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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SECRETARY'S ADVISORY COMMITTEE

ON

AUTOMATED PERSONAL DATA SYSTEMS

Bethesda, Maryland

Tuesday, 25 July 1972

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SECRETARY'S ADVISORY COMMITTEE

ON

AUTOMATED PERSONAL DATA SYSTEMS

Fogarty International Center

(Building #16 - Stone House)

National Institutes of Health

Bethesda, Maryland

Tuesday
July 25, 1972
9:00 a.m.

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P R O C E E D I N G S

1
2 MS. GROMMERS: Good morning, everyone. I am
3 very glad to see you all this morning, and I would like to
4 introduce our first evidence giver, well known to you all,
5 Mr. Robert Gallati, the Director of the New York State
6 Identification and Intelligence System, accompanied by Mr.
7 D'Alessandro. Would you be so kind as to introduce yourself

8 MR. GALLATI: Thank you, Madame Chairman. I am,
9 as most of you in the room know, Bob Gallati, Director of
10 NYSIIS.

11 Today I brought along my brains with me, my
12 colleague, cohort, my co-conspirator, my accomplice, Adam
13 D'Alessandro, my Deputy.

14 I know very little. He knows a lot. So between
15 the two of us, we might be able to communicate something
16 of interest to you.

17 I am really genuinely pleased to have this
18 opportunity to discuss NYSIIS with a group such as this.--
19 an interdisciplinary group. Unfortunately, we who are in
20 the criminal justice profession tend to be groupies. We
21 speak to each other, but seldom speak to people outside
22 the brotherhood.

23 As a result, we think we do what is right, and
24 we try the best we can. But sometimes we, for failure to
25 communicate with the people in the rest of the world, perhaps

1 overlook some very important considerations.

2 And I certainly hope that during this session
3 today we can test against your expertise, this interdisciplin
4 group, the types of things that we in the criminal justice
5 field feel are appropriate for our purposes for the preser-
6 vation of privacy.

7 I am sure you are going to find flaws in what
8 we do, and I hope you will call them to our attention. We
9 are looking forward to the type of critique that you people,
10 you ladies and gentlemen, can offer to us.

11 We are a developing agency. We have only begun
12 to develop, and we are looking for opportunities to improve
1 at all times.

14 We are concerned, and have been concerned from the
15 very inception of our agency, with the problems of privacy,
16 and at least in our own field we probably were the pioneers
17 in that kind of concern.

18 We did, when our first development took place,
19 immediately hire a consultant, Alan F. Weston, who is
20 probably well known to most of you, and he has guided us,
21 both as a paid consultant, for a short period of time, and
22 as an aficionado or buff ever since.

23 So to that extent we feel we have had some
24 input from the outer world, as it were.

25 Now, what is NYSIIS? It is basically a very

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1 large computerized data base, containing derogatory informa-
2 tion about people. And it is definitely a derogatory persona-
3 data system, and as such is obviously a concern for those of
4 us who are concerned with privacy.

5 It is created as an independent agency by the
6 Legislature in 1965. It is an independent agency in the
7 executive department. The executive department of New York
8 State is a catch-all for those departments or agencies or
9 commissions which are not constitutional departments. And
10 we report directly to the Governor. We have no intervening
11 layer of authority.

12 The design of NYSIIS was such that it was planned
13 to be a criminal justice information system for the State
14 of New York. We have problems with our budget people, trying
15 to convince them that this is the ultimate goal. They tend
16 to think of us as a finger print identification bureau, and
17 they lose sight of the ultimate goals.

18 But this is indeed what we, who were in the plan-
19 ning stages of NYSIIS before it became a statutory agency,
20 had planned and had designed, and we merely went the route
21 of the large fingerprint identification system because of
22 the need for this as a fundamental foundation for the crimina-
23 justice information system.

24 Our statute reads: "Through electronic data
25 processing and related procedures, establish a central data

facility."

And then paraphrasing the rest of that, the powers, duties and so on of the statute, serving criminal justice agencies, including criminal offender records, personal appearance data, organized crime intelligence, fingerprints, handwriting samples, and other related data, and engage in research related thereto.

That is a paraphrase of the charge that the statute gives to us in NYSIIS. Now the concept behind the creation of the agency had been identified by the advisory committee, of which I was a member, prior to the establishment of the agency, to have six basic principles.

The first principle -- and some of these may sound like old hat to all of us here today, at this point in time, but they were very revolutionary back in 1963 and 1964 when we were first talking about them.

The first principle is the unity of the criminal justice. And believe me, we don't have unity yet, but in any event we are at least moving in that direction. And commission after commission has pointed out the need for a concept of a system in criminal justice that the component parts, the six basic component parts of the criminal justice process are indeed not a system, should be a system; and to the extent we are making them more coherent and systemic, to that extent we will improve this process and more fully

1 evolve a system.

2 We are all in the same business and have the
3 same goals, that is, the police and various law enforcement
4 agencies, district attorneys, sheriffs, criminal courts,
5 probation and corrections people. This was quite revolutionary,
6 believe me, eight or nine years ago.

7 Then, the concept of information sharing. Again,
8 this was something which was perhaps given lip service,
9 but was definitely a thing which, at least in some areas of
10 criminal justice, was not really effective.

11 And one of the things that began the concept of
12 NYSIIS was the collapse of the prosecution in the Apalachin
13 organized crime case. The prosecutor of that case, in order
14 to develop his presentation to try to convict the seventy-five-
15 odd people who actually were rounded up at Apalachin, spent
16 two years going around the State, and to Federal agencies,
17 and so on, trying to pull together information on these people,
18 all of whom were notorious, who were well-known by the
19 newspapers and were subjects of Sunday supplements and so on,
20 yet in the files of law enforcement, including the Federal
21 government, in order to get a clear picture of just who they
22 were for legal presentation, it took him two years.

23 He went to about six hundred different agencies,
24 and found a complete collapse of good organized crime
25 intelligence information. No available information more than

1 newspapers and magazine clippings. And with redundancies
2 in the various files and inaccuracies. So much so, that it
3 collapsed.

4 And that was, of course, a symptom of the type
5 of lack of information sharing which NYSIIS was designed to
6 improve, as well as to emphasize the unity of criminal
7 justice.

8 The third concept was that it would be a voluntary
9 participation system. This is not quite true in the sense
10 that the actual submission of fingerprints had, by law, been
11 required, and this was one of the major input documents. So
12 everything but, however, the fingerprints, were designed to
13 be on a voluntary basis.

14 It was dedicated to research. Again, it is hard
15 to believe today, when we talk about research, back in 1963
16 and 1964, people looked at us with a blank stare. Research
17 in law enforcement, criminal justice? Whoever heard of
18 such a thing?

19 Today, of course, we have the Law Enforcement
20 Administration, with all kinds of heavy funding, which is
21 sometimes not devoted to the research but to purchase of
22 tanks and helicopters, but nevertheless, research is now
23 a respectable word in the criminal justice area.

24 Even the courts are accepting it, which is
25 amazing. I never thought it would happen.

A fifth area was security and privacy. Right from the beginning we felt there was a need to concern ourselves with security and privacy.

And the sixth principle was that this agency, in order to best function, should be independent of any line agencies. And, indeed, it was created as an independent agency, a staff agency without any authority or requirement to make arrests or perform any specific type of function.

So it could serve all of the agencies of criminal justice equally and without fear of favor.

Now into a certain environment was this new agency thrust, and the environment, of course, was the basic criminal justice environment which involves the local, state, and Federal criminal justice agencies. The sheriffs, police, district attorneys, police, courts, correctional authorities, parole.

And also, by law, we adopted the previous service that was given to State agencies by the Division of Criminal Identification, which was then in the Department of Correctional Services. They had been servicing them for the purpose of applicant and licensee checking -- checking the Department of Civil Service, State and Social Services, and other departments of the State, including the Attorney General, of course.

So when we absorbed the identification function,

we absorbed these responsibilities as well.

We became, as time went on, specifically involved with SEARCH -- System for Electronic Analysis and Retrieval of Criminal Histories -- which was an LEAA-funded project, to develop an interstate exchange of criminal history records.

This was successfully developed through the SEARCH project, and rapidly absorbed by the FBI into the National Crime Information Center, and is now the computerized criminal history program of the FBI's National Crime Information Center.

We of course were involved in the development of SEARCH, and also in the development of NCIC's CCH program.

We have basically five types of files. For purposes of conceptual thinking about it, I have often described our files as of two kinds -- one "thing" files, and the other "people" files.

The most perfect example, perhaps, of the thing file would be the stolen property or stolen motor vehicle file, which of course is almost without privacy connotations at all. It's strictly a matter of is this car wanted or not wanted, is this property stolen or not stolen.

Then perhaps a little less thing and more people would be the analytical type files in which you take data or take evidence at the scene of a crime and you try to relate it to a person. The obvious example of this would be a latent

1 fingerprint, a scene of the crime fingerprint, or a personal
2 appearance as a result of somebody's observation of a person
3 who perpetrated the crime; a modus operandi, for example,
4 describing the method by which the crime was perpetrated,
5 may identify the trademark of an individual perpetrator.
6 Fraudulent checks, for example.

7 These two have very limited connotations in
8 terms of privacy.

9 Then you come to a fringe area. The wanted file.
10 We include in our wanted file, also, missing persons. While
11 this concerns people, nonetheless basically what you are
12 talking about is a warrant or warrants for people, and
13 these are, of course, in a sense, things.

14 So you have a minor privacy problem in the wanted
15 system.

16 So in those three, I would consider them more
17 or less in the category of thing files.

18 When you get into the people files, and it is
19 no question of them being people files, that is, the
20 identification system and its criminal offender record,
21 information responses, and the checking of applicant-licensees,
22 and you can get into the organized crime intelligence area,
23 of course, you are getting into sensitive areas in terms
24 of privacy.

25 Now why do we collect this data? Why do we

1 response with the data?

2 I think in the first three types of files that
3 I mentioned, it is quite obvious. In other words, we need
4 to know whether property is stolen. We need to know whether
5 a certain type of operation was done by a certain suspect.
6 We need to have a file which will relate who is wanted
7 and can be checked against.

8 When we get to the identification system, and
9 the distribution of criminal offender record information,
10 and to the organized crime intelligence, of course you have
11 a totally different situation.

12 And likewise, you have a totally different
13 context between the identification portion of our responsi-
14 bility and the organized crime intelligence portion.

15 In terms, first, of the identification and
16 criminal offender record information system, we collect the
17 information in order to serve the various agencies of
18 criminal justice. For example, in the case of the district
19 attorneys and police, for investigative purposes; in terms
20 of the courts, for purposes of arraignment, for bail setting,
21 for purposes of sentencing, for purposes of the probation
22 of people in terms of pre-sentence investigation and for
23 their purposes in terms of probation commitments.

24 In the correction agencies, they are interested
25 of course in checking out who they are receiving in their

1 various institutions, both from the standpoint of making
2 sure they got the right person, but also getting an up-to-
3 date background to check on them; and likewise for parole
4 needs, to have information from these kinds of files.

5 Likewise we service, as I mentioned before,
6 applicant-licensees for criminal justice purposes. In our
7 particular system, we service only those applicant-licensees
8 who are so designated in terms of state law.

9 In otherwirds, we do not volunteer or take any
10 applicant-licensees unless there is a state law authorizing
11 our checking of these applicant-licensees.

12 Likewise, we collect for statistical purposes.
13 We have not yet fully developed in this area, but we have
14 the capabilities for diagnostic and research purposes, for
15 treatment and prognosis in terms of court and probation,
16 and general research in the area.

17 One of the big points, in terms of budgetary
18 commitment to the system, we are able to say to the local
19 agencies throughout the state that you no longer need to
20 keep your massive identification, fingerprint identification
21 and criminal offender files. We now have a state file which
22 will give you a state record, and we can provide it for you
23 within two and a half hours, which is as good as any local
24 agency can do for itself.

25 As a result, we can save many millions of dollars

1 preventing the development of computerized local files
2 throughout the State.

3 The situation in New York State is -- because
4 of the fact that we staked out the area early -- quite
5 different than the situation in California.

6 Anybody who may be familiar with the California
7 situation is probably aware of the fact that there are
8 computerized identification and criminal offender systems
9 all over the State, including the counties, and recently
10 I understand they are also talking about the service bureau
11 areas.

12 For example, Los Angeles County is about to go
13 into one of the most fantastic compilations of total
14 county information that the world has ever seen, and one of
15 the major portions of that will be a large identification
16 bureau servicing LA police and some sixty-odd cities in
17 the county. Totally ignoring the fact that there is a
18 State record laying up there in Sacramento which they are
19 not taking advantage of, and they will always be necessarily
20 incomplete in the sense we have such mobility today.

21 We feel strongly that we should have a State
22 bureau which services the locals.

23 In organized crime intelligence, we feel different-
24 ly. The concept of this system is quite different from
25 that of the identification system.

1 First of all, we don't collect data directly
2 at all. We merely serve as a clearing house -- or we plan
3 to serve as a clearing house -- for the agencies in the
4 State which already have organized crime files, and also,
5 when operational, to provide the basis for setting up an
6 organized crime intelligence file in those agencies which
7 do not now have it.

8 We are concerned with the very limited number
9 of people, the top persons who have State-wide interest.
10 And actually, at the moment, we are still in the developmental
11 stage.

12 The concept is information sharing with computer-
13 ized analysis and development of tactics and strategy on
14 a State-wide basis, and ultimately to encourage local files.

15 Actually, we do not at this point disseminate
16 any of the data we have compiled. We are still studying
17 it from the standpoint of operational effectiveness and
18 security and privacy.

19 There are also, obviously, very, very grave
20 problems of security and privacy involved in this.

21 In terms of the characteristics of the data base,
22 I'd like to focus on the identification in the organized
23 crime section, because the others, as I say, have very minimal,
24 if any, privacy connotations.

25 Let me first make the point that our identification

1 system, which is the big bulk of our operation, is only
2 partially computerized. Computerizing a very large identifi-
3 cation bureau is a tremendous project. It is expensive,
4 and it means that for some period of time you must necessarily
5 operate dual system -- both your manual system and your
6 computerized system.

7 We get the data, of course, from the various
8 agencies. The data comes in on a form such as I will pass
9 around later, and I have copies for you.

10 The most typical one is NYSIIS-2 form, which is
11 the arrest fingerprint form. Which contains fingerprints
12 and the backup data, identification data.

13 Then we have an applicant-licensee form which
14 is the NYSIIS-4. The NYSIIS-3 is our incarceration prints,
15 with various institutional prints.

16 Then we have a fingerprint form, NYSIIS-6,
17 which is used for pre-sentence investigation; the probation
18 people send it in to make sure that the latest possible
19 information is available to them.

20 And we have some various other forms. For
21 example, disposition input data, and so on.

22 So basically our file is built up by the
23 submissions of government agencies, either from police
24 agencies making an arrest or from correctional services with
25 incarceration prints, or perhaps in many cases, also upon

1 the applicant-licensee, the Government agencies which have
2 the right to check our files on applicant or licensee.

3 To give you an idea of the size of the files,
4 we have seven and a half million prints on file. We have
5 put over two million of these on the computer. We have six
6 million name cards. About half a million of those are on the
7 computer.

8 And those of you who are not familiar with the
9 problem of name files--I am sure Jerry is -- this is one of
10 the most difficult areas to computerize a large file.

11 We do have a very excellent system, I think, now
12 for name search.

13 Seven and a half million fingerprints represents
14 four and a half million people, two million of whom,
15 approximately, have criminal offender record information.

16 The other two million have been collected over
17 the years as a result of applicant-licensee submissions.

18 We perform about 500,000 searches of the finger-
19 print file and responses of record criminal offender records,
20 where appropriate, each year, and approximately 300,000
21 name searches based upon name only.

22 We are very scrupulous and concerned about any-
23 thing not supported by fingerprints. However, people do have
24 our NYSIIS number from some basic fingerprint source of their
25 own and this will of course serve well to get your name

1 searched, possibly as reliable as the actual submission of
2 the fingerprints.

3 To make sure everybody is aware of the arrest
4 process, what happens upon arrest, the arrestee is booked
5 and a set of fingerprints is taken of his ten prints, a
6 full set of ten prints. One card is sent to the FBI, one
7 is sent to us, NYSIIS, and normally the agency will retain
8 a card for its file.

9 So three sets of prints are normally taken,
10 and I think this is standard throughout the United States
11 upon arrest.

12 It is this which is our largest source of input
13 data.

14 Now as far as the organized crime intelligence
15 is concerned, it is not operational at the present time.
16 It is still in prototype status. But we learned interesting
17 things.

18 We found out that eighty percent of the data in
19 the organized crime intelligence files of some very, very
20 sophisticated agencies such as Manhattan District Attorney
21 and New York City Police Department and so on, some eighty
22 percent of those records in the organized crime area are
23 public records data gathered from newspapers, magazines,
24 court records, records of hearings.

25 Indeed, some of the data that exists in the

1 organized crime field is laying in the basement of the
2 Library of Congress, the records of the McClelland and
3 Kefauver hearings, which has never been mined, in the sense
4 of being computerized and made available for rapid retrieval
5 and discrete retrieval.

6 About twenty percent is not public record, and
7 we have insisted that anything that got into our files was
8 as a result of legal surveillance. In other words, we do
9 not -- we reject specifically any data which is based upon
10 illegal surveillance, that is, wire tap not court ordered,
11 or bugs which are not court ordered.

12 And we reject, of course, also, the confidential
13 minutes of grand juries and unverified informer information.

14 In terms of the relevance of our input to the
15 system purpose, our system purpose is pretty much, of course,
16 dictated by our enabling act, and also by the law itself,
17 by the criminal procedure law.

18 We have to do, for example, a search of finger-
19 prints for criminal justice agencies and also for some non-
20 criminal justice agencies, State agencies which are by law
21 permitted to check our files for purposes of applicant-
22 licensee checking.

23 As far as data collection procedures are
24 concerned, the data collection is mandatory. Arresting
25 agencies are mandated to submit fingerprints to NYSIIS, and

1 of course, the backup identification data. And these are
2 received by facsimile transmission, by mail or courier, and
3 the basis is, of course, the data which is given by the
4 prisoner, the back-up data, also supplemented by the data
5 which the arresting officer has obtained.

6 Sometimes, of course, when prisoners will play
7 games with the arresting officer and give phoney names
8 and addresses, and perhaps not be completely candid about
9 their date of birth, and so on, but sometimes the arresting
10 officer can compensate by the fact that he has an investiga-
11 tion of the person and has other documentary evidence to
12 support it.

13 So basically we get a pretty good background data
14 with the submission of the fingerprints. Different agencies
15 are, of course, more competent than others, but on the whole,
16 we have pretty good data.

17 Many of the names, of course, are aliases, as
18 you can readily appreciate.

19 In terms of whether or not the subject knows
20 the purpose of taking the data, we must assume that these
21 people are streetwise, and they have a pretty good knowledge
22 of what we are taking fingerprints for. We are obviously
23 not taking them just to clutter up our files. We have to
24 keep them for checking purposes, and I think the very fact
25 that they do give aliases or phoney names indicates they know

1 what the purpose is.

2 In terms of confidentiality of these data, we,
3 of course, have codes of ethics -- both the NYSIIS and police
4 code of ethics. We have provision for malfeasance in the
5 Public Officer's Law. We have administrative penalties.
6 There are, of course, sanctions in the penal law as well.

7 And not too long ago, several of the people
8 in the Identification Bureau in the City of New York were
9 indicted and have gone to jail for selling these records.

10 We have had a case recently where, by auditing
11 our number of responses to agencies, we were able to prove
12 that a particular police agency in the State of New York
13 was receiving many more, or sending in more requests, more
14 fingerprint cards, and receiving more responses, of course,
15 than was warranted by the number of arrests in that agency.

16 And we had reason to suspect that perhaps some one
17 of the investigative private agencies had perhaps managed
18 to subvert the chief. So we took very firm action and the
19 chief was summarily removed from his position.

20 This is the type of thing that we can do. We do
21 auditing. We have a field team which keeps its ear to the
22 ground to find out whether or not in the field the confi-
23 dentiality of the records is being recognized.

24 We also have a use and dissemination agreement,
25 which is a very exacting situation, which is signed by the

1 head of the agencies and it is practically -- maybe we are
2 invading his privacy by making him sign it before he gets
3 the data -- but they have all signed it, and all the bigger
4 agencies have signed it, and it is binding on them in terms
5 of preserving the confidentiality of the people and the
6 documents which we distribute to these various agencies.

7 In terms of the characteristics of the data
8 system, our data is maintained on discs, and as soon as the
9 input comes in, we immediately key stroke it in a CRT into
10 the disc file.

11 We also are doing some historical conversion.
12 We use check digits. We have a logic check. We apply
13 standards of reasonableness and accuracy.

14 We have an input quality control and output
15 quality control section.

16 Our outputs from the computer are compared always
17 against the manual file, basically so that we can make sure
18 that it is at least as accurate as the manual file and that
19 the computer has made no errors and has been properly
20 converted.

21 The updates are effected when we receive a new
22 fingerprint card. If there is a prior record, of course,
23 it goes against the record that is updated. Likewise, when
24 we obtain a disposition on the case, we update the record.

25 We now also update with information from the

1 Federal Bureau of Investigation, the National Crime Informa-
2 tion Center, and their Division of Identification.

3 As far as the retention of source documents,
4 they are retained indefinitely unless the subject requests
5 their return; upon dismissal, if he is a first offender, he
6 has a right to request return of all records.

7 Our files identify the NYSIIS number which is
8 assigned, and the FBI number which we need for linkages with
9 the FBI.

10 We do exchange data with the FBI, on tapes and
11 punch cards. We do exchange data on tapes and punch cards,
12 for example, with the FBI, the Judicial Conference, we give
13 them a record of our arrest on tape, and they submit to
14 us at a later time the disposition of the cases we have
15 indicated on our arrest tape.

16 Likewise, we give punch cards to the Department
17 of Professional Services for statistical purposes, and
18 we have punch cards received from Parole, which we enter
19 into our files, and from the Narcotic Addiction Control
20 Commission, as well.

21 In terms of security -- physical security -- we
22 have developed a rather extensive physical security program.
23 We have, of course, locked files. We are in a private building
24 We have the six upper stories of a ten story building, and
25 we have so programmed the elevators that you cannot get

1 above the fifth floor by elevator at all.

2 And we have also managed to crash lock the stair-
3 cases so nobody can get in without going through a security
4 desk, and we maintain visitor control.

5 We have an extensive badge system with colored
6 badges indicating the areas to which the person with a
7 particular colored badge is permitted to have access.

8 We have restricted areas of locked files, of
9 course, with pass words.

10 In terms of the linkage between organized crime
11 intelligence records and identification files, the organized
12 crime intelligence records are kept totally separate in a
13 high security area, and while an incoming arrest on one of
14 the subjects will trigger a response to the organized crime
15 intelligence section, there is no feed back at all in the
16 other direction.

17 And the people in the identification section have
18 no way of knowing whether or not this particular person is
19 in the files or not. This is done by discreet flagging of
20 the files so that it is not generally known who is in the
21 organized crime intelligence files at all.

22 Data is classified to a limited extent, and, of
23 course, the organized crime intelligence data is highly
24 classified. We maintain backup tapes off-site. And we do
25 have means of seal orders. We have special problems in terms

1 of seal orders and youthful offenders that we have to treat
2 in certain ways and we suppress data to certain people
3 in reference to them.

4 In terms of personnel security, we have in-house
5 -- in-house our people are investigated by our own investi-
6 gators, in addition to normal investigation that Civil
7 Service would provide.

8 We maintain monitoring, continuous auditing. We
9 are blessed with a comptroller that gives us an audit every
10 once in a while. We maintain security posters around the
11 people, almost like the good old Department of Defense in war
12 time days.

13 As far as outside the agency, we rely to a certain
14 extent upon the integrity of the agencies with whom we deal.
15 We have security manuals. We have a newsletter.

16 We maintain training programs both for our own
17 people and police and supervisors, but also for the people
18 in the local agencies. And as I said before, we have
19 followed up situations which seemed suspicious and have
20 invoked the sanctions of getting people removed from office
21 where indications are that there is some hanky panky going
22 on.

23 The Governor, as you are probably aware -- in
24 most states it is true -- has the power of removal of police
25 chiefs. So we have a tremendous weapon at our command.

1 And of course we do invoke the public officers
2 law, which provides for sanctions for malfeasance, misfeasance,
3 and so on.

4 And we don't hesitate to arrest people when
5 necessary. As happened in New York City not too long ago.

6 As far as access to the files is concerned, the
7 access is provided for by law and also to some extent the
8 form of access is controlled by administrative regulation.
9 We keep an audit trail of all who have access and what informa-
10 tion is given and the reason for the request.

11 And, of course, the fundamental basis is the need
12 to know. We do not permit any class access at all, except
13 for research purposes where the identifiers are removed.

14 And of course at the moment we have not disseminated
15 any of our organized crime intelligence data at all. We
16 are still in the prototype phase and analysis phase.

17 As I said before, we suppress parts of the criminal
18 offender record information in certain cases, as required.
19 Users will be notified where a file is corrected and the
20 file can be corrected in many ways.

