: Can we assume that all group members
5 will be attending group meetings?

6 PROFESSOR WEIZENBAUM: Why do you ask?

7 DR. GROMMERS: We really desperately need your help
8 and you really have been chosen on the committee because of
9 your real important contributions that you can make to this, and
10 at least a couple of hours would be very much appreciated.

11 MR. ANGLERO: May I say something. This morning we
12 had a pre-lunch discussion on H.R. 1 at some length. I would
13 like, if you haven't done it -- I think we have a June 9, 1972
14 letter. This has two pages addressed to this, quoting Richard
15 Nathan. I would like people to read it.

16 DR. GROMMERS: Do we have it?

17 MR. ANGLERO: Yes. I suggest it would be good to
18 read.

19 (Discussion off the record.)

20 DR. GROMMERS: We will break up into our work
21 groups now.

22 (Whereupon, at 4:15 p.m., the meeting was adjourned,
23 to reconvene at 8:30 a.m., Saturday, June 17, 1972.)