21 One way is the fact that we permit the subject
22 to see his own file and to have it corrected if the file
23 is in error, so that if we now correct the file, we have to
24 let all those people who had received copies of the incorrect
25 file know of the correction, and therefore, of course, permit

1 them to correct their own files.

2 As I said, for research and statistical purposes,
3 the identifiers are removed. As far as legal provisions
4 are concerned, data file and source documents are the property
5 of NYSIIS, acting as custodians for the State of New York,
6 and the file may be used only in accordance with State law.

7 It is subject to subpoena, and this is one of
8 the problems we have, particularly with our organized crime
9 in telligence material. We are concerned that it may be
10 subject to subpoena, and until we are able to get it exempted
11 from subpoena, we feel very concerned about keeping it.

12 So this is one of the loose ends that we have to
13 tie up before we go operational with our organized crime
14 intelligence.

15 We have been exempted from the Freedom of Informa-
16 tion Act, fortunately. So we have that further guarantee
17 of privacy. We are pushing very hard for the Model State
18 Act, a copy of which you were given sometime ago.

19 I was very happy to find out that the State of
20 Massachusetts has just passed the Model State Act, virtually
21 identical to the one we drew up in the Search Security and
22 Privacy Committee.

23 This is, I think, the answer to an awful lot
24 of the problems, and I wish I could sell the State of New York
25 on it. But Massachusetts has led the way. It is the first

1 state. Several states are considering it -- California
2 included. New York is considering it. But the State of
3 Massachusetts has actually passed our Model State Act, and
4 this I think is going to solve a lot of problems that
5 Congress can let the states solve, instead of trying to solve
6 it with all the attendant problems that rise when Congress
7 gets into an area like this, which is perhaps really beyond
8 their scope of operation, since the basic criminal justice
9 field is a state problem.

10 As far as linkages is concerned, I discussed that
11 before. We have linkages with the FBI, NCIC, and criminal
12 justice agencies, and as various cities in the state develop
13 computer systems, we will interface with them and they can
14 obtain as much of this data directly from the computer-to-
15 computer interface.

16 As far as purging is concerned, we purge
17 according to regular State procedures, and return the copies --
18 as I discussed before, under the Civil Rights Act, where a
19 person does not have a prior record and his case is dismissed,
20 he can have his prints returned to him.

21 We are now purging all those over eighty, and
22 where we are notified of death, of course, we are purging
23 as a result of the death of the subject.

24 But this is a problem, trying to find out when
25 people have died. We don't have any system whereby we are

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1 Don't worry. They let us know if there is
2 anything that doesn't quite satisfy them.

3 It's phenomenal to think that in most states of
4 the Nation, it takes eight days to get a criminal offender
5 record back from the submission of the fingerprints, and we
6 are now able to do it in two hours, twenty minutes.

7 We had an estimable gentleman in the City of
8 New York Court who couldn't understand why it took us more
9 than a half hour. So it's the old story --what have you done
10 for me lately.

11 As far as the long range implications are
12 concerned, we will continue to have restrictions upon the
13 uses of the data. We have tried to eliminate as many of the
14 applicant-licensee people as possible, and we have also
15 avoided filing the records wherever it is possible to avoid
16 filing them.

17 In other words, when the fingerprints come in on
18 an applicant-licensee situation, instead of filing them in
19 our main file, we search and return. We return the card
20 itself, so we don't file a record on a person who may, for
21 example, be an applicant for Civil Service, or for a license,
22 and there is no need to maintain follow-up.

23 In the past, Civil Service Department felt we
24 should keep them on file, and if somebody is arrested, they
25 should be notified. But further examination of this con-

1 vinced them that the number of times they wouldn't otherwise
2 hear about the arrest was so minimal, it was not really justi-
3 fied on a cost benefit basis to maintain these in the files.

4 Of course, one of the main arguments that a lot
5 of people give you for retaining these is if you have un-
6 identified dead, you can possibly locate them through keeping
7 these types of civilian files.

8 This is true, we do identify almost two thousand
9 a year persons who have been found dead with no other
10 identification. But again, it is a cost benefit problem.

11 We do have an awful lot of business which I think
12 deserves priority; with the scarce resources available, it's
13 better to emphasize the criminal justice aspects, rather
14 than the civilian.

15 And of course there are some implications for
16 privacy on maintaining these records on civilians in a file
17 such as ours.

18 As far as purging is concerned, we would like to
19 get to the point where we purge in accordance with the criteria
20 in the Model administrative regulations, and we are moving
21 in that direction. It is going to take legislation, it's
22 going to take some time to move to finally achieve this goal,
23 but we are on our way.

24 We have built up support. We have a privacy
25 committee in the legislature now, and I have testified before

1 them, and they have been receptive to our Model State Act
2 and regulations, and hope to see them passed within the next
3 few years at least.

4 Our big problem is trying to keep users out -- the
5 many, many people who seek to get information from our files.
6 Every year in the legislature there are bills introduced
7 which will allow the various security type agencies, such as
8 Wackenhut and Pinkerton, to check our files.

9 Associated Hospitals of the City of New York
10 want to check our files. Everybody wants to. And powerful
11 lobbies are built up. They hire former assistant counsel
12 to the Government to represent them, and so on.

13 We have a continuous problem trying to keep new
14 users out.

15 You are probably aware of the fact that the Wall
16 Street people managed to get a bill passed to permit them
17 to obtain a check of our files for the problem that they had
18 in Wall Street. We, however, were able to blunt that
19 legislation, even though we couldn't prevent it from passing,
20 by insisting that we would deal only with the Attorney General.

21 So we give our rap sheets to the Attorney General,
22 and he passes it on to the Wall Street firms only that type
23 of information which he is bound to pass on by virtue of the
24 law, and they don't actually get our rap sheets.

25 Although the Civil Libertarians were concerned

1 at the time that they were getting actual data directly
2 from our files.

3 As far as additional data that we intend to add
4 to the files, we will of course add those things required
5 for statistical purposes as we develop more statistical
6 capabilities.

7 We are very much concerned with the problem of
8 bail. Nowhere, in most states, if not all states, is there
9 any way of finding out what a person's bail record is. When
10 a judge is about to bail a person, most often he will take
11 into consideration his prior criminal record. As a practical
12 matter, this is probably the only way he can decide upon
13 bail.

14 But really the only reason he can deny bail, or
15 set a high bail, is because the person is unreliable in
16 terms of showing up for trial. The fact that he has a bad
17 criminal record doesn't necessarily mean he is unreliable.

18 So we would like to enter into our files data
19 to let the judges know whether in the past he was reliable
20 and this may significantly alter the number of people who
21 can be bailed, and perhaps keep some of the people who should
22 not be bailed off the street.

23 So that is the type of information we'd like
24 to add, as well as, of course, the probationary information,
25 as we go on developing the criminal justice information system.

1. We have transition controls, audit controls,
2 which are constantly monitored and reviewed.

3 The file subject -- he may review his own file.
4 He may make a copy of it, and here again the point was brought
5 up, as you recall, yesterday about releasing the file.

6 We release no file. If the individual wants
7 to make a copy of his file, he may make it in his own
8 handwriting. The reason we do not permit the person to take
9 out a copy of his file -- that is, a Xerox copy -- is that
10 it could very well be an employer will say, as a condition
11 of employment, get me a copy of your criminal record or
12 your file at NYSIIS, and we would not want him to be able
13 to provide that to an employer.

14 Furthermore, of course, he could very well take
15 a copy of it and multiply the copy and at 12:00 Noon, in a
16 downtown area, throw it in the streets, and there would be
17 NYSIIS rap sheets all over the street, which would certainly
18 be bad public relations, to say the least.

19 He can of course have changes in the file made,
20 and he can review it to see that they are changed, by again
21 looking at the file, and he doesn't have to come to Albany
22 to look at the file. We will send the files out. We have
23 offices in New York City, and Buffalo, Syracuse. And we will
24 send the files to those offices. And in the case of
25 prisoners who are actually incarcerated, we will send it to the

1 warden of the prison. And many, many people take advantage
2 of this, and the right to have their files purged as well.

3 We have over three thousand people make applica-
4 tion each year to purge their files.

5 As far as letting the individual subjects know
6 their rights, we do make a conscientious effort to have
7 them apprised of their rights.

8 We work with the Urban Coalition and various
9 civil rights organizations, and keep advising the chiefs of
10 police, and so on, that we have these particular rights, and
11 they should advise as many as possible of their prisoners
12 of their rights in this connection.

13 As far as the organized crime intelligence,
14 of course, is concerned, nobody has any right to see this at
15 all.

16 In terms of costs, I know Jerry is very interested
17 in costs. I am not sure I have too much to say about that,
18 Jerry, because we have done some cost studies for purposes
19 of trying to get into unit costs, but costs are amplified
20 by the fact that we are running a dual system, and they are
21 really distorted to that extent.

22 And then, as I say, many of the costs are minimal
23 in some cases, and aggravated in other cases, depending on
24 the type of search; different sets of fingerprints have
25 different difficulties of search.

1 Also, if we have to go both manual and computer
2 in some cases for various reasons, it adds to the time and
3 so on.

4 We have rough figures -- around \$10 a search.
5 But I would like to -- rather than give you any absolute
6 data at this time, I'd like to get back and do a specific
7 study designed to develop exactly the data that would be
8 needed for the purposes of this committee.

9 Just one final word. That is in reference to
10 the problem of the universal identifier, Madame Chairman
11 asked for a comment on it.

12 Of course, with a universal identifier, you could
13 have linkages, certainly, horizontally, longitudinally, and
14 probably to agencies of criminal justice; between government
15 agencies, between government agencies and private agencies,
16 and of course between private agencies as well.

17 And I would submit that the use of an incorrect
18 or false number, where you have a universal identifying
19 number, has tremendously vast implications, because of the
20 surface validity of the universal number and presumed general
21 acceptance of it as identifying the person whom it presumes
22 to represent.

23 And I submit that the only way I feel comfortable
24 with the idea of a universal identifier, if one must be, would
25 be to tie it in with a fingerprint. All we would need, of

1 course, would be a single print on the card, which would
2 be retained in a data base with the universal number,
3 wherever that may be maintained, and the fingerprint
4 maintained there. At the same time the number is given,
5 a fingerprint could be taken.

6 This would settle possible conflicting claims
7 of identity and certainly prevent a lot of fraud, I am sure.

8 And as far as checking out the identification,
9 there are machines coming on the market shortly which will
10 do a scan and possibly be able to compare one fingerprint
11 against the other automatically, for supermarkets and banks,
12 and so on.

13 And as far as checking with the basic file, a
14 facsimile is available for this purpose. So I don't see any
15 tremendous problem in utilizing fingerprints.

16 I realize that socially it is more difficult
17 to sell to the public than merely a universal number, but
18 if we did decide to have one, I would submit we should have
19 it tied in with the fingerprint process.

20 That's all I have to say. Perhaps Mr. D'Alessandro
21 would like to add something to what I have said.

22 MR. D'ALESSANDRO: I learned long ago in my
23 callow youth, when I was on the stage in a supporting role,
24 one never tries to upstage the star.

25 The only thing I would like to correct is a

1 possible mistaken impression created by the good Doctor's
2 statement of omniscience on my part.

3 I am here to answer any questions you may have
4 of minor details which the director may be unaware of, but
5 I think he has a fairly good grasp of the system.

6 MR. GALLATI: I'm glad it's fairly good, anyway.

7 MS. GROMMERS: Thank you very much for this very
8 fine presentation. I know there are a lot of questions
9 to ask of you. Let me start with Mrs. Hardaway.

10 MS. HARDAWAY: Bob, if I am a member of a family
11 that is part of a crime syndicate, or a known family, and
12 yet I have not violated any law, have not been arrested,
13 but the indications are that I probably would be, that more
14 than likely at some point I would be, do you gather any
15 preliminary data on me as a member of that family? Or in
16 anticipation of what is to come? Or do you wait until I
17 actually become a law offender?

18 MR. GALLATI: Actually, the organized crime
19 files which we have dealt with are so limited that they don't
20 really concern themselves with anybody who is not a very
21 major offender. And while they may list members of the family,
22 just for part of the dossier -- I shouldn't use that word,
23 but that's what it is -- it would list the members of the
24 family, the immediate family, of course, but they would
25 be listed as members of the family and not in terms of a

1 principal.

2 MS. HARDAWAY: You would not carry a file on me
3 as an individual?

4 MR. GALLATI: Not a separate file by any means.
5 It might mention if you were a daughter, for example, or a
6 wife, it would probably list your name, but only as a member
7 of the family. But no separate file on you. Unless you were
8 a rather important principal yourself.

9 It's not that easy to get into an organized crime
10 file. There are a lot of people are aren't that maybe should
11 be in.

12 MS. HARDAWAY: Let me get back to that. Unless
13 I am an important person myself -- in other words, you could
14 carry a file on me even if I had not been arrested or broken
15 a law?

16 MR. GALLATI: If you were an important person in
17 organized crime, you would not necessarily have to have ever
18 been arrested or convicted. It's possible. There are some
19 that have never been arrested and convicted.

20 MRS. HARDAWAY: I would have a right to see that
21 file?

22 MR. GALLATI: No. For a number of reasons.
23 First of all, the information is sometimes given by informants
24 and this would be a violation of the privacy of the informant.

25 MRS. HARDAWAY: So I would only suspicion that

1 you carry that, and not have a right to see that?

2 MR. GALLATI: You would have no right to see that.
3 Once we open an organized crime intelligence file for anybody
4 to see, the files are dead. Forget them.

5 MS. HARDAWAY: All right, now if I am in Tennessee
6 and I hear that someone that travels widely in those circles
7 and is well known and is a known crime person, and I hear in
8 Tennessee that the chances are they are coming to my state
9 to set up whatever operations they might be interested in
10 setting up, if I called you up and asked you for some
11 information on this person, would you give it to me?

12 MR. GALLATI: Well, to be very exact, at the
13 moment we are not disseminating to anybody. But the concept
14 would be, yes -- you are a criminal justice agency?

15 MS. HARDAWAY: Yes.

16 MR. GALLATI: Yes, presumably we would have an
17 arrangement with you. There is an interstate group that
18 does exchange information on a very guarded basis. But
19 presumably, being who you are, you would be one of those
20 who would have confidence in this interstate organization
21 and you would receive indications of who the person was, yes.

22 MS. HARDAWAY: What would I need to get that from
23 you? Just a name? Would I need a number? Would I say I
24 suspicion that so and so is coming, and with these intentions,
25 and what do you know that would help me in settling this before

1 it gets out of hand?

2 MR. GALLATI: You see, actually, the name would
3 probably be enough, because these people are so few in
4 number, really.

5 The principals are relatively small. We figure
6 in the State of New York there are not more than five thousand
7 people who are of sufficient importance to be of State-wide
8 interest or interstate interest, and I might add that the
9 SEARCH program is developing an interstate exchange of
10 criminal history data which undoubtedly Memphis or Nashville
11 would be part of. -- Excuse me -- organized crime data, about
12 organized crime principals.

13 But the number of people involved are not anything
14 of the magnitude of the people dealt with in the identifica-
15 tion files.

16 MS. HARDAWAY: Thank you.

17 MR. DeWEESE: Could you tell us how the controls
18 that are outlined in the Model Statute are different from
19 the controls presently in the New York State -- presently in
20 effect?

21 MR. GALLATI: Well, there are a lot of differences.

22 MR. DeWEESE: Briefly, for the Committee.

23 MR. GALLATI: They are not inimical, not different
24 in the sense they are in any way one opposed to the other,
25 but in the sense that we have not gone as far as the Model

1 State Act.

2 We do not, for example -- we have something
3 very similar to the Committee which is outlined in the Model
4 State Act in our advisory committee. We do not have the
5 council which is designed in the Model State Act. This would
6 be very helpful.

7 This would be designed to be a council which would
8 act as a sort of ombudsman, presumably would be people who
9 are sensitive to privacy.

10 We don't have the specific penalties which are
11 listed here. We don't have the provisions which are in
12 the regulations which support the Model State Act for closing
13 of files.

14 We do not have these, for example, yet. We don't
15 have all the purge criteria, either, that are in the Model
16 State regulations.

17 This is a great step forward. As I say, I am
18 delighted that it's been already passed in Massachusetts,
19 and hopefully will be passed soon in New York. But we are
20 beginning stages of the types of things we are trying
21 to accomplish with the Model State Act.

22 MS. NOREEN: I am just curious about one small
23 point. If I were arrested for the first time, and the charges
24 were dismissed against me, you would not keep a record, correct?

25 MR. GALLATI: Well, the procedure is for you to

1 make a request for the return of the records.

2 MS. NOREEN: Let's say I was arrested again, and
3 the charges were dismissed against me again, could I still
4 ask to have the record given back to me?

5 MR. GALLATI: That's entirely correct. If there
6 is no prior conviction.

7 MR. MARTIN: Why do you put the burden on the
8 non-offender, as it turns out, to request the record? Why
9 don't you just purge or not create the record?

10 MR. GALLATI: That is a good question, Dave,
11 and eventually this is the way we will go, I think. But
12 as a practical matter, we don't get enough data -- conviction
13 data -- from the courts to permit us to move affirmatively
14 in that direction.

15 Actually, the burden is upon the arresting agency
16 to notify us at the state level. But they don't necessarily
17 always get the results of the court action.

18 This is one of the big hangups in our whole system
19 is the failure of the courts to supply the information to the
20 police agencies.

21 So we wouldn't necessarily know, except many
22 months later perhaps, as to whether or not the person had
23 the decision in his favor.

24 MS. GROMMERS: Professor Weizenbaum?

25 MR. WEIZENBAUM: Just to follow up on that, the

1 first offender who is not convicted and asks for his record
2 to be purged or returned to him -- you said the record also
3 goes to the FBI?

4 MR. GALLATI: Right.

5 MR. WEIZENBAUM: Does he get that returned as
6 well?

7 MR. GALLATI: Yes, he can request from the FBI,
8 and they will return it.

9 MR. WEIZENBAUM: Is that a separate action?

10 MR. GALLATI: Yes.

11 MR. WEIZENBAUM: He then has to request from the
12 FBI, not from you?

13 MR. GALLATI: Not from us, no.

14 MR. WEIZENBAUM: Suppose the arrest took place,
15 say, as a result of a political demonstration, and the charges
16 were dismissed. The FBI then sends its file to a separate
17 file which has to do with political dissent, and possibly
18 to the Secret Service, for example.

19 Are those files returned as well, or returnable?
20 What is the procedure there, do you know?

21 MR. GALLATI: Well, I honestly don't know what
22 they do. But they would certainly return them upon the
23 request of the submitting agency. They will return the finger-
24 print files and the criminal record. Whether they would make
25 a note of this in some other file, of course, I just don't know.

1 MR. WEIZENBAUM: My suspicion is, under certain
2 circumstances, for example the one I described, that the file
3 very quickly propagates through a lot of agencies, and I
4 doubt very much that all of them can be retrieved. I doubt
5 that very much.

6 But that is not your business, in a way.

7 A couple of other questions. Just a technical
8 point. Do you store fingerprints in machine-retrievable
9 form, and if so, how do you do that?

10 MR. GALLATI: How do we do that? Yes, we store
11 the formula. You see, when you get a set of prints received,
12 you use the Henry System, which analyzes the prints and
13 basically gets a core delta distance on ridge counts,
14 and this results in a formula.

15 This formula is stored in the computer. When an
16 incoming print comes in, we again formularize it, and check
17 the formula against the two-plus million formulae.

18 MR. WEIZENBAUM: How reliable is that?

19 MR. GALLATI: Well, we get a first, second and
20 third choice, up to ten in certain cases.

21 In other words, reliability -- suppose I ask Adam.

22 MR. D'ALLESSANDRO: Up to seven respondents,
23 we have a ninety-three percent reliability. We can get
24 a hundred percent reliability if we print out all the
25 possible respondents, but in particular classifications it

1 becomes impractical. So I could say between ninety-five
2 and ninety-seven percent reliability is what we have right now.

3 MR. WEIZENBAUM: Okay. I am also concerned --
4 a couple of concerns.

5 One is related to what Jane Hardaway already
6 asked. You do have files in the organized crime category
7 of people not convicted of anything?

8 MR. GALLATI: Yes, there are a limited number.

9 MR. WEIZENBAUM: It's unusual, but nevertheless
10 it is there?

11 MR. GALLATI: Yes.

12 MR. WEIZENBAUM: The reason for that is that you
13 are talking about organized crime, which is, in general, in
14 society perceived as being very dangerous, and that sort of
15 thing?

16 I just wonder how far a step it is from that to
17 a file on organized dissent, for example, and how far a
18 step that is from keeping files on political organizations
19 that happen to be out of power at the moment, that might be
20 in power some years later.

21 MR. GALLATI: Well, I think the question is a
22 very good one, and the answer perhaps is simply that we need
23 the organized crime files if we are going to do anything
24 about organized crime. And it's important that we limit it
25 very carefully, as we have in our statute.

1 Organized crime intelligence. That is the
2 intelligence with which we are dealing, and we have never had
3 a charter or mandate to do anything other than organized crime.

4 MS. GROMMERS: I am afraid other people won't
5 have a chance to ask their questions. Mr. Dobbs?

6 MR. DOBBS: Bob, of the two million people in
7 the identification files, what percentage in fact have con-
8 victions?

9 MR. GALLATI: I would say there are a great many.
10 that don't have convictions. I'd say by far the larger
11 percentage have a conviction, at least, not necessarily a
12 conviction for each case.

13 MR. DOBBS: Do you have any rough figure? Thirty
14 percent?

15 MR. GALLATI: I don't think we have any real
16 rough figure even.

17 MR. DOBBS: Are these all felonies?

18 MR. GALLATI: Oh, no. All felonies and misdemeanors
19 in the penal law. At the present time we are getting all
20 felonies and all misdemeanors in the penal law.

21 Up until September, 1971, it was only certain
22 misdemeanors. Minor ones were not included.

23 MR. D'ALESSANDRO: One of the problems Bob alluded
24 to earlier is that our reporting system has been very poor,
25 historically. So the mere fact there is no conviction in an

1 individual's records does not necessarily mean he was not
2 convicted.

3 So it's impossible for us to really do a really
4 solid study of the percentage of persons who have been
5 convicted.

6 MR. DOBBS: Okay. I guess the question that
7 raises for me, if I understand what you just said, is that
8 we don't know what the exact percentage of no convictions are,
9 but you admit it may be significant, for whatever reason.

10 MR. GALLATI: That is true.

11 MR. DOBBS: There are in fact, of those people
12 who have been convicted, some percentage who have been
13 convicted only of a misdemeanor?

14 MR. GALLATI: That is true.

15 MR. DOBBS: Which tells me that in fact the
16 nature of the criminal information in terms of felony
17 information in the file may be small relative to the
18 total data base. Just maybe. I only raise the question.

19 MR. D'ALESSANDRO: It isn't.

20 MR. DOBBS: Is it not?

21 MR. D'ALESSANDRO: No, because historically we
22 have collected only fingerprintable arrest information and
23 historically, up until 1971, felonies were by far the major
24 part of the fingerprintable crimes.

25 There are certain selected misdemeanors, like

1 drug violations --

2 MR. GALLATI: Aiding escape from imprisonment;
3 burglary, unlawful entry.

4 MR. D'ALESSANDRO: The more serious misdemeanors.
5 So until 1971, the large bulk of crimes for which fingerprints
6 were taken were felonies.

7 MR. DOBBS: In the case of license files, is an
8 automatic search made of the identification file by virtue
9 of applying for a license?

10 MR. GALLATI: Depending on the license.

11 MR. DOBBS: Those licenses which require by
12 statute that the applicant have no prior criminal record.
13 Then there is an automatic search?

14 MR. GALLATI: Right.

15 MR. DOBBS: But for the others --

16 MR. GALLATI: For an automobile license, no.

17 MR. DOBBS: There's no tie between the criminal
18 identification file?

19 MR. GALLATI: No, this is strictly a search
20 to find out whether or not there is a record.

21 MR. DOBBS: Okay. The final question is, you
22 do have interstate transfer of information?

23 MR. GALLATI: Yes, through the FBI.

24 MR. DOBBS: And also, I presume, from places
25 like the National Driver Register File?

1 MR. GALLATI: No, we do not.

2 MS. GROMMERS: Mr. Gentile?

3 MR. GENTILE: It is not direct?

4 MR. GALLATI: If it is in the FBI files, we
5 would get it, but I don't know if the National Driver --

6 MR. DOBBS: Drunk driving is the kind of thing
7 I meant.

8 MR. GALLATI: You wouldn't need it from there
9 if it's a felony.

10 MR. D'ALESSANDRO: That is only a record of persons
11 whose license has been revoked.

12 MR. GALLATI: In the case of a felony, it's a
13 record in the FBI files.

14 MR. C'ALESSANDRO: We have no access to the
15 National Driver Registration File.

16 MR. GALLATI: But if it's a felony, it would be
17 an arrest.

18 MR. D'ALESSANDRO: From the FBI.

19 MR. DOBBS: In any event, from the FBI or state
20 agencies, do your standards for accuracy in quality control,
21 which sound very good compared to many that I have heard,
22 take into account that the originating or collecting agency
23 may in fact have standards which are less than yours in
24 terms of the quality of data?

25 MR. GALLATI: Well, yes, we have to take that into

1 account because it is very obvious. They send material which
2 has missing data or data which is obviously inaccurate.

3 For example, sometimes you will have a male name,
4 but a female check on the card, and so on. Or it says
5 ten foot, five inches, instead of five foot, ten inches.

6 MR. DOBBS: Do you clean that up as it is going
7 in, or reject it?

8 MR. GALLATI: We reject it, or call them on the
9 phone and get it corrected in some cases.

10 But we have charge codes which we send out.
11 Probably the most important thing is getting the correct
12 charges in. And we send out charge codes for the entries,
13 and they are supposed to enter it accurately, and we are
14 able to check through charge codes whether or not the descrip-
15 tion of the crime and charge is consistent.

16 MS. GROMMERS: Thank you very much. I just want
17 to remind you all that these questions are all terribly
18 interesting and I know you all like to hear the details.

19 If you could think of limiting yourself to
20 either three questions or four minutes, and then we will come
21 back to Professor Weizenbaum and you, Mr. Dobbs, and anyone
22 else who has a question, if there is time.

23 Mr. Gentile?

24 MR. GENTILE: I have one question. In recent
25 articles of Computer World, the Comptroller of the State of

1 New York audits some of your functions, as I think you
2 alluded to.

3 MR. GALLATI: He sure does.

4 MR. GENTILE: In addition to that, I am aware
5 that the FBI has some very stringent requirements for the
6 National Crime Information Center, and any system that ties
7 into it, which obviously yours does.

8 My question is, where do you divide -- where
9 are the responsibilities divided, or are they overlapped?

10 Does the Comptroller in fact audit aspects of
11 the system for confidentiality? Or does he concern himself
12 solely with the efficiency and data processing?

13 I don't know what the division is between those
14 two audits.

15 MR. GALLATI: Actually, he specifically alluded
16 very strongly to the question of security and privacy in his
17 audit. He had a few comments which actually were to our
18 benefit, because we had budgetary problems in terms of getting
19 certain things done. As a result of the audit, we were able
20 to get budget for the additional physical security measures.

21 Indeed he did go into it in great detail. There
22 is no conflict, of course, between NCIC regulations and the
23 types of security measures that the auditor or comptroller
24 of the State of New York would be auditing.

25 We have signed a contract with the NCIC, computer-

1 ized criminal history program, which we are bound to abide
2 by, and we have used the use and dissemination agreement
3 with our local agencies to protect us, because we require
4 the same types of things from them that the FBI requires
5 from us in terms of confidentiality and security of the
6 documents from NCIC.

7 We have that big problem, as you know, about
8 shared computers, but we don't have that problem in New York
9 that some other states have, thank God.

10 For those who are unaware of it, there is a big
11 dichotomy existing today between the National Association of
12 State Information Systems, supported to some extent by the
13 LEAA, and with the FBI, in terms of dedicated systems and
14 shared systems.

15 The position of the NCIC is that there should be
16 dedicated systems in law enforcement and criminal justice
17 and they should not be under the control of other than manage-
18 ment control of agencies of criminal justice.

19 This, of course, is somewhat difficult, particu-
20 larly in smaller states and smaller communities. So I thought
21 we might as well mention that, John, since I know John is
22 president of NASIS, as you know.

23 MR. GENTILE: Now that you bring that subject up,
24 I might say that independently, the City of Chicago is
25 running in a shared environment its police department, and

1 former Attorney General John Mitchell got into this one, saying
2 that shared computers can still be used to provide adequate
3 protection and privacy.

4 And the point I'd like to make here is that when
5 we talk about the dedicated computer, if you talk about
6 dedicating it to criminal justice information systems, you
7 are dedicating it to a very large scale system when you
8 interpret what criminal justice information systems contain.

9 You are talking about the correction agencies,
10 the state government, you are talking about court systems,
11 you are talking about law enforcement agencies, and so on
12 and on.

13 One final question, and then I will be quiet.

14 You mentioned that a dedicated computer had to be
15 under the management control of the criminal justice type
16 person. Is that completely accurate? Or is it a law
17 enforcement officer?

18 MR. GALLATI: Well, actually, the way NCIC
19 regulations read, you are right, they say under management
20 control of law enforcement.

21 It doesn't have to be a dedicated computer,
22 but that portion which is dedicated to criminal justice
23 must be under a law enforcement management control.

24 But the use of the word law enforcement, John,
25 is used in the context of the use of the term law enforcement

1 in the Safe Streets Act, which includes criminal justice.

2 For example, we are not a law enforcement agency,
3 but we are considered law enforcement for purposes of that.
4 Specifically, we are covered in the NCIC regulations.

5 MR. GENTILE: From these comments you might see
6 the motivation of my earlier comment or question concerning
7 the extent of the audit of the Comptroller as compared to the
8 FBI.. That's all.

9 MS. GROMMERS: Mr. Davey?

10 MR. DAVEY: May I ask a question with regard to
11 the mechanics of distributing information to other local
12 agencies, to the FBI, and the like, and we just had this
13 question, but I think it would be worthwhile to repeat it --
14 that is, the charges involved in this kind of thing.

15 Are there charged you make to other local law
16 enforcement agencies for the FBI, or vice versa?

17 How do the mechanics work? How do you transmit
18 information, audit the information being sent in for
19 accuracy purposes, that whole range of areas. If you could
20 spend my four minutes answer that question.

21 MR. GALLATI: Thank you for your courtesy in
22 offering me the four minutes. That's very nice.

23 First of all, we are a service agency, and
24 basically we do not charge for our services. We provide all
25 these services, basically, without any cost to the users.

1 For example, we supply facsimile machines to
2 as many agencies as we can within our budgetary limitations,
3 and we also have been supported by the Law Enforcement
4 Assistance Administration to supply others.

5 We cannot supply every agency in the State with
6 a facsimile machine, but we try to make them available within
7 a limited driving distance.

8 The lines costs are picked up by us. The actual
9 total in-house processing is paid for by us entirely, and
10 they get a free response.

11 This is likewise true in most cases of licensee-
12 applicant submissions.

13 The single major exception at the present time
14 is the Wall Street situation, where we charge \$5.00 to the
15 Wall Street houses. That is built right into the system which
16 was developed under the Act which permitted Wall Street firms
17 to have their people checked.

18 And that goes into the general fund. It is
19 received by the Attorney General, as a matter of fact, with
20 whom we deal. We don't handle this money at all ourselves.

21 We have charged for extra service projects
22 frequently, or we can, in terms of research where people
23 desire certain data for research purposes and we have charged
24 them on an extra service basis.

25 Now we also are utilizing the State Police

1 communications network, and to the extent that we utilized
2 it, of course, the customers, that is, the users in the field,
3 do pay for some part of that network.

4 The historical arrangement has been that the
5 line costs are picked up by the State Police, and the actual
6 teletype installations at the user locations are paid
7 for by the users.

8 So to the extent, and to the very large extent,
9 that we are part of that network, the State is being reimbursed
10 for those services.

11 Other than that--correct me if I am wrong, Adam --
12 I don't think there are any charges.

13 MR. D'ALESSANDRO: There is a change in the wind.

14 MR. GALLATI: Yes, we hope eventually that
15 facsimile devices will be paid for by local communities, but
16 in order to get the system under way, it is a one time cost --
17 not a one time cost but a yearly cost -- of something in
18 the vicinity of \$5,000 for each installation. So many local
19 agencies would not have joined the network if they had to pay
20 for it, particularly in the early stages when we weren't
21 responding in two and a half hours.

22 MR. D'ALESSANDRO: If I might add -- I think
23 the reason we haven't been charging is that we have had very
24 little remote access into our system.

25 MS. GROMMERS: Mr. Muchmore?

1 MR. MUCHMORE: I have two related questions.
2 First, you mentioned a figure there of the number who would
3 ask for correction of their records. What was that?

4 MR. GALLATI: Three thousand a year.

5 MR. MUCHMORE: Second is the relationship -- and
6 I have to tell you a story on this which relates it.

7 As a bank, every employee we put on the payroll
8 must have fingerprints taken and forwarded to the FBI. We
9 then get a record back, sometimes in forty-eight hours, or
10 sixty hours, or sometimes it's six weeks.

11 And our experience has been very unusual with
12 this thing. Of the ones that have a record, one out of
13 seven of the records are incomplete. They have a charge,
14 for instance, say rape, with no disposition of the case
15 whatsoever. That is all it shows.

16 The way we do it, we go to the attorney general
17 of the State of California and ask him to do a completion
18 record for us. They do a completion record for us, and
19 in almost ninety percent of the instances, the charges
20 were dismissed, and in several rape cases they merit the
21 victim.

22 Many of these are simply false arrest type of
23 things where they just simply state, mistaken identity.

24 Is that a true figure? Is this unusual? Is
25 this going to be corrected in the future?

1 MR. GALLATI: Well, everybody wants to correct it.
2 And of course we have had communication with the director
3 indicating the fact that we should submit disposition,
4 and the agencies of criminal justice are doing as much as
5 possible to submit dispositions.

6 But the problem is, you are dealing with the
7 courts, and with all due respect to anybody here who is an
8 attorney or has a judicial background, the courts are very
9 difficult to deal with.

10 MR. MUCHMORE: Especially when found guilty.

11 MR. GALLATI: We had a provision in the Code of
12 Criminal Procedure which was effective up until last year,
13 which provided that the courts should submit dispositions
14 to NYSIIS. And we just had no courts in the State of New
15 York that obeyed that law. We had to have the cops go out
16 and get them, and to the extent the cops cooperated, we
17 got them. Some departments claimed they didn't have the
18 personnel to do it, and we didn't get it.

19 Now we have the Judicial Conference, which is the
20 administrative body for the courts, and eventually this will
21 be solved.

22 But our experience in New York is horrible in
23 disposition reporting, and it's not dissimilar to most states.
24 And as a result, of course, if we don't get the disposition,
25 the FBI doesn't get it either.

1 MR. MUCHMORE: I was intrigued. But obviously
2 we must not be abnormal.

3 Could I then suppose or imagine that perhaps
4 fourteen percent of your records are inaccurate, as far as
5 completeness?

6 MR. GALLATI: I hate to admit it, but I think
7 your analogy is relatively accurate.

8 MR. MUCHMORE: That goes back to the two thousand
9 or three thousand who came in. It seems to me there must
10 be some way of not only informing a person of his rights,
11 but of his right to dispose of those records if he is not
12 found guilty or the charges are dismissed.

13 Because I will tell you what happens in the normal
14 bank. The normal bank releases the employee. They don't
15 bother to go further.

16 We are one of only five in the State of California
17 who follow through.

18 MR. GALLATI: I think as people become better
19 advised of their rights--and one of the things we are doing
20 is trying to keep people better advised, or make them better
21 advised -- they will seek to get their records back when
22 the case is dismissed.

23 But, of course, if they have a prior conviction,
24 this would still stay on there without a conviction record.

25 MR. MUCHMORE: But about a third of these are

1 one arrest situations.

2 MR. GALLATI: It's a horrible situation.

3 MR. MUCHMORE: There should be legislation to
4 compel the courts to supply you with records.

5 MR. GALLATI: We do not have such legislation
6 in the State of New York. It was dropped from the old Code
7 of Criminal Procedure. But it was useless.

8 MS. GROMMERS: Couldn't you simply have your
9 own computer printout at three month intervals, have it
10 mailed to the cases, saying, "your case is still pending."

11 MR. GALLATI: We do something like this, but we
12 get better results dealing with the police. We do mail it
13 to the police, for disposition.

14 MS. GROMMERS: I mean mailing it to the individual.
15 If a person has a disposition which is still pending, you
16 could have your computer, on a regular basis, simply print
17 out and mail it.

18 MR. GALLATI: To the person?

19 MS. GROMMERS: To the person. The fact that he
20 has still a case pending.

21 MR. GALLATI: Well, that's quite an interesting
22 concept. I'd have to think about that one for a while.

23 MR. MUCHMORE: Especially if it were on a postcard.

24 MS. GROMMERS: You are not aware that this is
25 possible?

1 MR. GALLATI: I am sure it is possible.

2 MS. GROMMERS: This is the way the Swedish people
3 run a blood bank control program, for example. I will be
4 glad to give you a reference on this.

5 MR. D'ALESSANDRO: The type of data you are talking
6 about is slightly different, though.

7 MS. GROMMERS: Mrs. Cox?

8 MS. COX: I pass, because mine was how does the
9 public know that they can have their records back, and it has
10 been discussed.

11 MS. GROMMERS: Thank you very much. Mr.
12 Siemiller?

13 MR. SIEMILLER: I would pretty near pass, with
14 just one comment.

15 That is, if you flag this record because it has
16 a female name and a male check, you don't always prove out
17 that it is in error, I think. That's all I have.

18 MS. GROMMERS: Mr. Anglero?

19 MR. ANGLERO: Are minors completely excluded
20 from this?

21 MR. GALLATI: Right.

22 MR. ANGLERO: There's no possibility of having
23 a minor in it?

24 MR. D'ALESSANDRO: Minors or juveniles? Minors
25 are those under twenty-one.

1 MR. GALLATI: I believe he is probably referring
2 to juveniles. Sixteen and under. Under sixteen, to be
3 exact.

4 MR. ANGLERO: Well, my definition would be --
5 I don't know exactly in the States -- in Puerto Rico we
6 have under eighteen years, he is not supposed to be a criminal.
7 He is an offender, but not a criminal.

8 I don't know if different laws in different
9 places could be different.

10 MR. GALLATI: It varies from state to state, but
11 basically the New York law is fairly common -- under sixteen
12 is a juvenile, and they are not fingerprinted, so we do not
13 receive any data on juveniles at all.

14 We do get data on persons between the ages of
15 sixteen and eighteen, and there are special procedures in
16 New York State called the Youthful Offender Act, which deals
17 with these, and -- but they are fingerprinted and we keep
18 a record, suppressed for some purposes.

19 We do not disseminate the information, but we do
20 get the information.

21 MR. ANGLERO: This information, whenever it is
22 forwarded -- even though I think that the question was some-
23 what answered before, but -- is it possible to forbid or
24 prevent the forwarding of information from juvenile or minors
25 that had not been found guilty to any FBI or any one agency

1 besides you?

2 MR. GALLATI: Well, again it's a problem because
3 the disposition reporting is so poor that you would have
4 a need for this data in the files long before you get a
5 disposition.

6 And of course a seventeen or eighteen year old,
7 as far as we are concerned, is not a minor in the legal
8 sense of the word. He is an adult for the purposes of criminal
9 law. Whether that is a right law is another story.

10 There are many, many crimes committed, as you
11 know, by people seventeen years old, and serious crimes,
12 and we would not have this on record unless there was
13 better disposition reporting.

14 In any event, there is going to be a time lag
15 between the time of arrest and ultimate disposition, and
16 we are all painfully aware that it takes sometimes six months
17 to a year before the final disposition is made by the courts.

18 MS. GROMMERS: Mr. Impara?

19 MR. IMPARA: Relative to the first offender,
20 assuming I were a first offender and the charge was not
21 adjudicated, and I wrote to you for my record. Would you,
22 in addition to sending me my record, tell me other agencies
23 to whom this had gone as a matter of routine, or would I
24 have to ask you who else have you sent this to so I can write
25 to them and get it back?

1 MR. GALLATI: Well, the normal procedure is you
2 deal through the arresting agency. So you go to the city,
3 let's say, that made the arrest, and you would ask them to
4 obtain your records from whoever they send them to, Because
5 they would send the card to the FBI, it would be their
6 obligation to get it back from the FBI and NYSIIS, or the
7 state agency.

8 I guess what you are saying is, if we sent it out
9 to some other agency, would we, correct? Yes, we would.

10 MR. IMPARA: That would be routine?

11 MR. GALLATI: That would be done by us, yes.

12 MS. GROMMERS: Ms. Lanphere?

13 MS. LANPHERE: I didn't quite understand one
14 question. Those agreements you said you had with most of --

15 MR. GALLATI: Dissemination agreements.

16 MS. LANPHERE: You said most of the major ones
17 were signed?

18 MR. GALLATI: All of the major ones. Well, we
19 sent these out within the last several months, and there are
20 still some stragglers. I can't give you the exact figures.

21 But I suspect we have ninety-nine percent of
22 the agencies in the State that receive data who have signed.

23 MS. LANPHERE: I wondered about the ones that
24 didn't sign.

25 MR. GALLATI: Well, we will cut them off if they

1 haven't signed.

2 Actually, right now would be the time to start
3 doing the recap. But my impression is that we have virtually
4 one hundred percent.

5 There may be some place with one arrest a year
6 which might not yet have signed it, but all the major
7 contributors have signed, which I thought was a major victory
8 because when you are dealing with a state like New York,
9 it has to go through in their own legal bureau, the mayor's
10 office, the corporation council, and somebody else.

11 It took two months to push it through, but we
12 finally got it from the City of New York. Seventy percent
13 of our fingerprints come from the City of New York.

14 MR. ALLEN: I'd like to get you to spell out
15 in a little more detail, because it may be a peculiarly good
16 agency with respect to showing some of the qualifications
17 of some one of the other recommendations that you were
18 mentioning yesterday, that is, it relates to some other things
19 with respect to privacy by way of limiting the input of
20 information into personal data files.

21 You were mentioning yesterday perhaps defining
22 a property right of a subject to the information in a file
23 about him. And that may be a way of creating a clearly
24 recognizable cost of information being put in a file, a cost
25 to the information compiler.

1 To the extent that a property right would begin
2 to include a series of rights, and you mentioned a number of
3 them in the process of this, I think I wasn't entirely clear
4 on which were actually rights of subjects.

5 But just to take a set of, say, six. The right
6 to be shown the contents of the file.

7 The right to have corrections made in the contents
8 of the file.

9 The right to approve dissemination.

10 The right to have an audit trail on who has had
11 access to the information.

12 The right to be notified of additions of informa-
13 tion to the file.

14 And the right that specified security precautions
15 be made for the confidentiality of the information in the
16 file.

17 And remedies for any of these that might not
18 be adhered to, that might be violated.

19 And the question really goes to how many of these
20 a system like yours can live with and still be performing
21 the main functions, purposes that it is devoted to.

22 I wasn't clear on just the basis of the right
23 that you describe, to see the file. I think you said that
24 organized crime was not given such access.

25 MR. GALLATI: No. I think we have to take that:

1 as a situation apart.

2 MR. ALLEN: But it was probably the criminal
3 record -- is this a statutory right, or is it the fact that
4 you are the administrator now? Could it change with a change
5 of directors? Is it a matter that you are permitting this
6 to occur, or is it a statutory right that if you don't
7 grant permission, he has a right?

8 MR. GALLATI: It's not a statutory right. It's
9 an administrative decision. And that is unfortunate.

10 I think it should be included in the Model
11 State Act, and hopefull will be a statutory right.

12 MR. ALLEN: But the thrust of this is, by way
13 of defining a property right of the subject, the personal
14 data on him, could a sensitive agency like this one live
15 with this? How far could you go with respect to giving
16 this sample of rights, and maybe others?

17 MR. GALLATI: Well, I think actually we could
18 go all the way with those rights, but not in the exact
19 context in which they are outlined.

20 In other words, the State would assume the right
21 of the individual. I think in this particular case you have
22 a person who has forfeited his rights to this information
23 here.

24 The property right that he might have to personal
25 information is forfeited by virtue of arrest, just as he

1 forfeited his liberty at the point of arrest.

2 However, the state then takes over custody of
3 his rights, so to speak, just as it takes custody of his
4 person, and it is now the responsibility of the state to
5 protect his rights.

6 And I think the state can afford him every one
7 of those six things you mentioned. It's not because of his
8 right, but because of the state's protection of his rights.

9 MR. ALLEN: You really wouldn't want to give
10 him approval power of your dissemination?

11 MR. GALLATI: No, but the state assumes this, and
12 limits its dissemination, because it is standing in legal --
13 there is a term for that -- in loco parentis -- that the
14 state must assume this kind of protection for him in terms
15 of his rights.

16 It takes away his property rights for this
17 information in the conceptable sense, but now the state is
18 obliged to take care of this right that he has or that they
19 have assumed, just as they have assumed his right to have
20 liberty, they have taken this away from him, but they have
21 to provide him with certain types of custody which are
22 humane, et cetera.

23 I think it's analogous. I don't see any problem
24 with that, except you insert the state as opposed to the
25 individual. Each one of these things could be -- or is --

1 or can be provided for by statute.

2 MS. GROMMERS: Mrs. Gaynor?

3 MS. GAYNOR: I think most of my questions were
4 asked. There's only one thing I am unclear about, that is
5 the return of the record of the first offender.

6 Is this the original record that is returned,
7 or do you keep any information on that first offender in the
8 file?

9 MR. GALLATI: No, no record at all. We return --
10 the way the statute reads -- 7090 of the civil rights law --
11 "return the fingerprints and photographs, and destroy the
12 record and expunge it from the computer."

13 MS. GAYNOR: For instance, if a person has the
14 right to view his record -- you said he can copy the record
15 in his own handwriting?

16 MR. GALLATI: Yes.

17 MS. GAYNOR: For instance -- well, that wouldn't
18 work -- if there is an error, what resource does he have
19 really?

20 Does he have to go back to the agency or can he
21 do it when he finds that perhaps the information that was
22 really sent was wrong information?

23 How does he get this thing corrected?

24 MR. GALLATI: In other words, to view his record,
25 he comes to us either at Albany or our office in Syracuse,

1 New York City, or the prison warden's office, and he reviews
2 his record, and he says, "I was never arrested for so and
3 so, I was never convicted of so and so."

4 Then we would conduct an investigation to determine
5 the truth or falsity of his allegation, and correct it if
6 indeed it should be corrected.

7 He would then be advised of it, and he could
8 then review his corrected record to see whether or not we
9 had expunged or corrected the incorrect entry.

10 MS. GAYNOR: Is this record destroyed if it is
11 falsified? What happens? Or does it stay there? Do you
12 just put the correction there but leave the person's record
13 in the file?

14 MR. GALLATI: He may have further arrests, of
15 course. We would expunge that particular area. If the
16 whole thing was in error, that would be expunged from the
17 file, but the file would remain if he had other arrests
18 and convictions.

19 MS. GROMMERS: Mr. Aronoff?

20 MR. ARONOFF: Bob, do you think there ought
21 to be a statutory cause of action that would give a person
22 who had false information disseminated a monetary cause
23 of action?

24 Supposing, taking Mr. Muchmore's example,
25 supposing a false arrest data and conviction data had been

1 passed on, and as a result a person could not get a job
2 for a period of X years while that false information was
3 being passed on.

4 Should that person who had been as a result
5 deprived of occupation have a right of action against somebody?

6 MR. GALLATI: I think he would have a right of
7 action, if there is neglect or if you have an action against
8 the state.

9 MR. ARONOFF: The state has sovereign immunity.

10 MR. GALLATI: This would be a Court of Claims
11 matter. He could appeal for remedy to the Court of Claims.

12 MR. ARONOFF: Until just recently you couldn't
13 in New York. As a matter of fact, in New York, when a
14 person is falsely imprisoned for fifty years, he didn't have
15 only last year did that person first begin to have a monetary
16 cause of action.

17 Even though there was always the Court of Claims
18 in New York, New York always hid behind its sovereign
19 immunity.

20 I am suggesting it is hiding in a much less
21 severe example like this, that it would definitely hide
22 behind it.

23 MR. GALLATI: I am not honestly sure they would.
24 It seems to me you would have good cause of action, if you
25 can prove negligence.

1 The negligence might not be on the part of the
2 state, either. If it comes in to us like this, and it is
3 incorrectly charged, it is a false arrest and so on, the
4 action may not be against the state but against the community
5 which was negligent, or worse, in terms of the submission.

6 We have to accept pretty much the face validity
7 of these unless there is some reason to suspect them.

8 But as far as false arrest is concerned, in
9 New York City -- so I assume it's likewise Upstate -- people
10 are being sued for false arrest frequently, and the false
11 arrest would be the one who would get a false record.

12 MR. ARONOFF: Perhaps I stated it wrong. A con-
13 viction that did not in fact occur. A record that shows
14 a conviction for petty larceny, which would be a kind of thing
15 I would think that would bother a bank,

16 I think what I am suggesting is that without a
17 statutory remedy, even though there may be negligence along
18 the line, that there are so many pitfalls and defenses that
19 can be thrown up, that it would be such a horribly expensive
20 procedure for a person that it wouldn't be worth going into.

21 My question is, does this throw too much of a
22 burden on the information agency to allow a statutory cause
23 of action to a person who has had false information dissemi-
24 nated about him?

25 How would you react -- your agency?

1 MR. GALLATI: My reaction would be that this should
2 have the same remedy that you would have for negligence in
3 any tort case. I don't see why this should be any different.

4 I would suggest that the sovereign immunity
5 should be waived in these cases, as in many others, if there
6 is a proven case of negligence on the part of the state. Or,
7 of course, the negligence might really be at the local
8 level, in which case the cause of action should probably be
9 brought at the local level.

10 MR. MUCHMORE: I would like to add one thing. We
11 always notify our people that it is unresolved. We write
12 the letter for them, practically, to clear the record. And
13 in many cases they have gotten letters of apology from the
14 agency involved. About half, I'd say.

15 But some of the people get a little abusive.

16 MS. GROMMERS: I want to thank you all.

17 The staff has a number of questions also to ask.
18 Mr. Justice?

19 MR. JUSTICE: I wanted to ask you -- I think,
20 you can agree that the sum effort of all your efforts could
21 be spoken of as to oppose whatever kind of crime.

22 What evidence do you have or know is available
23 that would substantiate any claim that an organized computer
24 file on the state or Federal level really does achieve the
25 objective of fighting crime for the money spent, any more

1 than trying to get better housing or better education or
2 all the other things?

3 Can you show us in fact any real benefit in
4 terms of dollars and cents, or is it worth the social cost?

5 MR. GALLATI: Well, in order to answer the question,
6 I think I should focus in on one part of the total picture.

7 Obviously the stolen property file -- we have
8 figures which show so many more recovered vehicles because
9 of the fact that people are able to more quickly determine
10 whether a vehicle is wanted.

11 It's a little more difficult when you are talking
12 about a wanted system. What is the return to the state
13 because you have captured that many more persons who are
14 wanted because of the ability to get a quick response as
15 to whether a person is wanted or not.

16 In terms of analytical files, it might be a
17 little difficult to prove that we got more convictions
18 because the fellow was at the scene of the crime. But when
19 you get to the identification file, you have pretty clear cut
20 criteria to show the cost benefit ratio.

21 For example, it's costing us about \$7 million
22 to operate our agency, a portion of which is only going to
23 the identification area. But a very logical portion.

24 How much have we saved local communities? I would
25 say at least as much as our annual budget for identification

1 purposes, for example; by virtue of the fact that we are
2 able to handle the arrest records situation in New York City,
3 we are able to relieve the City of New York of this burden.

4 I suppose with a good labor representative in
5 the audience, I shouldn't talk too much about the variance
6 in salaries, but the salaries of the New York City police --
7 and for the most part the identification bureau in the New
8 York City police department is manned by policemen -- is in
9 the neighborhood of 20,000-plus, when you take fringe benefits
10 into account.

11 Our police receive about an average of \$6 to \$7
12 thousand a year. So you could hire three police at the New
13 York State level -- clerical employees -- to one policeman.

14 So the cost of processing in Albany is minimal
15 compared to what it costs in New York. Yet we are taking this
16 tremendous burden away from the City of New York. I say the
17 City of New York because it is more concrete there. But
18 it's proportionate from the other cities in the State.

19 MS.GROMMERS: I have another question for you.
20 But I'll let Mr. DeWeese speak first.

21 MR. DE WEESE: I just wanted to follow up on the
22 negligence argument. I think the problem you have is that
23 all of this occurs in your lofty tower, and it's hard to prove
24 negligence except simply the fact that the file is false.
25 It's very difficult to prove that you have been denied a job

1 because of a file, because there are many factors which an
2 employer can claim go into his decision not to hire somebody,
3 and it's almost that you have to have a liquidated damages
4 type of situation where you just get so much money for having
5 your file used improperly regardless of the consequences.

6 That's the kind of statute I'd like to see --
7 with a lawyer's fee --

8 MR. GALLATI: I'd like to read that statute
9 carefully when you write it.

10 MS. GROMMERS: One question I'd like to ask,
11 and perhaps you covered it and I missed it, but what
12 does one have to do to get into your club?

13 MR. GALLATI: You have to commit at least a
14 misdemeanor in the penal law, and you have to be over sixteen.

15 MS. GROMMERS: And do you have any statistics
16 on how many people in your club are white and earn an income
17 of over \$10,000?

18 MR. GALLATI: No, we don't have any data on income.
19 We have of course a pretty good idea, generally speaking, that
20 the people who are arrested for crimes are in a relatively
21 low socio-economic group, as a general rule.

22 MR. MARTIN: I don't think you answered the
23 question that was asked by Mr. Justice.

24 You indicated that as a result of the existence
25 of the New York State intelligence system, the total taxpaying

1 body of the citizens in New York may be spending less money,
2 but I don't think that is in any way responsive to the
3 question how does the existence of this kind of a system
4 impact on diminution of crime or apprehension of criminals
5 as against not having it.

6 MR. GALLATI: Well, I was under the impression
7 it was two questions that really had to be answered. One
8 was the cost benefit of the operation.

9 MR. MARTIN: In relation to its objective, not
10 input.

11 MR. GALLATI: Well, of course the --

12 MR. MARTIN: The output objectives.

13 MR. GALLATI: In order to maintain the criminal
14 justice system, and therefore effectively deal with the crime
15 problem, you have to have, for various purposes of the system,
16 certain data, and the criminal --

17 MR. MARTIN: That is the assumption that the ques-
18 tion is trying to test.

19 MR. GALLATI: Oh, well, okay. You have to have
20 it by law, number one. You have to have it because it is
21 demanded by the courts. They claim they need it for
22 purposes of arraignment, bail, sentencing purposes.

23 I don't know how I can prove it other than to
24 say this is a user need which is recognized and supported
25 in law.

1 MR. JUSTICE: In your judgment, does it fill that
2 very strong need to have a criminal justice side? You must
3 feel that the things you are doing are helpful to combat
4 crime, but I guess the question I was asking is, is there
5 any way you can substantiate that?

6 MR. GALLATI: Well, in the analytical area, you
7 certainly are helping to solve crimes. Therefore, presumably
8 solving crimes, you are preventing additional crimes, or
9 removing from society those who commit them, in the case of
10 the analytical modules.

11 In the case of the stolen property one, again
12 you are solving crimes. You are fighting crime by preventing
13 people from stealing cars or apprehending those who steal
14 cars and other property.

15 In the area of identification, of course, you
16 have an effect, which is not direct but is certainly an
17 indirect effect upon the whole criminal justice system, which
18 is the system designed to eliminate crime and to control
19 crime.

20 So to the extent that you support that system
21 you certainly are achieving this goal.

22 MR. GENTILE: I'd like to comment first that Mr.
23 Gallati's organization is kind of a service bureau to the
24 ultimate users, the state agencies who are using his service.
25 So it might be more appropriate to ask those users.

1 And secondly, I'd like to comment that in a
2 number of states -- in Illinois, for example -- there has
3 been a split of the old law enforcement agencies so that
4 we have now a department of corrections and a department of
5 law enforcement, and the purposes of these two departments
6 are very different.

7 Corrections addresses the rehabilitative aspects.
8 And it tries to reduce the recidivism and to prevent people
9 from having additional problems after the first offense.

10 And the department of law enforcement ~~is~~ oriented
11 to apprehend the person who is violating a law.

12 And I don't think that the law enforcement officer
13 can do much rehabilitation where he is apprehending a person
14 at that point of contact.

15 So I just point out that there are different
16 purposes and the purpose for which the law enforcement official
17 uses the data bank is essentially to apprehend the person;
18 to stop a suspect in an automobile, they want to call in
19 and find out is this a stolen car, because that tells them
20 something. I just wanted to make that distinction.

21 MR. DAVEY: I'd like to make a comment about this
22 question of the court system. This is the second or third
23 time where we learned about the courts being slow in reporting
24 disposition of various cases. The first time being when I
25 discussed the credit reporting aspects of it. This is all

1 public record information, and yet you find that in both
2 the law enforcement system and on the credit side, in which
3 you are essentially dealing with different aspects of the
4 court system, that this is an area where there is very
5 inexact reporting requirements. It's easy to get stuff into
6 the court but extremely difficult to get it out.

7 I would suggest as a matter for the committee
8 that we investigate this in more detail by hearing from the
9 courts --I think it has impact on just about everything
10 else -- about how these are public record documents.

11 MS. GROMMERS: Thank you very much for that
12 suggestion. We shall certainly try to follow it up.
13 Mr. Dobbs?

14 MR. DOBBS: I guess it was a comment on Mr.
15 Justice's question and John's supplementary information.

16 It seems to me, in Dr. Gallati's defense, or at
17 least in the sense that he is a service organization that
18 attempts to supply information services for some using
19 agencies, to the extent that when he does begin to charge,
20 which he would like to do, for his services, and those
21 users demonstrate that they are useful by paying him
22 money for them, to some extent -- a very limited extent --
23 your question gets answered.

24 I think that it is fair for us to contrast
25 asking that question, for example, of an HEW information

1 service in the same sense in which you put it. Because I
2 think that it is an appropriate question there, too.

3 That is, to what extent do the information
4 services supplied by HEW kinds of information systems support
5 their stated objectives in the same sense that you phrased
6 the question.

7 MS. GROMMERS: Thank you very much. I think we
8 will end the discussion now. And we will have a coffee break
9 and return back here at 11:30.

10 (Recess.)

11 MS. GROMMERS: We will start again now, and
12 we will be recessing at 1:00 o'clock, so we will recoup our
13 twenty minute loss.

14 I'd like to present Dr. Harry P. Cain II, Director
15 of the Office of Program Planning and Evaluation, National
16 Institute of Mental Health, and will you please introduce
17 your other people with you?

18 DR. CAIN: On my right is Mr. Goldberg of the
19 NIMH staff and I'd like to ask him to handle the other
20 introductions.

21 MR. GOLDBERG: On Dr. Cain's left is Dr. Jean
22 Warthem, who is with the Maryland Department of Health and
23 Mental Hygiene, and she is the Chief of the State Center
24 for Health Statistics.

25 DR. WARTHEM: Yes, the Maryland Center for Health

1 Statistics.

2 DR. GOLDBERG: And at this time, may I introduce
3 two members of our staff who I may ask to comment if there
4 are questions from the floor.

5 Mr. Kenneth Williams, who is a member of our
6 staff, and Mrs. Beatrice Rosen, who is also a member of our
7 staff, both statisticians.

8 MS. GROMMERS: Which of you is going to make the
9 presentation?

10 DR. CAIN: Let me start by just saying a few
11 things about the view of the NIMH and of this subject area
12 and the aspects that somehow seem to affect us.

13 As I understand the subject this committee is
14 addressing, it is of a high and increasingly serious interest
15 to the National Institute of Mental Health, although I have
16 to say that in the press of other priorities, it hasn't
17 received as much attention as it should have. And I myself
18 am not very knowledgeable about the area.

19 I will just tell you of the most significant
20 parts of the NIMH program that this subject impinges on.
21 The majority of this presentation will be devoted, as I
22 understand it, to a psychiatric case register, and I will not
23 say anything on that subject for now.

24 The second area that the subject has affected us
25 in is in the developing of so-called multi-state information

1 system, that is, a system that was developed under support
2 from NIMH, starting in about 1966.

3 And it had the aim of computerizing patient
4 information from state psychiatric hospitals in a number of
5 the New England states, and having them all feed into a central
6 computer.

7 I know something about that project, and if you
8 are interested in pursuing it, we can.

9 The next area that concerns us is in the develop-
10 ment of the alcoholism projects around the country. You have
11 probably heard that there is now a very sizable new national
12 effort in that substantive area, and through Federal support
13 so-called alcohol treatment centers are being established
14 throughout the Nation.

15 And every patient that goes through those
16 centers has compiled on him a fairly extensive amount of
17 information that is supplied to the Stanford Research Institute,
18 which has a substantial contract from us to develop and
19 start this particular information system.

20 It is now in operation in some of those alcohol
21 treatment centers, and should soon be extended to them all.

22 And then finally what I have just said about the
23 alcohol centers is also true in the narcotics service centers,
24 although in that area the scene is substantiall more confused
25 and complex. I probably don't have to pursue that very far.

1 The information system that is operating in
2 those centers that the NIMH supports has been developed
3 and is still operating out of -- I can't remember the name
4 of the Institute in Texas --it's the Texas Christian
5 University.

6 On that subject, I should add that there are
7 several other patient information systems, some of which are
8 in operation in the same centers that our system is operating
9 in. That is in part why that is a fairly confusing subject.

10 That is probably enough to indicate to you the
11 areas that the National Institute of Mental Health is
12 involved in, and hence our high concern for this subject area.

13 But now if there are no questions on that subject,
14 let's switch over to the Maryland State Psychiatric Case
15 Register.

16 MS. GROMMERS: Thank you very much. I think what
17 we will do is reserve our questions until the end for the
18 whole presentation.

19 DR. CAIN: Fine. Irv?

20 MR. GOLDBERG: Thank you.

21 In introducing this subject, I think I should
22 point out first that the NIMH was interested -- I guess it
23 started before the 1960's, and with the development of a
24 psychiatric case register as a means of collecting information
25 on individuals on the patterns of care, utilization of

1 services, of persons with emotional problems, psychiatric
2 problems.

3 And it had supported a few registers around the
4 country dealing with psychiatric patients.

5 Let me at this point describe very briefly what
6 a case register is as distinct from other reporting programs
7 or other data systems.

8 The unique feature of a case register is its
9 linking internally of the events being measured so as to
10 provide a longitudinal history of these events throughout
11 the patient's presence in -- I might say -- in the area
12 covered by the register.

13 In most data systems one has cross sectional
14 information, an event at a particular point in time, with,
15 let's say, the admission to a hospital a particular point
16 in time, with no effort to link it to other admissions to
17 other hospitals in that area.

18 That is the difference between the register
19 and other systems.

20 And then the register provides a longitudinal
21 record of the patient's history.

22 The Maryland register is one which covers, as the
23 name would indicate, essentially all of the facilities in
24 Maryland, in the entire state. I think it covers about
25 ninety-seven percent or ninety-nine percent of the population

1 in Maryland who receive services in psychiatric facilities.

2 Let me digress for a moment and say that I passed
3 out to you a record- form, the basic record form, with the
4 instructions for filling out the information, and also this
5 pink booklet which describes the register system, at least
6 as of the end of 1967.

7 And my presentation will largely consist of what
8 is contained in this document, and I will try to be brief,
9 because of the short time, and you may want to refer to this
10 and ask me questions about items in this document.

11 Then the Maryland register, as I said, covers the
12 patient population of the State. It obtains reports from
13 all of the facilities in the State who serve psychiatric
14 patients, including the official, public hospitals, the private
15 psychiatric hospitals, and out-patient clinics, and
16 psychiatric services in general hospitals.

17 It does not include the patients of private
18 physicians, that is, in private practice.

19 The Maryland register was established effective
20 July 1, 1961, and included all patients known to the
21 reporting facilities on June 30, 1961.

22 It was a cooperative project with the State
23 Department of Health, and the State Department of Mental
24 Hygiene, which were separate departments at that time, and
25 as I say, NIMH.

1 This was the second register -- log scale
2 register -- in the country. The first, which I will refer
3 to very briefly, is one in Monroe County, New York, which
4 covers that entire county's population. And there was one
5 a little later on, I think in 1963 and 1964, with the State
6 of Hawaii, which NIMH supported, and another one in the
7 Tri-County area of North Carolina which is no longer in
8 existence but that I think was initiated in 1963 or 1964.

9 The Maryland register is the only one of these
10 in which the NIMH staff played an integral role ~~in~~ the
11 management and in the activities of the register.

12 The responsibilities for maintaining the register
13 lay with the State Department of Mental Hygiene. The system
14 was built upon the reporting system to the State of patients
15 receiving psychiatric services in the State. It was expanded
16 to include reports in a uniform way from the private hospitals,
17 hospitals with psychiatric services in general hospitals,
18 and broadened to include out-patient clinic reporting, I
19 believe.

20 So there was a solid basis, initially, for
21 establishing the register. It also served as a way in which
22 NIMH staff, with the State personnel, might -- it would
23 provide a laboratory for developing methodology and conducting
24 both administrative type research and research of an
25 epidemiologic nature, or the studying of patients in various

1 categories.

2 I will not comment, if you will, on some of the
3 details related to the register which are contained in this
4 document. Would that be all right?

5 MS. GROMMERS: Yes, please do, because we have
6 only about five more minutes for your formal presentation,
7 and then we will get into questions and we will probably
8 cover a lot of those things.

9 MR. GOLDBERG: Okay, very good.

10 Let me go from here to a very important aspect
11 of psychiatric registers, of any data system, that is the
12 confidentiality.

13 In the development of this register, one of the
14 prime concerns was the confidentiality of the information
15 contained in it. Of course, the State had its regulations
16 to start with, and the reporting was broadened beyond the
17 original State's reporting system at the initiation of the
18 register, and special State legislation was adopted, and
19 a copy of that legislation is shown in this document on
20 page 36 and 37, and you will have that to refer to.

21 This protected the individual in the sense that
22 no person was allowed to provide any information relating
23 to a patient to any source at all, and the records could not
24 be subpoenaed.

25 Also, we were bound by the Public Health Service

1 regulations at the Federal level. And in no instance in
2 the operation of this register has there -- are we aware of
3 any violation of this. We have never had any account of
4 that, any complaint of that in my experience, and I believe
5 Jean Warthem will bear me out on that.

6 We do not provide information of any kind to
7 any individual. We will not even tell any facility about
8 where that patient or what other facility that patient may
9 have gone to. That kind of thing.

10 In other words, we might tell them about patients
11 in their own facilities, but not otherwise, and that kind
12 of information would be handled by the State, and we have
13 reached an agreement or procedure between us on how we would
14 handle any such request for information.

15 The kinds of information that we use -- this
16 report contains some illustrations of the kinds of studies
17 that were done and the uses made of the register. I might
18 point out that one of the unique features of the register
19 system, as I mentioned, is the longitudinal linking of
20 patient episodes over time.

21 And we have developed a model which will -- which
22 enables us to select any cohort of patients, say admitted
23 in a particular year for the first time ever, and trace that
24 person's psychiatric history as we have it recorded in the
25 register, to tell how long he has been in this facility, how

1 long out, when he came back to another facility for how long,
2 and so on.

3 In other words, a complete description of what
4 his psychiatric service utilization was. And this enables
5 us to do -- since it is an on-going system, that is, a
6 continually operating system -- it enables us to evaluate
7 what happens as a result of any intervention in the provision
8 of services, such as the introduction of community mental
9 health centers at a point in time.

10 We already have information on the patient
11 population in regard to how it has utilized services in the
12 specific areas of reporting.

13 Once the centers are introduced, we can then
14 study what happens to the population in those areas and
15 related areas or other areas of the State, after the intro-
16 duction of those centers.

17 I might digress to point out that a contract
18 with the persons involved with the Monroe County psychiatric
19 case register in New York is now employing this kind of
20 a technique in evaluating the effect of the introduction
21 of community mental health centers in Monroe County.

22 The model we have developed for the Maryland
23 register is applicable with certain modifications to other
24 registers in the country, and we are now working with those
25 people to have them, at their interest and request, introduce

1 this model to their system so that we might get comparative
2 data in other parts of the country, and that work is now
3 going on.

4 I might say that the model is set up such that
5 minimal tables and programming is required to produce a
6 wide variety of information.

7 MS. GROMMERS: I am afraid our time is rather
8 brief. Would Dr. Warthem like to say a few words to sum up?

9 DR. WARTHEM: Well, Mr. Goldberg has probably
10 covered any kind of general introduction to what we have.
11 Now I know your time is brief. I am a little uncertain as
12 to what your primary interests are. I'd be glad to comment
13 on them or answer any specific questions or speak to whatever
14 issues. I don't know if you are interested in confidentiality,
15 how much it costs --

16 MS. GROMMERS: Why don't we just proceed to the
17 questions.

18 DR. WARTHEM: I think that would be very good.

19 MS. GROMMERS: Whichever of you would like to
20 answer the questions --

21 DR. GOLDBERG: May I just make one comment to
22 set the current status of the register?

23 The register -- NIMH's role in the register
24 program was terminated effective with the completion of
25 reporting of data for fiscal 1968, ending June 30, 1968, and

1 we are in the process of completely updating that register
2 system so we would have a data resource at NIMH, and the
3 system itself will be turned back to the State.

4 NIMH has operated the system up to this time --
5 the computer application of it, or the computer processing
6 of it.

7 MS. GROMMERS: Mr. Siemiller, would you be prepared
8 to ask first?

9 MR. SIEMILLER: I will pass to Puerto Rico.

10 MS. GROMMERS: Before you start, may I note
11 for everyone that we have only forty-five minutes and eighteen
12 people. That means approximately two and a half minutes
13 maximum for each person.

14 MR. ANGLERO: I will try to consume less.

15 I would like to know how this system fits
16 into the whole structure of NIMH, or the decision-making
17 process of HEW.

18 DR. CAIN: This system -- you mean the Maryland
19 State psychiatric case register?

20 MR. ANGLERO: As an information system.

21 DR. CAIN: Well, it has for NIMH served entirely
22 a research function. And as Irv just said, it's no longer
23 a project that NIMH is supporting. So if that is what you
24 are asking, it is having no effect whatsoever on decisions
25 made either inside NIMH or in the whole Department.

1 MR. ANGLERO: It is just operative?

2 DR. CAIN: Yes, but I am not sure of the answer
3 on the Maryland side.

4 DR. WARTHEM: Are you interested in hearing about
5 the State?

6 MR. ANGLERO: I am just trying to relate it to
7 the whole system of NIMH or HEW.

8 MS. GROMMERS: We would like to hear what it
9 does have to do with the State.

10 DR. WARTHEM: All right. I am glad Irv made
11 the distinction and definition of case register, because
12 at the present time the case register -- and by this I mean
13 the longitudinal records -- really does not serve any
14 practical purpose for the State at all.

15 It is used in some types of research, but in
16 terms of State operation or decision making, I'd say there
17 is very little influence, for several reasons.

18 The primary one being that it is not completely
19 up to date. 1968 is too long ago for 1974 budget that we
20 are working on right now.

21 Now in this interim period, I have had to do a
22 great deal of fast talking, in fact, to keep the reporting
23 system going. And I have succeeded in doing so primarily
24 because, if you forget the linkage aspect for the moment,
25 because we are not linking, we are more up to date than 1968

1 on dealing with individual transactions, that is, admissions
2 data, discharge data and so on, for private facilities as
3 well as state facilities.

4 Now even this is not as up to date for private
5 facilities as it is for those which my department controls.
6 I have a primary obligation to really have very current
7 data on our state mental hospitals, and facilities for
8 the mentally retarded, so this at the moment is more up to
9 date than that for the private facilities.

10 We have gotten the most mileage, I think, out
11 of these data for purposes of planning at the present time.
12 And the longitudinal information might add a lot to it,
13 and we hope to get back to it.

14 But at the present time, having only the magnitude
15 data has been very helpful in such things as deciding whether
16 or not a new facility should be allowed in a given area,
17 and things of this nature.

18 Now in Maryland, comprehensive health planning
19 agency is within the Department of Health and Mental
20 Hygiene. This means we get asked a lot of questions from
21 them in an attempt to support requests that come in, or to
22 evaluate requests that come in, for placement of facilities.

23 We have also used this information to study
24 certain patient groups, like alcoholics, and where they are
25 going and what have you.

1 If you remember, if you live in this area,
2 alcoholism was a prime concern of the General Assembly this
3 year. So we are getting value out of portions of the system,
4 but are not currently actually using the longitudinal
5 information.

6 MS. GROMMERS: Thank you. Could we go on to the
7 next question? We'll try to get back if there is time.

8 MR. IMPARA: One brief question.

9 I notice on the form you passed out that the
10 social Security number appears twice. Once on the front
11 and again on an item on the second page.

12 I wonder what use is made of the Social Security
13 number, and why it appears twice.

14 MR. GOLDBERG: I will attempt to answer some
15 aspects of that that I am familiar with.

16 The Social Security number may be required by the
17 facility itself, number one.

18 Number two, this provides a positive measure of
19 linkage. Linkage is essential to a register, internal
20 linking or otherwise, and it replaces a name or it is used
21 in conjunction with names and other items as part of the
22 linking process.

23 I might point out here that the register employs
24 a register number, rather than a name, in its manipulation
25 of data, so to speak. It talks about a registered number,

1 rather than John Doe, per se.

2 So the Social Security number and the name provide
3 positive linkage, and the data are recorded with a specific
4 registry number for identification. That way it helps
5 preserve confidentiality and so on. That is the reason for
6 it.

7 The bottom part is a separation form. It is
8 a separation form which is also submitted to the registry.
9 The admission form and the separation form completes the
10 episode of care on that individual.

11 MR. IMPARA: The second question might better
12 be handled by some of the lawyers in the group, but in reading
13 the statute, I notice the interpretation of the final
14 paragraph in terms of legal liability for damages from
15 release of the information or reporting of information as
16 indicated on page twelve. It seems to apply to reporting
17 of the information to the register or to the State, not to
18 a general reporting of the information.

19 There is a liability in terms of a \$50 fine for
20 misuse of the data. A misdemeanor.

21 Is my interpretation correct, that this is a
22 statement of legal liability for reporting the information
23 by the physician or reporting agency -- that this only refers
24 to reporting it to the State?

25 MR. GOLDBERG: If you are talking about the

1 State statute, that would be correct.

2 It would imply here -- we get into legal questions
3 here, and I am not sure I am the best one to answer this
4 kind of a question.

5 But in essence what this does, it protects the
6 physician. In other words, these records cannot be subpoenaed
7 for any reason, and it also protects the individual, because
8 no person connected with the register is allowed to provide
9 information on individual names to anybody without his
10 knowledge or so on.

11 MS. LANPHERE: The main question I want to ask,
12 is the patient and the family aware that this data is going
13 into the register?

14 DR. WARTHEM: No, they are not.

15 MR. GOLDBERG: Does this vary between facilities
16 now?

17 DR. WARTHEM: Well, I couldn't swear there is no
18 facility or no physician who makes an individual aware,
19 but there is no state-wide pattern for --

20 These are filled out as part of the ordinary
21 admissions procedure along with many other forms required
22 by the hospital, including those of a financial nature and
23 so on.

24 To the best of my knowledge, there is no hospital
25 who has a routine statement which must be uttered.

1 MS. GROMMERS: Why not?

2 DR. WARTHEM: I do not know. This has never been
3 an issue in Maryland. It may well be with individuals.

4 MS. GROMMERS: Could it be because no one knows
5 it is happening?

6 DR. WARTHEM: You mean individual patients? It
7 may well be.

8 MR. GOLDBERG: I think -- am I correct that some
9 private physicians advise -- or the private hospitals
10 advise the patient that this is being submitted to the State.
11 Is that true? Some of them.

12 DR. WARTHEM: To the best of my knowledge, no.
13 Now I have contact with the hospitals, but I have not been
14 notified formally by any of them that they are doing this
15 on a routine basis, and I do not know of it informally.

16 I suspect that for individuals, no doubt some
17 of them have been informed by their own physician, or what
18 have you.

19 MS. LANPHERE: So if some of this is erroneous
20 or changes, how is it corrected or up-dated?

21 DR. WARTHEM: The information coming in?

22 MS. LANPHERE: Yes, because much of this data will
23 change, or could have been erroneous in the first place.

24 DR. WARTHEM: All right. Strictly speaking, at
25 the present time, we have never been able to go out and do

1 good, reliable studies. Because I think that about the only
2 way this could be done would be to go back and check with
3 the medical record.

4 We make a number of internal checks on the form
5 proper. We also -- we have a very close relationship with
6 the admitting people and with the medical records librarian,
7 so we frequently get their questions -- what shall I do in
8 this case or that case; what shall I do if I cannot get this
9 information. Certain items of information may be left blank
10 or be indicated unknown.

11 There are a few crucial ones that we will call
12 the facility on if it is left out.

13 Now you have a check on the two Social Security
14 numbers. We have checks on age and date of birth. We have
15 certain diagnoses that are not probably correct for given age
16 groups, and so on, and this type of check is made.

17 But at the present time there is no check of
18 items with the medical record proper.

19 MS. GROMMERS: Did you say the law that set up
20 that register might need revision?

21 DR. WARTHEM: I really wish there was a lawyer
22 here.

23 MS. GROMMERS: There are.

24 DR. WARTHEM: I know, but to speak from the point
25 of view of the Department of Health and Mental Hygiene.

1 Because I really in this can only give my
2 personal opinion, and I do not have legal training.

3 The principal meaning of this law for us in
4 operating the register has been the provision that our
5 records may not be subpoenaed. Medical records in Maryland
6 can be subpoenaed, but you can't find out from me where to go
7 to get the record. All right?

8 Now there actually was a revision in the mental
9 hygiene law in Maryland in 1970, which has a provision for
10 reporting -- required reporting -- from all facilities within
11 the State, public or private, as desired by the Department
12 of Health and Mental Hygiene.

13 Now I must confess I really do not know the
14 legal implications of the regulation, the new law, the wording
15 in the new law, with respect to the old statute. I suspect
16 there are interrelationships if people cared to draw the case.

17 Now in Maryland, so far, we have had truly no
18 difficulty with confidentiality. We have had no complaints
19 from either hospitals, physicians, or patients. And
20 frankly, I receive relatively few or no requests for misuse
21 of the information. I am astonished at this, but I really
22 do not have people calling me up and saying, I know you
23 somewhere have the information, surely I am entitled to it.

24 This is true with many laws. A law is a moot
25 point until something comes up and it is taken to a court for

1 a decision.

2 And we simply have not had problems with it to
3 date, and therefore have no final interpretation on any of
4 these points you might raise.

5 What would happen if a patient protested? I
6 really must say I do not know.

7 I know there have been cases in other areas of the
8 country -- I believe I know this -- and in one case it was
9 decided in favor of the patient -- am I correct?

10 MS. GROMMERS: Well, there are a number of cases
11 that are relatively -- for example, in Massachusetts, where
12 films were made of people who were unable to protect them-
13 selves because they didn't have the capacity to do so. This
14 was decided in favor of the patient.

15 Why don't we go on to some other question and
16 we may clarify some of these points. Professor Allen?

17 MR. ALLEN: Pass.

18 MS. GAYNOR: I am interested in the reporting
19 from the various facilities in the State of Maryland who
20 have input into your register. And is this only really from
21 State hospitals and do you have any law that really requires
22 private facilities to do their reporting? And is it enforced?

23 DR. WARTHEM: All right. We have reporting from
24 the full set of facilities. We do have reporting from virtually
25 all facilities directed by a psychiatrist

1 We do not have reporting from some social work
2 agencies and so on, some alcoholic groups. But agencies
3 directed by a psychiatrist, and this includes out-patient
4 clinics and private hospitals.

5 Now, does Maryland have a law that would require
6 this kind of reporting? This is the law I was alluding to,
7 the portion of the law in 1970. There was a statement
8 placed in this law, the Mental Hygiene Law was changed in
9 several respects, most of them not of interest to this group.

10 But there was in the new law placed a statement
11 that the State of Maryland's Department of Health and
12 Mental Hygiene may require reporting from all psychiatric
13 facilities within the State.

14 I'm sorry I didn't bring this with me, and I do
15 not recall the exact words. There is a statement about
16 at the time of admission and discharge of a patient, or at
17 any other time deemed necessary by the Department of Mental
18 Hygiene.

19 And I could get you copies of this if you are
20 interested in seeing it. I don't have them with me.

21 MS. GROMMERS: Yes, if you would send them to us.

22 MS. GAYNOR: You said the law may require as it
23 deems necessary. Does the State Department of Health require
24 it, and do they deem it necessary? That is all I am asking.

25 DR. WARTHEM: Okay. At the present time, we

1 have a new Commissioner of Mental Hygiene. Are you aware of
2 that? He is very new. He came July 15.

3 The former Commissioner was requiring that the
4 form of report that you see before you be done by the
5 various facilities. However, I must also point out that the
6 facilities have really not, with very few exceptions,
7 challenged the reporting system. Most began it on a voluntary
8 basis, and have not asked to be relieved of the reporting
9 chore.

10 So that since we have had very little conflict
11 in this area, it is difficult to know, it is impossible for
12 me to state, and particularly for the new Commissioner or for
13 the Secretary of Health and Mental Hygiene, who would
14 bear the final responsibility, what the decision would be
15 under certain terms of protest by a facility.

16 I believe that they would probably require
17 reporting similar to this. I will point out something else,
18 that in Maryland we are currently working on revision of --
19 on instituting forms for a number of hospitals that have not
20 reported, such things as chronic disease hospitals, changing
21 certain forms for facilities like mental retardation, where
22 the items are not too appropriate for these facilities at
23 the present time.

24 And as part of this overhaul, no doubt the form
25 that you see in front of you will change somewhat.

1 MS. GAYNOR: What is your tie-in with schools
2 in relationship to the Department of Mental Health and Mental
3 Hygiene?

4 DR. WARTHEM: None.

5 MS. GAYNOR: None whatsoever?

6 DR. WARTHEM: No formal tie at all.

7 MS. GROMMERS: How about informal?

8 DR. WARTHEM: There have been some cooperative
9 studies that have drawn data, I believe, from both areas.

10 MS. GROMMERS: With names, or --

11 DR. WARTHEM: No, no. On a research study, we
12 do not furnish names. The data as they are available to
13 researchers come by way -- primarily by way of statistical
14 tabulations that we perform in-house.

15 Most generally we are asked to provide some kind
16 of tabulation on some kind of patient. What is the age
17 distribution of alcoholics in a given period of time -- that
18 being a very simple example.

19 This is performed in-house. And the tabulation
20 is given and of course there is no problem here at all.

21 MS. GAYNOR: Do you also maintain an alcoholic and
22 narcotic register?

23 DR. WARTHEM: We do not have an alcoholic register
24 as such. Alcoholics who are admitted to these facilities
25 are admitted as alcoholics, if the doctor gives that

1 psychiatric diagnosis.

2 The Drug Abuse Administration has a very small
3 drug abuse registry. At the present time, these statisticians
4 do not work for me. In Maryland we have centralized within
5 the Department all of our statistical services under the
6 title of the Maryland Center for Health Statistics.

7 Now the sole area within the huge Department of
8 Health and Mental Hygiene who still retain their own
9 statisticians happens to be the Drug Abuse Administration,
10 and I do not have very good information on their register
11 except to know they have one.

12 MS. GROMMERS: Thank you very much.

13 Dr. Gallati?

14 MR. GALLATI: I gather this was intended to
15 be a prototype or model for the department of other systems,
16 and the bill contained herein presumably has satisfied you
17 and that would be in the sense a model bill for other states
18 to use, I presume, since you have been satisfied with it
19 in Maryland, and Maryland presumably has, too, in terms
20 of confidentiality?

21 DR. WARTHEM: I must say only that I am not a
22 lawyer and I really would be very happy to hear legal
23 opinions on it. We have had no problem with it.

24 MR. GOLDBERG: In Hawaii, they also have had
25 State legislation. I was not present at the time, but I

1 believe this statute was used as a basis for the statute
2 which was eventually developed by that State.

3 MR. ARONOFF: I will pass my time.

4 MS. GROMMERS: Mrs. Cox?

5 MRS. COX: I am a little confused on the real
6 purpose of the registry. You say you link or match it with
7 Social Security, Census, Welfare, school records, police
8 records.

9 DR. WARTHEM: This has never been done.

10 MRS. COX: It's in this report here.

11 MR. GOLDBERG: Let me say these are done only
12 in terms of some research studies. This study has indicated --
13 in the statute, too, I believe -- that this kind of linking
14 implies at least that this can only be done in-house, so to
15 speak.

16 That we will link and have linked the register,
17 as indicated on page 17, at the top, in one of the
18 illustrations of the study on the recurrent episodes of
19 psychiatric services -- sorry --

20 Number eight on that page, "Characteristics of
21 adolescent cases receiving psychiatric services and/or
22 school facility services." The Baltimore City School
23 Division of Special Services records were used, but this
24 was done by a staff person with their company and nobody
25 else sees the names of these people.

1 In other words, names are only used for that
2 kind of linkage, but it is not provided to anybody.

3 MRS. COX: You say you don't give the registry
4 records to anybody else. What if a patient moves to another
5 state or someplace. They cannot get their past records?
6 I mean the psychiatrist?

7 DR. WARTHEM: Not from me. First of all, I don't
8 have the medical report, you must be clear about this.

9 MRS. COX: I mean the treatment.

10 DR. WARTHEM: No, I have only a very broad
11 summary with respect to treatment. Very, very broad. Like
12 diagnosis, and there is an item on generalities of therapy.

13 The particular record that I keep would not
14 really be of much use to a psychiatrist.

15 MRS. COX: You could get it by having their
16 psychiatrist contact the psychiatrist, but not you?

17 DR. WARTHEM: That is correct. If a patient
18 makes a proper arrangement to give his permission for another
19 psychiatrist to release information, fine.

20 But it does not -- he cannot even find this out
21 from me.

22 MRS. COX: Then I get the impression -- and it
23 is stated here -- that it is for statistical purposes?

24 DR. WARTHEM: For research purposes only.

25 MRS. COX: All right. Let's put it thatway, then.

1 It should never be collected for statistical purposes. It
2 is collected to give you research information, then, on the
3 history of mental diseases and the magnitude of the disease
4 and so on?

5 MR. GOLDBERG: Let me point out one thing that
6 is unique about the register. As I think I inferred from
7 the beginning, the register takes into account not only the
8 public facilities which might be required to report to a
9 state agency or local agency, but it takes account of all
10 the facilities throughout the area involved, and links the
11 records of that individual as he goes from one kind of
12 facility to another.

13 And the register is the only kind of an instru-
14 ment that will link across facilities. So you can always
15 tell how many people come back to the same facility, but that
16 is a totally incomplete record.

17 MS. GROMMERS: What good is that to anyone?

18 MR. GOLDBERG: Well, the important thing here
19 is what is the natural history of the disease, what is
20 the outcome, what is the patient outcome, for example, after
21 having been treated in a particular facility?

22 If he doesn't come back to that facility, you
23 will never know. Or nobody will really ever know.

24 And one way of looking at what happens -- and as
25 I said, we had a model which actually does that -- actually

1 traces the individual's record.

2 We do it in groups of individuals, coming into
3 a particular kind of facility. We evaluate how long he has
4 been in that facility, how long out of that facility before
5 he came under the care of any other kind of facility, and
6 so on.

7 And we have also death information coming into
8 this register through an agreement with the Department of
9 Health, the Vital Records Division, or whatever, of the
10 State Department of Health, and the Baltimore City Department
11 of Health.

12 MRX. COX: Well, you are doing that through other
13 sources than State or local registers. You are getting it
14 from the State, other facilities? Because you said there are
15 only the two.

16 MR. GOLDBERG: Well, if you look, I think on
17 page --

18 MRS. COX: Of course, we have the disadvantage
19 that we haven't had the chance to see this --

20 DR. WARTHEM: I will point out that the vital
21 records in Maryland are part of my Center for Health
22 Statistics, including Baltimore City, as of July 1. The
23 facilities were merged.

24 So the death clearance, for example, is now totally
25 not only in-house within the Department, but in-house within

1 my own shop.

2 MS. GROMMERS: We appreciate that you didn't
3 design -- or I believe this is the case -- you did not
4 design the system, that you are rather the administrator
5 of it, and therefore my comments are really not directed to
6 you. But the use that you have just said, the good that
7 it can do anyone is to maintain, for example, an audit trail,
8 which is a certain kind of an evaluation of a treatment or
9 whatever is happening at the facilities.

10 But you are lacking the other half, which is
11 what happens -- Therefore I have to repeat the question --
12 what good is it to you or anyone?

13 MR. GOLDBERG: I think it's important to know
14 what the patterns of utilization are. By this technique
15 it is unduplication. That is, when a person comes into
16 facilities one and two, if you have cross sectional data,
17 you know there are twenty-eight in facility one, and
18 thirteen in facility two. Do you have twenty-eight people
19 in this community? Or forty-one?

20 The register tells you you might have thirty-two
21 because some have come back to another facility.

22 So this is the only way, by linking across
23 facilities, by which you can unduplicate this kind of
24 information.

25 MS. GROMMERS: Do you use this for budget control

1 or inventory of beds required or planning purposes?

2 MR. GOLDBERG: One way this is used, as I pointed
3 out in my earlier remarks, we have a program of community
4 mental health centers throughout the country, and one of
5 the important activities the Institute is now concerned with
6 is the evaluation of this program.

7 And in one contract with the Monroe County
8 register, for example, they are tracing the effect or looking
9 at the effect of the introduction of these centers at a
10 point in time in various areas of the county, with respect
11 to how services are being utilized or what changes have
12 taken place in the utilization of these services.

13 And then you have to look at where an individual
14 comes in and goes to, both in that area and outside that area.

15 And you have to look at what has happened before
16 those centers were introduced, as well as what happened
17 after that center was introduced.

18 So we are not looking at just what happens to
19 an individual, per se, but what happens to groups of
20 individuals, and what happens to a population in a particular
21 area.

22 MS. GROMMERS: Thank you.

23 MS. COX: I am not satisfied, but go ahead.

24 MS. GROMMERS: Mr. Muchmore?

25 MR. MUCHMORE: Pass.

1 MS. GROMMERS: Mr. Davey?

2 MR. DAVEY: Could you step through the use of
3 this particular form from the time it was submitted and who
4 fills it out, where it goes?

5 DR. WARTHEM: Could I make one comment? The State
6 is beginning to use the data from the reporting system for
7 a number of purposes, such as the ones you are speaking of.

8 For things that do relate in some ways to dollars
9 and buildings and where should things be placed and what is
10 happening to given groups of patients.

11 We might come back to it.

12 The form basically is filled out -- the top half
13 of the form you have before you is filled out at the time
14 of admission. Ordinarily along with all other routine forms
15 that are filled out by a particular hospital.

16 They generally are submitted on a monthly basis.
17 They are not submitted daily, for a number of very practical
18 reasons that have to do with the fact that sometimes the
19 patients are not coherent enough to furnish it, and the
20 family may not be there,

21 So in order to get as good reporting as possible,
22 we do not ask for this on a daily basis. When the
23 facility has checked their forms, they pull off the top half
24 and send this to us within roughly a month, or at a really
25 routine day in the month for each facility.

1 They then retain the rest of the record as part
2 of the medical record until the time of discharge.

3 At the time of discharge, they fill out the
4 discharge information on the bottom half, pull that off,
5 send it to us, and retain for their own files a complete
6 record of what they have transmitted to us.

7 If corrections need to be made on the top half,
8 they do this at the time of discharge by correcting the second
9 sheet.

10 On occasion we get a telephone correction -- not
11 occasionally -- fairly often.

12 MS. GROMMERS: By correction, you mean made by
13 the institution and not made by or with the knowledge of
14 the subject of the files?

15 DR. WARTHEM: These are ordinarily bits of
16 information unknown at the time of admission.

17 MS. GROMMERS: Is that correct, what I just said?

18 DR. WARTHEM: Yes.

19 MS. GROMMERS: It is the institution making
20 it, not the subject?

21 DR. WARTHEM: Yes, a change in spelling of the
22 name. Sometimes the information has been obtained from the
23 patient.

24 MS. GROMMERS: But it might be incorrect, and
25 the subject would never know it was being said. It might

1 be incorrect and --

2 DR. WARTHEM: You mean the correction?

3 MS. GROMMERS: The correction might be incorrect,
4 and the diagnosis might be incorrect, and the subject would
5 never know that it even had occurred.

6 MR. WEIZENBAUM: The subject doesn't know of the
7 existence of the form.

8 DR. WARTHEM: Since he doesn't, obviously yes.

9 They are probably made by the patient or the
10 family. They are for us minor ones.

11 The diagnosis is totally something over which
12 we have no control. If the physician states that the
13 diagnosis is thus, and so, we accept it.

14 And whether or not the patient knows how he
15 was diagnosed is purely, so far as I am aware, a matter
16 between the patient and his physician.

17 MR. GOLDBERG: I think Mrs. Rosen would like
18 to make a comment, because I think there is one slight
19 difference of opinion perhaps as to how the reporting was
20 done with respect to the knowledge of the patient at the
21 initiation of the register.

22 Do you want to comment on that?

23 MS. ROSEN: When the register program was first
24 developed, it is my understanding that every facility was
25 contacted. In most cases, the director -- particular at the

1 state facilities -- the director may have made the decision
2 as to whether a patient would be informed or not about
3 whether he was being registered, so to speak, or whether he
4 was being put on the register.

5 However, in the private facilities, this was not
6 always the case, that sometimes the directors were very firm
7 about wanting to inform patients, and in one particular
8 facility that I know of, because I was present at a meeting
9 where this was discussed, he told us that every patient was
10 informed about the register and asked.

11 So that perhaps in the State hospitals this may
12 not be true, but I think that at least up through the time
13 that we were involved in this, this procedure was still
14 being followed, depending upon the director's discretion.

15 MS. GROMMERS: I do want to raise one comment.
16 Thank you very much.

17 But there is a question of a person who is
18 psychotic. Can he in fact be informed? Can a legal
19 communication take place?

20 DR. WARTHEM: If this is of great interest to
21 your committee, I will be very happy to do some checking
22 and find out what the situation is.

23 MS. GROMMERS: We'd be very grateful for a
24 follow-up.

25 MR. GOLDBERG: Generally speaking, I think infor-

1 mation would come either from the patient or collateral.
2 I think that is the way it would normally appear at the
3 time.

4 DR. WARTHEM: Would a spot check do? A few private
5 facilities, and a few questions to a few of the state
6 facilities? Would that be sufficient?

7 MS. GROMMERS: That would be very helpful.

8 MR. DAVEY: Maybe you have the answer or not.
9 But it would be helpful.

10 From the State side, how much does it cost to
11 maintain a unit record, and from the Federal side?

12 DR. WARTHEM: From the State standpoint, because
13 we have done no linkage since 1968, the costs at the time
14 I last heard of them is far more than the State would be
15 willing to pay, quite frankly.

16 The computer costs were really quite high.

17 MS. GROMMERS: Can you be specific?

18 DR. WARTHEM: I really don't remember, but it
19 runs in my mind -- is \$200,000 one year -- is that too much?

20 MR. GOLDBERG: I have some figures on this, if
21 you would like I can go into it briefly.

22 MS. GROMMERS: Well we really wonder about a
23 unit cost per record. Is it \$10 per patient? But if you
24 have other figures, send them in.

25 DR. WARTHEM: The reporting system proper is not

1 very expensive. The preparation of the forms, the filling
2 out of the forms.

3 MS. GROMMERS: Like \$3.00 per patient?

4 DR. WARTHEM: We do not pay people to do it,
5 and it would depend completely on the size of the facility
6 and their clerical staff. I don't know how they would
7 allocate the dollars.

8 MR. GENTILE: One very brief question. If I
9 as a private citizen went to see a psychiatrist in the State
10 of Maryland, regardless of whether it was a State-run
11 facility or a private clinic that that psychiatrist was
12 running, am I correct in interpreting that I have a ninety-nine
13 percent chance that in my record in your file there would
14 be entered either a diagnosis, which is according to your
15 instructions in your form something that the psychiatrist
16 diagnosed or filled out or an impression as a result of
17 the first interview as to my ailment or what is wrong with
18 me that somebody less than a psychiatrist put into the file,
19 and this would be stored in your state-wide center in
20 Maryland, is that correct?

21 DR. WARTHEM: If you went to a psychiatrist
22 in his private office, I know nothing whatsoever about it.

23 If you go to see a psychiatrist in a facility,
24 whether as a private patient or as a state patient, a form
25 will be filled out.

1 Now at the time of admission, a diagnostic
2 impression may be furnished. The item may also be left blank.
3 Or a psychiatrist may put in a diagnosis.

4 It may be left blank at the time of admission.
5 At the time of discharge, a diagnosis will be entered. It
6 may be the diagnosis of no mental disorder. But a diagnosis
7 will be entered. And at this time, it may not be an
8 impression. It must be signed and sealed by the psychiatrist.
9 This is the diagnosis that he wishes to make for this patient.

10 MR. SIEMILLER: His best guess.

11 DR. WARTHEM: This may very well be. I am sure
12 you are right.

13 MR. DAVEY: I think Mr. Goldberg had some cost
14 information.

15 MS. GROMMERS: We'd like him to supply that later.
16 Mr. Dobbs?

17 MR. DOBBS: With respect to the linkage, in the
18 instruction for completing the form, it is noted that the
19 patient's name, with careful spelling, is the primary link,
20 and subsequently the Social Security number is required for
21 identification purposes, and care is taken to make sure this
22 number is obtained.

23 Is the Social Security number used in addition
24 to the name as part of the linking mechanism?

25 DR. WARTHEM: Yes.

1 MR. DOBBS: Maybe you don't have the answer to
2 the next question, which is, at the time that decision was
3 made, did anyone ask the Social Security Administration
4 relative to the efficacy of the use of the number for that
5 purpose?

6 DR. WARTHEM: Can you answer that one, Irv?
7 I cannot answer specifically.

8 MR. GOLDBERG: I have no knowledge of that, except
9 I am positive in my own thinking that much of this is the
10 usual procedure that these facilities have, in other words,
11 it is part of their record.

12 But whether anybody concerned with the register
13 has looked into this for purposes of the register, I do not
14 know. I have no information at all.

15 MR. DOBBS: One last question, on a different
16 sort of vein.

17 MS. GROMMERS: Could you continue through on
18 that? I think you were alluding to the fact there that
19 Social Security wouldn't verify it.

20 MR. DOBBS: Social Security has said in fact that
21 the number will not be used for verification purposes. But
22 that hasn't stopped anybody else, so I don't see why it
23 should stop the State of Maryland.

24 The other question was, is it the case that the
25 practicing mental health professional, these days, feels

1 that the class of information that you are collecting in
2 this kind of register is useful to them in actually furthering
3 and supporting the delivery of their services, or is there
4 any controversy within the field itself about how valuable
5 this kind of information might be, specifically the longitudinal
6 kind of traffic?

7 MR. GOLDBERG: Well, I think individuals are
8 going to vary in their opinions about this. I think that
9 would be true in almost anything we do.

10 But generally speaking, there was a great deal
11 of interest -- the development of the psychiatric register
12 came about because there was a great deal of interest in
13 this tool as a method of both furthering research and
14 providing information on the utilization of services.

15 And the fact is that I have had visitors
16 from abroad who have looked at what we were doing with the
17 register. These were psychiatrists who were extremely
18 excited about the potential that this register had, and in
19 fact were extremely anxious and interested in the kinds of --
20 anxious to have and interested in the kind of an instrument
21 we developed with respect to the spelling out of the
22 patterns of utilization of care in this population.

23 They have requested the kinds of forms we had,
24 and as I say, other registers in the country which include
25 people concerned with providing care in private facilities.

1 They are interested in obtaining this kind of information.

2 So yes, there has been an expression of interest
3 in it, in the usefulness of it.

4 Now if you mean individual psychiatrists, I
5 don't know. We don't generally get in touch with that many
6 of them in our normal course of activities.

7 It's hard really, I guess, to evaluate how many
8 really feel this is particularly useful information to them
9 in their patient management.

10 Although this is not intended as a patient
11 management tool, I ought to point that out also. We only
12 have a face sheet of information. We do not have an entire
13 record.

14 We only know that the person has received maybe
15 chemotherapy or something of this kind. We know nothing
16 more than that.

17 MR. WEIZENBAUM: I have listened carefully, but
18 I am totally confused.

19 Looking at pages two and three of this pink thing,
20 among other things it talks about the purpose, and it seems
21 to me the purpose as stated here is entirely incestuous.

22 It lists three purposes. The first one is to
23 provide a laboratory for solving methodological problems
24 for registers of this kind.

25 The second is to demonstrate the application of

1 registers for various types of applications of this kind,

2 And the third is to provide the source for train-
3 ing, guidance and so on, and so forth, to persons interested
4 in building registers of this kind.

5 It seems completely incestuous. I'm not clear
6 what it has to do with psychiatry, or whatever.

7 However, I want to attach myself to the question
8 asked earlier where I thought I heard confusing answers with
9 respect to item 2.3. Data banks in particular schools.

10 One answer we heard from Dr. Warthem was that
11 there wasn't any, and Mr. Goldberg said yes, there was.

12 And then on page seventeen, paragraph eight,
13 we see 318 children identified out of a total of 5,000
14 receiving attention from the Baltimore City Schools.

15 What is going on?

16 DR. WARTHEM: Let me make a distinction.

17 MR. WEIZENBAUM: Let me focus sharply so you
18 can perhaps answer it.

19 Apparently there was a matching of rosters having
20 to do with your data bank somehow. And one roster apparently
21 contained the names or some identifiers of 5,000 children
22 who were having some sort of psychiatric difficulty or at
23 least were recorded in a school data bank of some kind.

24 This was apparently matched with something else,
25 using your roster. Could you explain that to me?

1 DR. WARTHEM: Let's talk about two kinds of things.
2 One, there has been no general matching on a continuing
3 basis.

4 There have been special studies. There have been
5 special studies in which various rosters have been submitted,
6 I believe in each case to us.

7 MR. GOLDBERG: We have some.

8 MS. GROMMERS: Just this particular one.

9 DR. WARTHEM: The Department of Education at
10 one time -- and I believe you are no longer receiving them,
11 are you?

12 MRS. ROSEN: No.

13 DR. WARTHEM:--Submitted forms on their children.
14 These were matched --

15 MR. WEIZENBAUM: What did they submit to you?
16 Forms? Paper?

17 MRS. ROSEN: They submitted a form that we paid
18 them for their cooperation to collect a certain identifying
19 information and service information from the Division of
20 Special Services in the Baltimore School System.

21 This definitely was an agency run by the school
22 system for children with emotional problems -- not retarda-
23 tion, just emotional problems.

24 They were interested, and we were interested at
25 the time that this study was conducted, in seeing how many

1 children in their service were later or previously identified
2 in psychiatric facilities, whether they had had any treatment.

3 Because they did not treat children. They only
4 were counseling services.

5 It was a one or two year study, in which we
6 collected data.

7 MR. WEIZENBAUM: Did they submit 5,000 forms
8 to you?

9 MRS. ROSEN: Yes.

10 MR. WEIZENBAUM: And these forms had names
11 and other identification of individual children?

12 MRS. ROSEN: Yes. And what kind of services
13 they received in the school system.

14 MR. WEIZENBAUM: And now you passed this set of
15 data, these 5,000 names and records -- somehow you passed
16 this against something else and came up with 318 children?

17 MRS. ROSEN: Yes.

18 MR. WEIZENBAUM: What did you pass it against?

19 MRS. ROSEN: Our register.

20 MR. WEIZENBAUM: Magnetic tape?

21 MRS. ROSEN: Yes, by tape.

22 MR. WEIZENBAUM: So the forms that were submitted
23 the 5,000 -- were these submitted on paper?

24 DR. WARTHEM: On paper. We coded and key-
25 punched them.

1 MRS. ROSEN: As a matter of fact, they key-
2 punched it.

3 MR. WEIZENBAUM: That means the identification
4 of these children by name and possibly Social Security
5 number must have been present on both the files being
6 matched against one another?

7 MRS. ROSEN: Right.

8 MR. WEIZENBAUM: And apparently you do the
9 same with Social Security, Census, welfare and police records?

10 MR. GOLDBERG: No, no. May I comment on some
11 of this?

12 We are trying to be helpful to you all, and
13 time was so short, we couldn't go into this in detail. We
14 were told to keep it brief. This is why I referred to this
15 document. I will be happy to go into this for you.

16 I think we pointed out, too, and I intended
17 in my initial remarks to point out, that this is only one of
18 a number of registers which we are interested in supporting.

19 The others were doing this kind of research we
20 were speaking of, and we were doing it also, but we were
21 doing it in this kind of a context -- developmental.

22 I mentioned the fact that we were involved in a
23 laboratory to develop techniques and methodology, which we
24 have done.

25 And we were interested in demonstration

1 of the application of the register, and various kinds of
2 studies indicated here, and we have conducted those kinds
3 of studies that you are talking about, but not done partly
4 for the study's sake and partly to demonstrate how you could
5 use it in other registers and to provide a resource for
6 training and so on. On this --

7 MS. GROMMERS: May I just interrupt with a
8 question.

9 Dr. Warthem said she did not retain the names?

10 DR. WARTHEM: No, no. Wait. This is not com-
11 pletely true. In any data system that does any kind of
12 matching at all, you must start with names, and you must
13 end with names, or you have nothing to match the next batch
14 against. All right?

15 Now to describe the total complexity of the
16 system would take a long time, but basically there are
17 several kinds of files that are kept.

18 One type of file is a pure education file. It
19 really has nothing on it except the information needed to
20 decide whether or not one individual is probably the same
21 individual. This would include things like name and
22 address and Social Security number. Okay?

23 Now this is one separate file all by itself.

24 MR. WEIZENBAUM: It doesn't make sense to have
25 a file of names, addresses and Social Security numbers.

1 DR. WARTHEM: You have to have something to match
2 incoming records against. Once the match is achieved --
3 and as it happens, the current model makes use of the
4 computer for this -- once the match is achieved, a new type
5 of record is generated. A new tape, if you will. Or a new
6 record.

7 This scratches the name. It in fact assigns a
8 number to the person. You are person One.

9 It then starts another file, and it doesn't put
10 a name or address or anything else on it. It puts Number One.

11 And now it starts entering the psychiatric
12 stuff. The type of facility. It enters the date of
13 admission, it enters the date of discharge, the final
14 diagnosis, and this kind of thing.

15 Now when you do studies, you use this tape, and
16 you have no idea who Person One is, or Person Two. You know
17 he is twenty-seven years old, was diagnosed schizophrenic,
18 and lives in Baltimore City.

19 This tape is kept completely separate from the
20 other tape. So that in -- well, it must be done this way,
21 but in a manner of speaking, it is additional protection.

22 If you had the name tape, all you would have
23 would be a list of names. And you actually would find it
24 hard to get hold of, but if you could.

25 MR. WEIZENBAUM: There would be the name and

1 all that, and then there would be a One, saying there
2 exists a record in Category A.

3 DR. WARTHEM: That is correct.

4 MR. GOLDBERG: This is described in the pink
5 booklet. We show you, for example, on page thirty-one, the
6 master identity record, and what is contained on that record,
7 and as Dr. Warthem said, that is for linkages purposes, not
8 data output. May I just say --

9 MS. GROMMERS: May we go on?

10 MS. NOREEN: My questions were already answered.

11 MR. DE WEESE: I am pretty confused. I really
12 have trouble with the system.

13 Is it correct that the person whose records are
14 included in these files is never told that the record is
15 being kept, and never signs a waiver at the time he is in
16 the hospital?

17 DR. WARTHEM: Apparently there is some issue
18 on this, because I made the statement I was not aware of any
19 routine mechanism whereby this was done. Mrs. Rosen says
20 she feels that in the beginning there was a provision
21 for this in selected facilities, at the discretion of the
22 director.

23 MS. GROMMERS: When a patient is taken up into
24 a psychiatric system at all, there is a form which must be
25 signed. Either by the legal guardians or some other

1 representative of the patient. Which is different.

2 DR. WARTHEM: That's giving permission for treat-
3 ment.

4 MS. GROMMERS: Well, it gives a number of
5 things, but it does not neatly give permission for putting
6 them in a register.

7 DR. WARTHEM: I will check on it, at least on a
8 spot check basis. But there commonly is a provision in
9 most of these indicating that, there is a stock phrase for
10 the use of records.

11 I would be fairly certain most of these do not
12 have anything specific about the psychiatric case register.

13 MS. GROMMERS: We'd like to have you, if you could,
14 look that up for us.

15 DR. WARTHEM: And it probably differs from
16 hospital to hospital.

17 MS. GROMMERS: Could you give us specific
18 information in as many hospitals as you can get for us?

19 MR. DE WEESE: In your opinion, in your view,
20 is the extremely high percentage of people undergoing
21 psychiatric care of the upper social economic class?

22 DR. WARTHEM: Are they the upper social-economic?
23 Well, I would say no.

24 You see, I cover the gamut of the institutions,
25 and --

MR. DE WEESE: I don't mean your institutions.

1 I mean generally. Because as I understand this document,
2 the people in the upper income brackets, because they deal
3 with private psychiatrists, are not included in the system.

4 You have collected a system of highly derogatory
5 information on people of a certain socio-economic bracket.

6 DR. WARTHEM: If they are seen in a private
7 physician's office, we will not know of it. Now depending --
8 there is a class of patient of which we probably know very
9 little. I really don't know what tag to give the neurotic
10 group who are only seen in offices.

11 There are very, very many private patients,
12 actually, both psycho-neurotic and psychotic, seen in
13 private facilities.

14 MR. GOLDBERG: May I make a comment that is
15 most pertinent?

16 The Monroe County psychiatric case register
17 does in fact collect information from private practicing
18 psychiatrists. It's the only one that does in this country.

19 That is one of the reasons we try to develop
20 these kinds of registers in various places. And they have
21 a unique community which permits that really.

22 MS. GROMMERS: Mrs. Hardaway?

23 MS. HARDAWAY: Two quick questions that pertain
24 to every day visits, that go on to state government.

25 Number one, do you interchange your information

1 with any other state agencies within the State of Maryland,
2 such as the welfare department, et cetera?

3 DR. WARTHEM: I must distinguish. If you mean
4 on a routine basis, no. There is no continuing interchange.

5 As it happens, we have not made a special study
6 with Welfare in Maryland, and therefore we have not had
7 that interchange.

8 MS. HARDAWAY: All right. My last question --

9 DR. WARTHEM: But we might.

10 MS. HARDAWAY: If I were the Commissioner of
11 Personnel in the State of Maryland, and I suspicioned that
12 I had a director with mental problems, at a high level, that
13 would worry me, and I hear via the grapevine that he, six
14 months ago, entered an institution for psychiatric help.

15 If I called your Commissioner, could he give me
16 that information?

17 DR. WARTHEM: No.

18 MS. HARDAWAY: You are positive?

19 DR. WARTHEM: All right, I must tell you directly.

20 In Maryland, information on patients serviced in State
21 mental hospitals is part of the public record. And at the
22 discretion of the Commissioner of Mental Hygiene, it is
23 possible to transmit information to a variety of sources.

24 We have many inquiries from other hospitals in
25 other states, and so on.

1 MR. MARTIN: It's a straightforward question.
2 Requires a yes or no answer.

3 MS. HARDAWAY: If I as Commissioner of Personnel
4 called your Commissioner --

5 DR. WARTHEM: You could not get that information
6 from me.

7 MS. HARDAWAY: I didn't ask about you. I asked
8 from your Commissioner. Could -- would it be possible
9 to get that from your Commissioner? Would he have access
10 to that information?

11 DR. WARTHEM: No, he would not.

12 MR. MUCHMORE: It says on page thirty-seven of
13 the bill that it is not only unlawful to do so, but it also
14 carries a \$50 fine.

15 (Laughter.)

16 MR. SIEMILLER: Tremendous. A whole \$50.

17 DR. WARTHEM: I'm sorry to not yes or no you,
18 but there are certain conditions under which a Commissioner
19 of Mental Hygiene could instruct me to find out whether or
20 not an individual had been treated in a State mental hospital.

21 MS. HARDAWAY: State -- not private?

22 DR. WARTHEM: In a State mental hospital. The
23 thing I am not allowed to do -- and I have records of various
24 kinds on State mental hospitals -- I am not allowed to use
25 the case register in order to answer this question.

1 Do you understand my distinction?

2 MS. HARDAWAY: So you use other connections?

3 DR. WARTHEM: Yes. I actually serve a dual role
4 in this. I maintain something we are calling a psychiatric
5 case register, which may not be tapped for any of this.

6 In my role as Director of the Center for Health
7 Statistics, there are questions pertaining to people in
8 State mental hospitals that I may be legally required to
9 obtain for the Commissioner of Mental Hygiene.

10 What I may not do is make use of the psychiatric
11 case register to get this information.

12 So when you asked me about a person in personnel,
13 you might be able to direct the Commissioner to direct me
14 to find out if that person had been in a State mental hospital,
15 but you couldn't direct me to do it by way of the case
16 register.

17 MS. GROMMERS: One question from staff.

18 MR. JUSTICE: As you know, we asked you to appear
19 before the Committee because you are on a policy-making
20 level in NIMH.

21 After you have heard what you heard today on the
22 system, which is no longer funded by NIMH directly, would
23 it seem to you, Dr. Cain, to be in the best interest of
24 the future programs, like the multi-state information system
25 to which you alluded earlier, to re-evaluate some of your

1 policies and procedures and programs to meet some of the
2 very serious dangers and questions that the committee has
3 raised? For instance, and most explicitly, the suggestion
4 that welfare, police and other agencies might have access
5 to these files?

6 MR.GOLDBERG: They do not have access.

7 MR. MUCHMORE: I'd like to point out one thing.
8 I think you ought to read what is in the pamphlet before
9 you ask that sort of question.

10 The government is instructed:

11 "That every safeguard will be taken
12 to insure complete confidentiality of this
13 Register; no information in these files
14 will be given to any public or professional
15 agency or person and the data derived from
16 the basic records will be used solely for
17 research purposes"

18 MS. GROMMERS: It says on page twenty-one that
19 such studies have not been carried out.

20 MR. WEIZENBAUM: But it's violated, Mr. Muchmore.
21 On page thirty-two, it has the data structure of the most
22 sensitive data imaginable.

23 MR. GOLDBERG: That is a statistical file with
24 a register number, and nobody can say that is John Doe without
25 getting into the master identity file.

1 MR. WEIZENBAUM: The master identify record,
2 the file, the data structure, is displayed on page 31 and 32,
3 which means that I, who happen to know about computers, can
4 manage to find a tape of yours, for example, or manage
5 to somehow get into your computer -- that it would be
6 perfectly easy for me to de-code your tape.

7 All I am suggesting is that here is a safeguard
8 among every safeguard, that was in fact not taken, which
9 I think makes this question realistic.

10 MR. MUCHMORE: You'd be violating page 35 and 37,
11 and you'd have to pay \$50.

12 MR. JUSTICE: On page 21, it says,
13 "Record matching studies with police,
14 welfare and other agency records, either on a
15 sample basis or as part of a broader psycho-
16 social register, have not yet been carried out..."

17 My question was, in view of this discussion,
18 would you expect and plan to re-evaluate this intention,
19 or would you want to perhaps minimize it?

20 DR. CAIN: Well, let me say something about the
21 MSIS. Multi-State Information System. Not only on these
22 grounds --

23 MS. GROMMERS: Will you be sure just to speak
24 specifically here? We'd really like a yes or no answer first.

25 DR. CAIN: Yes. Well, the short of it is that

1 a substantial study has just been designed and the contract
2 signed to evaluate the MSIS, and similar systems operating
3 in several parts of the Nation.

4 It is a serious subject.

5 MR. JUSTICE: Will that include the confidentiality?

6 DR. CAIN: Yes.

7 MS. GROMMERS: Will it include matching police
8 records?

9 DR. CAIN: I don't know. I will have to check that
10 out. I don't know if that is performed in any of those
11 other systems. If it is, it certainly should --

12 MS. GROMMERS: We thank you very much. Thank
13 you very much for your attention.

14 MR. MUCHMORE: I would really like to say something.
15 There is a basic question here which is very important, and
16 one which I object to quite strenuously.

17 The allegation that he -- Professor Weizenbaum --
18 could obtain one of those tapes. In the first place, it's
19 a crime on his part, number one.

20 Two, the question you raise I think has two parts,
21 and one was omitted from your question, which seems to be
22 the most important part that came out of the discussion today,
23 and that is, has a patient ever been advised of what is
24 happening? That is the most important part.

25 And yet we haven't really borne in on that single

1 aspect of it.

2 MR. GOLDBERG: May I just make one comment
3 please?

4 I appreciate all of these questions. I think they
5 are very pointed and extremely important and valid.

6 And these are -- all of these are concerns that
7 we have been worried about. I would hate, however, for the
8 committee to leave without at least some clarification on
9 one or two issues, very, very briefly.

10 That is, no one does have access to the
11 computer files. The computer files have a special library.
12 Only certain persons have access to it. One cannot get into
13 the files unless he knows what is in effect a password.

14 There are only certain authorized people who
15 have self identification.

16 MS. GROMMERS: How much do you pay them?

17 MR. GOLDBERG: The only person on my staff
18 has been just admitted for slight surgery at Naval Medical --

19 MS. GROMMERS: It's just a rhetorical question.

20 MR. GOLDBERG: I appreciate that. The only
21 person with access to it actually on my staff is Mr. Williams.
22 He knows what it is. The only other people are those who
23 maintain the library.

24 MS. GROMMERS: And the people who design your
25 system program, to begin with.

1 The point is not that anyone does or anyone
2 will, but rather that someone could.

3 MR. GOLDBERG: But I say, there are certain safe-
4 guards which would make it extremely difficult for anybody
5 to have access. There's nothing written on the tape label
6 to indicate what is on the tape, any number of these tapes --

7 MS. GROMMERS: We appreciate that, and we would
8 also be glad to change a few of the considerations we have
9 been looking at here on what is the cost of security and
10 what really is security.

11 We would like to thank you very much, and
12 unfortunately, we would love to continue, but --

13 MR. GOLDBERG: May I --

14 MS. GROMMERS: But I think we will have to
15 break. We will resume at 2:00 o'clock.

16 (Whereupon, at 1:20 p.m., the meeting was
17 recessed for lunch, to be resumed the same day at 2:00 p.m.)
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AFTERNOON SESSION

(2:10 pm.)

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MS. GROMMERS: Please come to order. I'd like to call your attention to revised page four of your agenda distributed to you, and you will find one at each of your places.

At approximately ten minutes after two, we are pretty nearly on schedule, I think, for having had a short lunch break. I want to thank you all for eating so quickly and coming back to join our schedule.

This afternoon we have with us for a panel discussion four gentlemen from the Office of Education, who will introduce themselves.

The purpose for their being with us today is because they have discussed among themselves and are here in order to revise a handbook, or at least to discuss with us a possible revision of a handbook of standard terminology for pupil information in local and state school systems.

These gentlemen are here for the purpose -- I'd like to emphasize as opposed to some other purposes that others will be here for -- it's because they wish to have our suggestions that they are here.

So when we ask them questions or maybe make suggestions, we might keep that in mind.

Mr. Lichtenberger, would you be so kind as to introduce yourself and the other gentlemen?

1 MR. LICHTENBERGER: Thank you very much, Madame
2 Chairman. We are pleased to be here.

3 I am Allan Lichtenberger, and our little group --
4 two of the men are not with us today; one is out at the Census
5 working on a project there for adult continuing education,
6 and we had to leave somebody to keep the store. So Dr.
7 Chismore -- Dale Chismore -- is not here, and Dr. Harris is
8 at the shop.

9 I am Allan Lichtenberger, and I want to tell you
10 that our little group is called the Educational Data
11 Standards Branch. We are in the National Center for Educa-
12 tional Statistics. We collect no data. We have one job,
13 and that is to standardize educational terminology.

14 Now I want to introduce these men who are with
15 us. Dr. John Putnam at my immediate left. John is the only
16 city slicker in our group. He comes from Milwaukee by way
17 of Northwestern and Yale, and what is that little school in
18 Tennessee? Peabody Institute. Where he took his doctorate.

19 Dr. Charles Roberts, who has the staff handbook
20 terminology project that is going on now. At the same time,
21 the one on pupil information is being developed. Dr. Roberts
22 comes from Texas, and Texas University is his school.

23 Ivan Seibert is from Iowa, from Iowa University.
24 He was there in the State department of education. He has
25 been a county superintendent of schools, a teacher, a coach,

1 the whole bit clear from the rural schools on up.

2 Mine is Nebraska. I left that for last. And
3 It's Nebraska University, although I should mention Peru
4 State Teachers College. If anybody wants to talk about
5 football, we can do that too. I find no great enthusiasm, but
6 for years and years, we found we were the ones at the lower
7 end of the scale; now that we are at the top, we are enjoying
8 it.

9 I have a little cartoon from one of the comic
10 strips, and it starts out like this. This gentleman over
11 here at the left is saying to four people, "Mankind will never
12 master the art of communication."

13 Their responses are words such as this: "Absurd."
14 "Ridiculous." "Tommy rot." "Hogwash."

15 So this gentleman reached down and picked up a
16 hunk of mother earth, and their responses were: "Ground,"
17 "Soil." "Earth." "Dirt."

18 And he left, saying, "The prosecution rests."

19 Well, we don't get to rest very much, but our
20 problem, the problem on which we work, goes back more than a
21 hundred years.

22 The first report that was made by the first
23 Commissioner of Education to the Congress, his task was that
24 of providing a report of the condition and progress of education
25 in the several States.

1 His first report said it was virtually impossible,
2 virtually impossible to make a report, because the reports
3 from the states used different language. There was no
4 comparability, or very little comparability.

5 Now they talked about that for forty years.
6 That was back in 1868. They talked about it for forty years,
7 and in 1909, 1910, 1911, 1912, a group -- not the Office
8 of Education, which was called the Bureau of Education then --
9 went to work for those three or four years and developed
10 a report of the Committee on Uniform Records and Groups.

11 Now these are collectors items, but this group
12 was the Department of Superintendents.

13 Now the American Association of School Adminis-
14 trators, they work with two or three other groups, and
15 established a cooperative approach.

16 Now in our commission, we have the task of
17 coordinating national efforts to standardize educational
18 terminology.

19 This is a 1912 bulletin. Another one out of the
20 archives is a 1928 bulletin. It has almost the same name,
21 except it is the report of the Committee on Uniform Records
22 and it takes up all of the areas of educational information
23 and puts them under one cover.

24 Then in 1934, there was another item. This time
25 the Office of Education moved into this area, and they worked

1 from 1934 until 1940, when the War came along, and published
2 a little bulletin on school finance.

3 All through these, the whole purpose was
4 establishing definition and classifications.

5 Then after the war, they came back and had at it
6 again. And for two years, the committees were working,
7 somewhat, but by 1949 -- and I never could find out why --
8 all of those committees were inactive.

9 It was at that time that a group of men met
10 in the Office of Education and thought this: Now here
11 we have two little bulletins. We look back over forty years
12 of work and we have hardly dented this matter of a lack
13 of comparability of educational information. What shall
14 we do?

15 It was at that time that our little unit was
16 established.

17 Actually, it goes back to 1951. So we are of
18 age now. Not any of us has worked there through this whole
19 period of time. The men who began this are now out in the
20 field, and we use them as part of the cooperative effort
21 in doing this work we have to do.

22 Now one of the first products -- we don't have
23 this (indicating) anymore, it's out of print. It was an
24 expediency, and you can see what a mangled thing this is.
25 The Common Core of State Education Information. It contains

1 516 items that State departments of education agreed they
2 would collect and own annually.

3 Now these are combined and derived items, not
4 basic unit items, as you will find in the other handbooks.

5 This expediency served for eighteen years
6 as the basis for the biennial survey of educational informa-
7 tion, the information collected by the Office of Education.

8 The pressure to revise this is coming on every
9 day. I don't know how we are going to escape doing it, and
10 maybe we shouldn't.

11 The next one was Handbook 2, on finance. It
12 identifies, classifies, and defines those items of informa-
13 tion about school finance that need to be maintained in
14 comparable form, that are agreed upon as important enough
15 to be maintained in comparable form by all school systems.

16 This was published in 1957, and if we were to
17 nominate a candidate for one of the most important documents
18 in the mid-century, I think this would have to be identified.
19 It is in obvious obsolescence. We are revising it. The new
20 handbook should be issued this fall.

21 The next one was handbook three, and I don't have
22 a copy of it. It was on school property, buildings,
23 facilities, land, equipment, and anything else. The things
24 that are used to make education go.

25 The next one was staff. This is being revised.

1 Handbook 4, published in 1965.

2 The one Dr. Putnam is working on, Handbook 5,
3 published in 1964, Pupil Accounting.

4 Then we have one of our latest -- Standard
5 Terminology for Curriculum Instruction in Local, and State
6 School Systems. This is six years hard work by Dr. Putnam
7 and Dr. Chismore. Thirty-one conferences, seventy-six
8 organizations, to round up this maverick area of curriculum
9 that had just ~~grown~~ by accretion. And it's a masterpiece.

10 The next one that has been published -- Dr. Seibert
11 and Dr. Harris were the ones in charge of this one -- the
12 State Education Agency. It does the same for the State
13 education agency as the others do for local school systems
14 in their areas.

15 We think it's a very good handbook.

16 This one is the Principles of Public School
17 Accounting. It's a different character. It's a "how to do
18 it" book, and deals with double-entry, accrual based accounting.

19 How far have we yet to go? I don't see any end
20 to this. As long as education is dynamic, we are going to
21 have new terminology, and we are frantically trying to put
22 these together.

23 We are moving into the field of systems. We
24 can't help it, because those don't represent separate, isolated
25 files.

1 We find now with data processing that inter-
2 relating of data is extremely important. Furthermore, the
3 early emphasis was on reporting. Let's face it, that's what
4 it was.

5 Now the emphasis -- while that emphasis remains --
6 a greater emphasis really is on information for decision-
7 making and management at the local and state school system
8 levels.

9 It's an entirely -- well, not entirely unexplored, but a
10 virtually unexplored field. And it's made a difference in the
11 kind of work we do.

12 Now, why define these terms? Can't anybody
13 define them?

14 No, that isn't true. States are unique entities.
15 They establish their own school systems, they use different
16 terminology, and we also find that even though they tried
17 very hard to use the same terminology, if we ask, for
18 example, for the number of schools, what do we get? School
19 districts, number of buildings, almost everything but
20 schools. And there can be three schools in one building.
21 Many are -- there are many situations in which there is
22 more than one school in a building.

23 And ask for teacher-pupil ratio -- first of all,
24 what is a teacher? Teacher -pupil ratios often reflect
25 librarians and counselors and everyone else who suddenly

1 become teachers, to give a low pupil-teacher ratio.

2 Try to define reading. We found that we could do
3 it only with the help, the agreement of the committees with
4 which we work.

5 There is a national committee that works with
6 each of these.

7 John is now on a regional conference tour with
8 his handbook on pupil information.

9 Dr. Roberts just finished the one on staff. Ten
10 regional conferences.

11 I suppose we ought to make a count of how many
12 hundreds of people work on one of these handbooks, but they
13 will not be accepted unless we have some means of this input
14 from the field.

15 Now we find -- I don't want to use the word
16 enthusiasm -- I think it's impatience. They want to know
17 when are these handbooks coming out, how can we operate
18 unless we have the terminology? I am going to stop with
19 that and turn it over to Dr. Putnam for what he has to say
20 about Handbook 5 revision.

21 DR. PUTNAM: Thank you, Allan.

22 We are in the process of revising Handbook 5 now.
23 The original Handbook 5 was completed in 1964, and now
24 school systems and state agencies have had an opportunity
25 to try it out to see how it fits their needs.

1 They have had some experience, and now we are
2 attempting to get some feedback to strengthen the handbook
3 that was developed at that time.

4 You are concerned with various issues for the use
5 of information about individuals. I'd like to indicate by
6 reading just a little portion from this handbook that even
7 back in 1964, and prior to that time, we did have some concern
8 for this matter of the use of information.

9 In fact, this is printed here on page seventy-four
10 in italics. It says, "Some information in the records of
11 individual pupils is of a confidential nature. For example,
12 some information recorded under Item 4040, type of mental,
13 emotional and behavioral exceptionality, may fall into
14 this category. When such information concerns individual
15 pupils, it should be made available only through professional
16 personnel trained in its interpretation.

17 "When this information is summarized for general
18 reporting purposes, it should not be identifiable with any
19 specific individual."

20 This summarized a concern that we had at that
21 time, and I will leave this handbook just as an exhibit for
22 any of you people that might like to look at it at a later
23 time.

24 So now we are in the process of updating this
25 handbook of items of information. The earlier work was done

1 by personnel in-house, in the Office of Education.

2 At the present time, our mode of operation is
3 a little different. We have a contractor doing much of the
4 work under our direction as project monitor or project
5 officer.

6 In the new handbook, which I think has been given
7 to several of you, there are three major criteria for includ-
8 ing items of information.

9 First of all, that the item of information is
10 needed for providing effective educational services. This
11 is not only instruction. It would include various of the
12 pupil personnel services. It would include transportation,
13 food, a number of services that are related to enhancing the
14 effectiveness of instruction.

15 A second criterion is the criterion of reason-
16 ableness that the item can be collected and maintained with
17 reasonable effort, with reasonable cost. If it is too
18 expensive or too hard to collect the information, or to
19 maintain it, then we ought not to keep it. We ought not
20 to include it in our handbook.

21 Third is a matter of communication, that the
22 information, to qualify for being used in our handbook, is
23 needed for the exchange or reporting of information or to
24 have information available for us for whatever purpose it
25 may be needed.

1 Incidentally, we feel that if the information
2 is only of value to a local school system, there is no need
3 for us to be concerned with terminology or with definitions.
4 your own local terminology or definition is quite adequate.

5 It's only when you try to communicate with other
6 agencies or other individuals, that the terminology becomes
7 important, because that is the only way you can be sure
8 that you are not talking past one another, using the same
9 terms to mean different things, or to use different terms
10 to mean the ~~same~~ thing.

11 This is our main concern, actually, the matter
12 of communication.

13 We are also concerned with providing guidelines
14 to local school systems and state agencies as to what items
15 of information are important for them to have in their
16 systems.

17 Our prime concern, as I look at it, however, is
18 the matter of communication.

19 Information is used in several ways. The infor-
20 mation in our handbook will be used by those persons who are
21 concerned with improving the effectiveness of instruction,
22 so it will include teachers, of course. It will include
23 councilors, pupil personnel workers, health personnel, and
24 so on, because these people are all concerned with improving
25 instruction and, generally seeking, the kinds of information
that they will be developing will be found in the cumulative

1 records of pupils.

2 A good group of the information that is included
3 is needed for business office purposes. So this may include
4 where do pupils live, when that is the basis of scheduling
5 transportation, or in fact determining which schools the
6 students ought to be attending, or establishing whether or
7 not they should be given free transportation to school.

8 Some information about the condition of children
9 is important. The business office ought to know which
10 pupils have certain conditions which qualify the school
11 system for reimbursement from the state because individual
12 children qualify under state legislation, regulations, as
13 being exceptional, as requiring programs of special education
14 if they are to achieve the full development that is possible
15 for them.

16 Information about the residents and other consid-
17 erations is important for tuition purposes.

18 So these are a few illustrations to indicate
19 that the business manager of the school system, or whomever
20 serves that function, has a need for information, for a
21 variety of information.

22 Another area of use of the information which
23 is very important is the situation when a pupil transfers
24 from one school to another or one school system to another.
25 It may be that the child during the year is traveling from

1 one state to another as his family changes their residence.

2 It may be that the child is going from the elementary to
3 secondary or secondary to college.

4 At this point, a transcript ought to go along
5 with the pupil, we feel, a transcript of some sort, so that
6 the pupil gets started in his new situation as smoothly
7 as possible, with as little delay, so that those items of
8 information that are most significant to the proper placement
9 of the child are available for the new school and for the
10 new teachers.

11 MS. GROMMERS: May I interrupt just a moment?
12 Are both of the other gentlemen going to be speaking as well?

13 DR. PUTNAM: Well, in answer to the question
14 about whether the other gentlemen will be speaking, I believe
15 that this really is the largest part of our presentation
16 as a group, and that they may have comments, but they will
17 not be making presentations as such.

18 MS. GROMMERS: May I ask you then, would you be
19 kind enough to specify exactly what it is that you would
20 like to be speaking to as part of your presentation?

21 DR. PUTNAM: Well, I will speak a little bit more,
22 try to give a background of our area, will speak something
23 about the chapter we have about confidentiality of the
24 student information, and this is an area which is under
25 development, and we really will be pleased for any kind of

1 feedback that you people are able to give us, recommendations
2 that you may give us either at this time or at a later
3 time.

4 So I am kind of working up to that, to say
5 that we are in the business of getting pupil information which
6 is used for a variety of purposes. And much of this
7 information we might say is of a privileged nature, some of
8 it we might say is confidential.

9 So we are concerned about the manner in which this
10 information is used, and this is bringing us up to where we
11 are right now. We just finished the background.

12 The concern in our new project for revision
13 of Handbook 5, the Handbook of terminology about students
14 and pupils, well, the concern was reflected in the earlier
15 handbook, as I indicated a few moments ago.

16 The information -- the directions given to our
17 contractor were to provide a chapter on uses of the informa-
18 tion.

19 As our contractor spoke with people representing
20 state agencies and with people representing local agencies,
21 the concern of the use of the information, not only what
22 items ought to be there but how it is going to be used and
23 what are guidelines for the appropriate handling of informa-
24 tion, the matter of confidentiality and so on surfaced
25 again and again.

1 We have a national committee for our project which
2 comprises representatives of a dozen national organizations
3 concerned with information about pupils and students and
4 organizations at various levels.

5 These people on this committee also expressed
6 a concern about the confidentiality of information.

7 As a result, we have taken this area out of a
8 chapter which had been intended to be used or to be included
9 for uses, and have incorporated now a special chapter on the
10 confidentiality of student information.

11 I, at this point, would like to distribute
12 these so that, at a couple of places in my remarks then, you
13 may be able to look at these comments or the things we have
14 here and you may wish to comment on those.

15 Also, so that you will know how to reach us for
16 any reactions that you may have, following this meeting,
17 I would like to give you -- well, you have my name, John
18 Putnam. My room number is 3064 in the Federal Office
19 Building No. 6, Office of Education, Washington, D. C.,
20 zip code 20202.

21 And should you have comments, suggestions,
22 recommendations, we would be pleased for you to let us know,
23 because in these meetings that Al referred to, we are
24 exposing the work which has been done to this point to the
25 scrutiny of persons across the country who are concerned

1 with the different areas of information in our handbook.

2 This chapter six that you have here is based on--
3 centers around three major issues.

4 The first is how can the relevance of the data
5 in the student file be assured?

6 The second major issue is how can the accuracy
7 of the data be guaranteed?

8 And finally, how can the data be safeguarded
9 from unauthorized, illegal and unethical use?

10 The background for the material which is in this
11 chapter, which, incidentally, updates the chapter in the
12 handbook draft that several of you may have -- this is
13 more recent and reflects the two regional meetings which we
14 had last week in Chicago and Denver -- but the material in
15 this handbook is based on statements of three national
16 organizations.

17 The first is the Russel Sage Foundation Report of
18 a couple of years ago.

19 The second, the American School Councilor
20 Association of the American Personnel and Guidance Associa-
21 tion.

22 The third, the Michigan Child Accounting and
23 Attendance Association.

24 The Michigan report is here. We have several
25 copies of this, and I have six copies which I will leave

1 for you people to use as you see fit.

2 I'd like to point in particular to six statements
3 which are pretty directly from the Michigan Child Accounting
4 and Attendance Association, appearing on pages 7 and 8 of
5 this material which was handed to you.

6 The first two of these statements refer to the
7 relevancy of data. The first question or statement has to do
8 with what data is needed, what information is needed in the
9 records of individual pupils.

10 The second -- or the third and fourth statements
11 suggest that written policies are needed in local school
12 systems, and they encourage these policies be developed for
13 the verification of the accuracy of the data.

14 Procedures to verify accuracy and to destroy
15 unneeded information.

16 They suggest about the right of the parent and
17 the pupil to review, to verify and to challenge data which
18 is not appropriate which is in there.

19 The last two statements suggest guidelines for
20 controlling access to pupil data, indicating in the fifth
21 statement who is authorized, and again in the sixth state-
22 ment that written policies are needed for controlling the
23 access to this data.

24 The application of this in a local school system
25 is suggested on page 10 in Exhibit 6.1. These are

1 illustrative guidelines which might be used by local school
2 systems. You can see on the left there are several groups,
3 persons or agencies that might seek access to information
4 or to whom information might be communicated.

5 The numbers in the columns on the right which
6 are listed at the bottom of the page indicate under what
7 conditions, if any, these materials should be made available.

8 Now this is not presented as a pronouncement as to
9 what local policies ought to be. It is presented as an
10 illustration which might be a model or a suggestion to local
11 school systems as to what their local policies might be.

12 The organizations that we mentioned a moment ago,
13 in their statements each encouraged persons at the state
14 and local level to see to it, so far as they could, that
15 policies were developed, that legislation was developed, to
16 assure the proper use of information which is collected
17 about students and pupils.

18 As I indicated a few moments ago, our materials
19 are under development. They will be under development for
20 another half year or more.

21 We would appreciate any comments, suggestions,
22 recommendations, that you might have about these materials
23 or other portions of the materials that are going to be
24 incorporated into our revised handbook of terminology about
25 pupils and students.

1 MS. GROMMERS: Thank you very much for the
2 presentation. Would you like to question us, or have us
3 question you, or how would you like to proceed?

4 DR. PUTNAM: Any way you would like to proceed.
5 In many ways, I feel that I am a neophyte in this.

6 I am helping to develop these materials, helping
7 to pull them together, working with our contractor and the
8 other people in our project, and I don't pose as a specialist
9 in the area.

10 So we are just grateful for any kind of help we
11 can have, and if, for example, you should have some
12 recommendations to make, even today, we have regional
13 meetings we will be conducting for the next four weeks, and
14 we will be able to try these out with the people at various
15 levels, local, state, school levels, with various kinds of
16 responsibilities -- administrative, pupil personnel,
17 special education, things of this sort -- in an attempt to
18 develop a national consensus on the items of information
19 that are important to local school systems, and the manner
20 in which they should be used.

21 MS. GROMMERS: I think what we might do is
22 proceed around the room, starting with Mr. Siemiller, to
23 see whether there are any comments or questions.

24 MR. SIEMILLER: Pass.

25 MS. GROMMERS: Senor Anglero?

1 MR. ANGLERO: I would like to know -- I have
2 to assume that the relationship between this and what we are
3 doing is the kind of communication, common denominator to
4 communicate between school systems, and we are trying to do
5 the same through the computers.

6 But in terms of state or local, what is your
7 responsibility in development of personal data systems in a
8 sophisticated way, a modern way?

9 And if so, do you have any monitoring on the
10 system?

11 DR. PUTNAM: Our responsibility is not one of
12 monitoring. We don't collect information. We are attempting
13 to help persons across the country themselves determine what
14 they feel is most appropriate for their needs.

15 We don't collect information, though within the
16 National Center for Educational Statistics information is
17 collected. We don't do this. We feel -- at least I am
18 expressing myself in terms of the persons who have been
19 involved in the development of this material, not within
20 the Office of Education, but persons about the country -- we
21 feel that this is basically a local concern, local considera-
22 tion working within the scope of applicable state and
23 Federal legislation.

24 There isn't much, so far as I know, applicable
25 Federal legislation, and so most of these people then are

1 working within the state, developing their own situation from
2 where they are, starting at the local level and working within
3 the context of the state government.

4 We ourselves are not involved in monitoring
5 or telling people how they ought to be carrying on their
6 activities.

7 MR. LICHTENBERGER: I would like to add to that.
8 We have no mandate. There is no mandate that we have, or
9 any power we have.

10 And it works very well, because most of the
11 states do use the terminology of the handbooks.

12 Now the monitoring -- you see, we don't have
13 that role, but a technical assistance role. We do some --
14 not very much. Because of the number of our people, we just
15 don't have enough to go around.

16 But whenever we can, we do get out and help the
17 people in the states, and it seems to work pretty well.

18 For example, Handbook 2 was implemented in all
19 of the states with the exception of one, and its reporting
20 was very close to this.

21 MR. IMPARA: Just a simple clarification of
22 what you just said, Al, that no local or state agency is
23 required to use any of the handbooks, although many of them
24 modify this to their own particular needs.

25 DR. PUTNAM: Yes, we feel there are advantages

1 to being able to communicate accurately, and the guidelines
2 are useful to them as they review and update their systems
3 of pupil information.

4 MR. IMPARA: As I scan the chapter six draft, I
5 notice there is a particular section beginning on page nine
6 which addresses confidentiality and automatic data processing,
7 which is the guidelines that you mention on page ten.

8 Although the issue is addressed in here as simply
9 an issue, would it be feasible to recommend specific detailed
10 procedures using some other model as devices for insuring
11 confidentiality in terms of an automatic data processing
12 such as linkages?

13 How can linkages be accomplished between the
14 welfare agencies and schools, for example, on data processing,
15 and what kinds of limitation might occur reasonably on these
16 kinds of linkages?

17 DR. PUTNAM: I think it would be appropriate to
18 include consideration of this area. We do have a limitation
19 on complexity within our handbook since it must be used by
20 very small units as well as very large units.

21 And we don't look on our prime concern as being
22 that of systems or procedures. We feel our prime mission
23 is the one of language, communication, terminology, and
24 definitions.

25 I would feel that we do have room to hit the

1 high points on this sort of thing, and to make several
2 specific recommendations, if we were to know how to attack
3 or how to suggest appropriate procedures for this kind of
4 consideration.

5 I don't know what the solution is, or what
6 the answer is to this, and perhaps some of you people would
7 be able to help us identify some of those primary considera-
8 tions.

9 MR. IMPARA: Would it be appropriate, in your
10 opinion, to, as you say, hit the high spots and perhaps give
11 some references where a reader might go to follow up on
12 some of these?

13 DR. PUTNAM: I think this would be very helpful,
14 and again, if you can help us with what the reference might
15 be, we can certainly include that sort of thing. And people
16 who want to go into greater detail on their own in an area
17 would have access to that information. We could help get
18 them there.

19 MS. HARDAWAY: Just one thing for my own
20 clarification.

21 You do not gather this information? You are
22 simply guiding the states?

23 DR. PUTNAM: We are coordinating the efforts
24 to develop a national consensus on what items are of impor-
25 tance for local school systems to have in their systems of

1 information -- the terminology and the definitions.

2 MS. HARDAWAY: All right. You are not in the
3 data gathering business?

4 DR. PUTNAM: No, we are not, though there are
5 others in our overall unit, the National Center for
6 Educational Statistics, who do collect information. We
7 are not involved in that in our own particular unit, the
8 Educational Data Standards Branch described by Mr.
9 Lichtenberger.

10 MR. LICHTENBERGER: Mr. Nassetta will be here
11 tomorrow to talk about that part.

12 MS. HARDAWAY: So you are just guiding states
13 into a common language so when it is reported to you, for
14 whatever reason a state would require it, it would be in the
15 same language?

16 DR. PUTNAM: This is correct. And when the
17 person goes from one state to another, one school system
18 to another, they can communicate.

19 As I look at it, the prime emphasis is not to
20 develop reporting to the Federal government. The Federal
21 government will be a beneficiary of this activity, but I
22 wouldn't see more than maybe fifteen or twenty percent of
23 the items here, that would be probably beyond the percentage
24 of items, that would be reported to the Federal government
25 ultimately through the state agencies.

1 But we feel we need to have a handbook which
2 can be implemented at the local level where the information
3 is collected. That is the vital point. And unless it is
4 collected in comparable form at that point, the comparability
5 may be lost forever.

6 Manipulation may help to improve it, but it may
7 be lost.

8 So we are trying to coordinate the activity so
9 that the people at the local level will be able to do better
10 for the pupil overall in terms of his education, to plan
11 more effective educational programs for groups of pupils,
12 to help the individual pupil as he goes from one place to
13 another, or in guidance and so on, in his position where he
14 is at the current time.

15 Our emphasis is at the local level, and so we
16 must, we feel, have a document which can be used locally.
17 If the local people look through and find that a big area
18 of information is missing, they may say, we can't implement
19 this.

20 MS. HARDAWAY: One question. Do you find within
21 the states a fear? When you say some use the handbook and
22 some do not -- would you find a fear that this would, in the
23 mind of the state, be an easy system for the Federal govern-
24 ment to have in order for the states to report to the Federal
25 government, and that at perhaps some point this information

1 would be used then in consideration of Federal educational
2 grants, et cetera, back to the states?

3 DR. PUTNAM: Well, much of it is used for that
4 purpose. One of the things that is important, I feel, in
5 this -- and we had a meeting this morning just on this,
6 because we also feel that various of the Federal agencies
7 ought also to use the same language of communication when
8 they are communicating or asking for information from the
9 states and local school systems about the students.

10 And so, in answer to your question, yes, this
11 will be used as a basis for information requests from the
12 Federal government.

13 And when we can coordinate among the various
14 agencies of the Federal government and among the various
15 units within the Office of Education, also, for example,
16 if data is requested for more than one, then we are easing
17 the burden on the state and local agencies, and we are getting
18 much more meaningful information at the same time.

19 MS. NOREEN: I basically just have one question.
20 You said when you drew up these guidelines you consulted
21 with state and local people?

22 DR. PUTNAM: We are doing this at the present
23 time through our regional meetings.

24 MS. NOREEN: I was wondering if you have anyone
25 who just directly represented the student, and not some other

1 type of organization as well.

2 DR. PUTNAM: To this point, we have not had such
3 a person. But we would welcome input from such people.

4 Perhaps you can suggest a way in which we might
5 involve them. We do have regional meetings, and we have
6 involved a number of organizations that we felt had concern.
7 We have asked them to come to our meetings to make their
8 input.

9 And I'd be pleased to give you the schedule --
10 or to anyone else -- the schedule of our regional meetings
11 so that persons of this sort who had an interest and
12 concern might be able to attend some of our regional meetings
13 and make a direct input to our project.

14 MS. NOREEN: I think it would be interesting
15 if you could have more student representation.

16 DR. PUTNAM: I will leave one other thing, and
17 maybe leave several of these, but this indicates where our
18 regional meetings will be during the next four weeks. The
19 date, the location, and the exact conference room.

20 MS. GROMMERS: Could you yourself arrange or
21 initiate getting some students into this?

22 DR. PUTNAM: I am afraid I just won't be able
23 to do it myself, because I am going to be tied up in
24 actually participating in these meetings.

25 MS. GROMMERS: Who would you suggest organize

1 this?

2 DR. PUTNAM: Well, I can help you get in touch
3 with the person that can send you the conference materials.
4 That is our contractor. And we would welcome this sort of
5 participation, although I am not able -- I just won't have
6 the time. I am going to be out of the office the last
7 two days of this week, and the next four weeks we will be
8 having the meetings.

9 MS. GROMMERS: I am not requesting it, but
10 asking the question, could it be possible to set up a
11 mechanism whereby someone from your organization --

12 DR. PUTNAM: I'd have to defer to Mr. Lichtenberger
13 who might be able to do that.

14 We have the mechanism, once we know who the
15 people are, so finding out who to invite -- and this is
16 one point I am not able to help on.

17 MR. LICHTENBERGER: The question is a good one.
18 I am very much interested in your asking it. It has
19 come up before. It has come up very -- rather late in the
20 operation, but it intrigues me very much.

21 Why not have some of the young people whose
22 records are going into this have some kind of a representa-
23 tive input.

24 I don't know just how it would be done. Now I
25 can't right here tell you how that would be done, but,

1 Madame Chairman, could I take this as a suggestion from here
2 and we could see if there isn't some way to do this.

3 I think it would be fascinating, and it ought
4 to be done.

5 MR. MARTIN: I think if you were to talk to Stan
6 Thomas, Assistant Secretary for Student and Youth Affairs,
7 and indicate the least interest in doing this, Stan would be
8 all over you like a tent, helping and suggesting ways to
9 do it.

10 MR. LICHTENBERGER: That was one of the things
11 I was taking into consideration before I pull the cord.
12 I want to talk it over with Mrs. Gilford. Your question
13 down there is a very good one, and Mrs. Gilford has taken this
14 into account, almost annually -- what data acquisition plan --
15 that does get to this matter of what we are going to ask
16 these people. The question has come up.

17 Because we put this item in here, does it give
18 the Federal government license then to just ask all these
19 questions? Well, we can't handle all of them, it's obvious.

20 But there has to be a mechanism and Mrs. Gilford
21 is working that out. A data acquisition plan where the
22 chief state school officers and others -- which is a pro-
23 tection against just acquiring great loads of data which
24 we can't possibly handle.

25 MR. SIEMILLER: And have no need for.

1 MS. NOREEN: That was my basic idea, just to see
2 if we could get some kind of student ideas on the committee.

3 MR. LICHTENBERGER: We could follow the same plans.
4 Great numbers wouldn't solve it, but if we could have a few
5 people to speak for others --

6 MS. NOREEN: I think the problem is, a lot of
7 people who would be interested don't know about it and
8 wouldn't know how to get involved if they had the time.

9 DR. PUTNAM: Let's work on it.

10 MR. DOBBS: I have only a suggestion which really
11 goes along with Jane's, but from a different point of view.
12 It's probably a lot more difficult to deal with.

13 You suggest in several places, based on inputs
14 from Russel Sage and other work, the importance of a
15 judicial procedure, a procedure incorporating due process
16 principles, and then point out -- which is perfectly
17 appropriate, I think -- that in practice the applicable
18 state and local laws as interpreted by legal counsel should
19 --- (reading) -- the development of the policy procedures.

20 I wonder if it would be appropriate for you to
21 try to find a way to bring together what I suspect are con-
22 flicting local legal statutes surrounding the issue, insofar
23 as they relate to educational materials, with a view of
24 displaying it in some cohesive fashion, and with a view
25 towards getting legal inputs from perhaps the state attorney

1 generals or other local legal counsel, relative to them
2 getting themselves together in terms of some consistent view
3 of the problem.

4 That is a harder one to do, but --

5 DR. PUTNAM: I could see this as being a very
6 significant implementation activity. It's a little more diffi-
7 cult at this point inasmuch as there are such differences
8 from state to state, and we are attempting to develop
9 something which will have applicability in all of the states.

10 The best we can do is -- at least, this is the
11 point of view reflected in these materials -- is to suggest
12 that a review of these materials be made, that a policy be
13 developed, and that it reflect the applicable legislation
14 and regulations and so on.

15 Because each state has their own unique problem.
16 Maybe we took the coward's way out, but we didn't see any
17 other way to do it.

18 It may be that this could be a most useful imple-
19 mentation activity, and it might be that a national conference,
20 or something of that sort, just on this topic, might be very
21 appropriate.

22 I don't think, within the scope of our own
23 activity, that we are able to carry that on. We don't have
24 the funds or time.

25 MR. DOBBS: Well, perhaps a simple way would be

1 to ask the local people relative to this specific set
2 of guidelines to get rulings from local counsel in terms of
3 limitations that are already on the books which would
4 prevent them from in fact implementing procedures in accord-
5 ance with the guidelines.

6 MR. LICHTENBERGER: And at least they'd find out
7 whether they exist or don't exist. In some places they don't
8 exist at all.

9 MR. DOBBS: Sure, and maybe for you, it would help
10 you find out how useful the guidelines will be in a broader
11 sense.

12 DR. PUTNAM: Yes. We do attempt to get this
13 information from people who are concerned with school
14 administration in various local school systems, as we have
15 our regional meetings.

16 MR. GENTILE: One short comment. In the State
17 of Illinois, we have approximately -- well, somewhere between
18 1200 and 1300 school districts. And I was just wondering
19 if you anticipate great deal of problem -- great problems
20 in implementing your handbook once it is completed.

21 I think the cost of conversion, et cetera,
22 would be quite great, especially for those districts that
23 have systems already in use.

24 And you mentioned one incentive for prodding,
25 the local districts to convert to your system and that is

1 that your federal reporting requirements will come out using
2 these standards.

3 Are there any others that you can think of?

4 DR. PUTNAM: Well, the state agency itself. State
5 agencies are very deeply involved in these, in making
6 recommendations along these lines. Many states will take this
7 and either put their own cover on it or use this document
8 or else interpret this, say this is what the meaning of this
9 is under our own state legislation and our own state boards
10 and policies, and distribute this to the local school systems,
11 and give this to them as guidelines.

12 While we don't implement ourselves, there are
13 agencies that are interested in doing this. In fact, it is
14 a part of their function. And the national organizations
15 that are involved also encourage their membership who are
16 in key positions in various levels of the educational organi-
17 zation to implement the concepts, if not the language, of the
18 handbooks.

19 So it's a voluntary process, but it does move
20 ahead.

21 MR. DAVEY: Do you have any jurisdiction over
22 any of the state universities, or things of this nature?
23 Or is it largely the other schools?

24 MR. LICHTENBERGER: When this was put into effect
25 in 1951, higher education was included. And for some reason,

1 at that time, they elected not to be a part of the standard
2 terminology effort.

3 Now they have taken that up, and it is in our Nation-
4 al Center, and Theodore (Drews) is working on that. And
5 they are coming out with their manuals.

6 This is going on now. It was later than ours,
7 and maybe ours is more difficult. We have a lot of schools.

8 MR. DAVEY: As a follow-on to that, first part
9 of the question, there are a number of universities who
10 have written a kind of code of ethics regarding student
11 records and things of this nature.

12 I wonder if you have ta-en those into considera-
13 tion in the drafting of these regulations, and what is your
14 attitude towards these things?

15 It does represent what Jane was after a few
16 minutes ago, some kind of student input into this whole
17 thing. I'd like a comment.

18 DR. PUTNAM: Personally, I am not familiar with
19 these, and would welcome the opportunity to become acquainted
20 with them.

21 MR. LICHTENBERGER: I want to comment to the point,
22 because for many years -- I have been in this a long time --
23 for many years we did pretty well on confidentiality of the
24 data because of the professional ethics among educators.

25 Now with the data machines, easier access, a code

1 of ethics is fine, and we don't want to lose that. However,
2 it doesn't answer all the questions.

3 There is a whole body of legal information that
4 has to be worked out here. But I don't know that we can get
5 that into this, but it is a very interesting point.

6 MR. DAVEY: I don't know if it is even within
7 your purview or not, but when students do come out and say
8 this is a type of information that should not be supplied
9 to draft boards or other things, they are taking a rather
10 strong position.

11 I was just wondering what your attitude is.

12 MR. SIEMILLER: The type of representation you
13 are talking about, I think, was very much present in the
14 Russell Sage meeting and subsequent report. And in turn, the
15 Russell Sage document I think has had considerable impact
16 on not only proposed chapter six, but on what is being done
17 in the field at the present time.

18 I don't know how many of you -- maybe you are
19 all more familiar with this document than I am (indicating).
20 But much of what we are talking about here came out of this
21 Russell Sage Foundation Guidelines for the Collection,
22 Maintenance and Dissemination of Pupil Records.

23 There were twenty people involved in that, and
24 if you look over the representation on this, I think there is
25 some solid background on that.

1 MS. GROMMERS: You all were given this about
2 two meetings ago. You will find it in your archives.

3 MR. MUCHMORE: I have a statement and two
4 questions.

5 Statement is a simple one. I compliment you on
6 what you are doing. I think it's a worthwhile task you have
7 undertaken, and I think you are going to have a difficult
8 time in implementing it, but that is normal with this type
9 of thing.

10 I used to receive these in (Roy Simpson's) office.
11 We filed them for twenty-four hours, and then put them in
12 another file for two days, and three years later we did
13 something about it.

14 Everything has now been changed, however. I think
15 -- I frankly feel it is a little vague in points, and I
16 think there are places -- at least a dozen -- where you
17 could sharpen it up and come down to "it is recommended," or
18 "there are recommendations," or something comparable to that.

19 Because I know that they look for the word
20 "recommend" and on the basis of the recommendation, they
21 take action.

22 I think there is that weakness, if there is any,
23 in this.

24 The other one I see is an omission of something
25 I saw recently in one of the states. I can't think where, but

1 they had a section in which was a suggested guidelines for
2 school districts in that state whereby they had about five
3 lines, and in that language it stated that was to be sent
4 home, was to be signed by the parent and returned,

5 And in there, in about five lines, they stated
6 the rights of the parent as to what they could see in the
7 child's record, and it seemed to me at the time that it was
8 an ideal item to have.

9 And I would suggest that you add this as a guide-
10 line that should be adopted by each of the school districts.
11 And it's just simple language, and you have the parent have
12 it and sign it and send it back so you will know they have
13 it.

14 DR. PUTNAM: Do you know where we might obtain
15 a copy?

16 MR. MUCHMORE: It seems to me it was in Colorado.
17 I am not certain. One of the Mid-Western states. Somebody
18 showed it to me and said it is something very, very new to
19 us, and we wonder how it's going to work.

20 DR. PUTNAM: If you are able to track it down,
21 or recall --

22 MR. MUCHMORE: I will get it to you.

23 DR. PUTNAM: Thanks.

24 MR. MUCHMORE: The other is that I think there
25 is something omitted from this, and omitted from anything

1 else I have ever seen in education, and I think it's a very
2 important factor.

3 We always talk about the right of the parent
4 to come in, and whether he can know what the child is learn-
5 ing, and the parent's right to do this and that.

6 But in reality they should have a right to
7 participate in determining any new basic items which are to
8 be added to the child's record in the A, B, C and D cate-
9 gories, which is pretty standard as far as your definition,
10 and they meet the challenges of the past.

11 But that is something that could be put into
12 this, too, that parents should be brought in in determining
13 the shift from A to B, or B to A, of specific items.

14 Because there will be many, many people who will
15 otherwise have a total lack of understanding of this, and
16 the school districts sometimes have a tendency to issue
17 statements saying B item 72 is now in A and it's Item 73.

18 And I think that kind of thing could solve a
19 lot of problems.

20 But again, my compliments on what you have done.
21 It's a great start.

22 DR.PUTNAM: A little clarification on that last
23 point -- are you thinking in terms of new items in a reporting
24 system, or in a record system, or are you thinking of the
25 items that may be in the record of the child?

1 MR. MUCHMORE: The items in the record of the
2 child. But you carried it further, and I like your point --
3 both your points.

4 The item in the record of the child -- whatever
5 makes up Category A, define Category A. If you are going
6 to change the base of category A, it seems to me there ought
7 to be some parents that work with you in determining what
8 should be added or subtracted from Category A. That is a
9 guidelines that could be used with all schools.

10 MS. COX: I need a little information here.
11 This is for the states, and as I understand, education data
12 information is collected by the states and this is partly
13 to get uniformity of that collection and classification of
14 categories and definitions.

15 Now what comes into the National Center for
16 summarization and for use?

17 MR. LICHTENBERGER: I will respond. It is
18 practically all summary data. How many youngsters, how many
19 of these young people, at what grade levels, and that type
20 of thing.

21 But I don't want to leave it this way. There
22 are some collections of information through special studies
23 about individuals. This is true.

24 MS. COX: As I remember, most of it comes in
25 in so many studies in class A, and that type, but there is

1 a lot of national questions that come up that have to be on
2 an individual basis. Probably this is collected by this
3 time on a sampling basis or a special study basis.

4 What, on a national level, protection of confi-
5 dentiality do you have on that statistic? You don't need it
6 on the summary data from the schools.

7 MR. LICHTENBERGER: On this, I have to be --
8 I talked to Mr. Nesselton before I left, and we had this
9 discussion. We are not going to try to answer those. They
10 do exist. There are ways --

11 MS. GROMMERS: He will be with us tomorrow.

12 MR. LICHTENBERGER: Yes, he will. Your question
13 is a good one. He should be able to answer it.

14 MK. COX: It says, "confidential reports received
15 from cooperative agencies and individuals, such as welfare
16 agencies and hospitals and so on, is certainly confidential
17 within the school."

18 That type of thing, again, would only be sent
19 as a summary of so many children are on welfare or that
20 type of thing, as it comes into the National Center?

21 MS. GROMMERS: We have a question on content
22 from one of our staff members. Before he asks that, I have one
23 question.

24 Where you are going to be promoting not a hand-
25 book, but an electronic data system, could you not solve a lot

1 of these problems by making a program available to people
2 in which all of these categories would appear, and if that is
3 the case, and this is preliminary to that, don't you want to
4 think an awful lot about what blocks go into that program?

5 MR. LEITHEN: The question I have relates
6 to Appendix A, Exhibit 1.1 of the exhibits.

7 Since your presentation represented the classifi-
8 cation of information to be both necessary and relevant in
9 education, I was wondering whether you might be able to
10 explain several of the categories which you have included,
11 in terms of your standards of relevance, particularly those
12 for religion, the parameters in the two hundred series of
13 information on the parents, and their background, and several
14 others, too.

15 MS. GROMMERS: This is in your handouts that you
16 have in your folders, and it is a prior document, a staff
17 paper.

18 MR. LICHTENBERGER: Now your question is on the
19 two hundred series?

20 MS. GROMMERS: First of all, he wanted you to
21 speak to why the category of religion was included at all.

22 DR. PUTNAM: The reason religion is there is not
23 to identify religion as such, but to tie this to the
24 educational program.

25 If there are certain restrictions on the activities

1 of the child because of his religion, if he is exempted
2 from certain activities, for example, or if the matter of
3 types of medical treatment, and so on, are a factor, in
4 working with this child in the case of an emergency, then we
5 should know what these factors are so the school can act
6 appropriately if the condition should arise.

7 And if this is the case under these circumstances,
8 the stating of the specific religion would help to explain
9 to people who know what the treatment ought to be.

10 Or with the financial condition for the subject
11 matter, then that ought to also be indicated.

12 MS. GROMMERS: I believe this is against the
13 law in some states. Massachusetts, for example. I wonder
14 whether you intend to clearly mark that this is voluntary.

15 MR. PUTNAM: Well, we do have a statement that
16 this handbook is not intended to take precedence against
17 any state law or regulation.

18 If it is against the law to get that kind of
19 information, then of course it would not appear in the record
20 in that state.

21 MR. LEITHEN: The question that would come from
22 your answer, though, is that the classification of informa-
23 tion you are asking for here is sort of overkill in the
24 sense that you are asking for more information than you need,
25 and you are not asking for the right category in the sense

1 of its restrictions on either medical treatment, for
2 attendance. Those restrictions ought to be noted specifically,
3 rather than asking for everybody's religion.

4 DR. PUTNAM: This is correct, and this is the
5 way the whole handbook is intended to be used. We don't
6 anticipate anyone is going to implement all the items in
7 this handbook. But if you have this item in your informa-
8 tion system for your reasons, then it is going to be more
9 meaningful to you and useful to you, and you can communicate
10 it if you use it on the basis of these definitions and
11 terms.

12 But we are not intending to say all of these items,
13 or whatever items, ought to be in your own information
14 system.

15 MR. LEITHEN: Isn't that a problem when you
16 represent a series of information like this? You represent
17 a criteria as being a necessity to running an educational
18 system.

19 In a sense what you do is elevate all these
20 classifications of information to some formal status.

21 DR. PUTNAM: Could be.

22 MS. GROMMERS: Would you accept a modification
23 or would you rather, or prefer to continue to include
24 religion? The choice is up to you.

25 DR. PUTNAM: Well, the feeling of the people
involved is that there are certain educational decisions

1 to be made in certain situations based on that item.

2 Now I do not look at this really as just an item
3 for religion. May I go to the item in the handbook and
4 indicate what items appear under this?

5 It is not quite the way it looks on our
6 page 1.5. There are two items. May I read what those two
7 items are in the handbook?

8 The first is religious restrictions. And the
9 second is religion.

10 Religious restrictions says, "any specific
11 prohibition or limitation on the pupil's school activities
12 because of his or his parents' religious beliefs and practices."

13 And then in situations where this item is
14 completed, the next item also should be completed, and the
15 next item is "Religion," and it says:

16 "The pupil's religious preference as
17 indicated by the pupil or family."

18 Its for use only where this other item is
19 completed. These two items are tied together, and we ask
20 for religion only when it has significance in the educational
21 program. That is, we are recommending or suggesting that
22 it only be used in that context.

23 MS. GROMMERS: Could you speak to the next point?
24 The information about the parents' economic status -- two
25 hundred series.

1 MR. LEITHEN: Particularly the one of most
2 interest to several staff members was Item 250, economic
3 information relating to the parents, what relevance that
4 has to either the educational program -- and I presume this
5 information is being maintained for the good of the student --
6 what relevance this has either to the educational program
7 or what necessity it has to running an educational institution.

8 DR. PUTNAM: Okay. There are three items or
9 categories under this.

10 The first is welfare. The second is special
11 compensation programs. The third is source of economic
12 information.

13 And the purpose here is to determine -- as I
14 would interpret it -- what is the economic situation of the
15 pupil so far as the necessity of the school to provide
16 certain kinds of economic assistance, such as school lunches,
17 clothing perhaps, other kinds of programs of this sort.

18 It is even a matter for, let's say, junior
19 colleges. If they know that the parent has their sole
20 income from retirement income, or disability income, or some-
21 thing of this sort, then tuition help might be found for this
22 person.

23 This is the reason for having that information
24 there. We do not ask for income. We don't ask for anything
25 of that sort. Or we don't recommend or include it in the

1 handbook.

2 MR. LEITHEN: In Item 530, is the membership
3 that you refer to there some special term of art? Does
4 that refer to membership in organizations?

5 DR. PUTNAM: No, the membership here -- this is
6 really an accounting -- pupil accounting piece of information.
7 And it is used for determining state aids, generally.

8 The child comes into membership when he first
9 enrolls. During that period that he is in membership, he is
10 either present or absent each day school is held, and then
11 he terminates the membership by withdrawing or completing
12 work or dropping out.

13 MR. LEITHEN: Just one sort of question and
14 comment. Again, it illustrates the point I am trying to
15 make, that is, in the 630-31-32-33 series, where you begin
16 with outside activities and employment -- again, the point
17 I would make is, why is it necessary to evaluate all these
18 types of information to some formal status in the student's
19 file where it might be just as easy, if the student wants
20 placement assistance, to ask him when he comes in for an
21 interview what he is interested in, what he has been doing
22 outside of school.

23 The suggestion that you should collect this
24 information is implicit in elevating this whole thing to
25 a formal status.

1 DR. PUTNAM: Well, there are times when these
2 kinds of considerations become important. For example,
3 at the time a record is forwarded from a secondary school
4 to a college for college application, we are giving less
5 and less concern to pure intellectual information, that is
6 to say scores on various tests of academic achievement.

7 We are becoming more and more concerned for a
8 well-rounded student, the people who are active in various
9 kinds of activities, who show leadership and initiative
10 and things of this sort.

11 And this is considered to be a significant part
12 of that record of the pupil, his activity on things other
13 than purely academic.

14 MS. GROMMERS: Aren't the dull ones entitled to a
15 good education, too?

16 DR. PUTNAM: This is to help them. I don't know --
17 I think you are supporting what I am saying here, that we
18 ought not to limit ourselves to tests of academic achievement.
19 And these are places where other persons are able to indicate
20 that they are active and capable and ought to be considered
21 for certain benefits as well.

22 MR. IMPARA: Mostly it's a clarification of a
23 question. I would like to congratulate Dr. PUTNAM on his
24 responses, which were obviously based on his experience, and
25 were hypothetical in nature, and that these are not things

1 that the Office of Education mandates being included in a
2 student file.

3 These are all of the possible things. It's like
4 a Sears-Roebuck Catalog. You don't buy everything. It's
5 simply something from which you can select based on your
6 own local need.

7 MS. GROMMERS: The program is there, though,
8 with the slots just waiting to be filled. I wonder if it's
9 the same thing.

10 MR. IMPARA: No, that's not the intent. The
11 intent is to provide a catalog system, a local system, which
12 can be adopted. A local system may not be able to afford
13 the total system study which went into a document of this
14 nature.

15 MR. MARTIN: I wonder whether it would be a useful
16 thing to consider, in categorizing information, where there
17 is some information, where it is your intent and everybody's
18 intent that the information be collected and available
19 only for limited and specific cases, that you talk about that
20 information or present it in a schedule, in a place separate
21 from the information that you anticipate and the likely
22 intent is it will become uniform base data for all students.

23 I think by listing it differently, with a little
24 parenthetical "don't collect this unless you really need
25 it," you are going to feed the feeling that information

1 systems have to over-collect information, and you might want
2 to consider segregating special purpose, limited application
3 instructions about standardized ways of collecting information
4 from the information that is more mainline, and as to which
5 there won't be any doubt about the utility and virtue of
6 collecting on everybody.

7 DR. PUTNAM: We have attempted to do this to an
8 extent. In our handbook draft, page 2.21, you can see, even
9 with our meeting that we have had, there has been a lot of
10 comment on this, but this is an attempt to single out or
11 give special attention to certain items which seem to be of
12 greater significance than others, and it's a more selected
13 listing of items where school systems might start.

14 And then any way they wanted to augment that
15 within the items that are here, or any other items, then
16 they are free to do this, but if they are looking for
17 guidance as to a place to start, or if they are reviewing
18 their materials, this would be the basis for that kind of
19 review.

20 We have attempted to do that and if you want
21 to suggest, for example, some are more important than others,
22 or might be deleted, we'd be pleased to get that kind of a
23 response.

24 MS. GROMMERS: I'd like to try once more to make
25 the point -- at the point where you would, rather than a

1 handbook, actually prepare a system program and documentation
2 of that, and possibly a form that could be filled out with
3 black marker and then processed by a digital scanner, which
4 might be a nice way of getting real data across the country
5 which is, according to your objective testimony, what you are
6 looking for -- if you have all those blanks, it's going
7 to be more difficult to expect someone not to give data
8 than if it is already separated.

9 DR. PUTNAM: Although that is not our mission.
10 Our mission is not to get into the systems and forms. We
11 are working on the language.

12 If you are concerned about what items are asked
13 from the Federal level, Mr. Nesselte, tomorrow, can respond
14 to what is the selection of items from this that would be
15 asked for at the Federal level.

16 MS. GROMMERS: Thank you very much. We will do
17 that.

18 MR. MARTIN: I'd like to know how much inter-
19 action there is between your unit, as you described it earlier,
20 and the rest of the world of the Office of Education, or
21 the Office of the Secretary.

22 Who is aware of your work, and how do you
23 interact about it?

24 MR. LICHTENBERGER: I will speak to that. For
25 instance, this morning, one of the reasons we were glad

1 you were a little late starting is because Dr. Putnam had
2 a session of I think three hours with the people representing
3 other agencies. And it's part of a series.

4 We try to get this input from the other units
5 of the government, and also within the Office of Education.

6 And incidentally, it is one of the more difficult
7 things to do. People out in the field keeping the records,
8 they find that they need these very much. They want
9 guidance in this.

10 In the office where we are changing quite often,
11 everybody has an interest they want to ride or work on pretty
12 hard, so we work on that, and it's not an easy thing to do,
13 but that's the way we are getting at this.

14 DR. PUTNAM: May I indicate also, we are very
15 gratified -- though she wasn't able to be there -- Dr.
16 Elliott, on behalf of her own bureau and the Bureau of
17 Education for the Handicapped, submitted five or six pages
18 of thoughtful recommendations for improving the handbook.

19 So even though a number of units were not able
20 to be at our meeting, we are corresponding and letting them
21 know and keeping them posted, asking for suggestions and
22 their presence at any point along the way.

23 We recognize we need to work together and keep
24 one another informed so far as possible.

25 MS. GROMMERS: Thank you very much, gentlemen,

1 for being with us this afternoon. We will have a coffee
2 break.

3 MR. LICHTENBERGER: I just want to add one thing.
4 We didn't get these other men to speak. Dr. Roberts is
5 on annual leave, but he has this other handbook, the one on
6 staff, and so he came in to be with us this afternoon.

7 (Short recess.)

8 MS. GROMMERS: This afternoon we are very happy
9 to have with us three gentlemen who are sitting at the
10 table. Mr. Hastings, the HEW General Counsel, unfortunately
11 was having a meeting with the Secretary at this moment,
12 and we are therefore very happy to welcome Mr. St. John
13 Barrett, the Deputy General Counsel, of HEW.

14 And Mr. William Small, Vice President of CBS
15 News. And to his left, Samuel J. Archibald, whose report
16 "The Basis of the Right to Know" was the background docu-
17 ment for the Government Information Subcommittee Study on
18 Restrictions on Access to Information, and he worked on the
19 Government's first Freedom of Information bill.

20 Which one of you gentlemen is Mr. Barrett? Will
21 you address us first?

22 MR. BARRETT: I will review very briefly with you
23 what the Freedom of Information Act is, what the situation
24 in the Government was relating to information, as I
25 perceived it at the time the act was enacted, and very

1 briefly how it has changed the scene and what we may expect
2 in the future from it.

3 The Freedom of Information Act is five years
4 old. It was enacted in 1967. I was working for the
5 Government, but was then in the Department of Justice, at the
6 time it was enacted. I can't recall that I was aware of it
7 at all when it was enacted.

8 I have no doubt that I regarded the papers and
9 documents that I kept in my office, that my secretary kept
10 in our files, as mine.

11 If I had been pressed, I suppose I would have
12 conceded that they are actually the documents and records
13 of the Department of Justice, but if somebody had asked me
14 to locate and show them or give them a copy of this or that
15 letter or memorandum, or photocopy of some legal document,
16 my first response would have been, "why?" "Why do you want
17 it?" "What are you going to do with it?" "Why in the world
18 should I give it to you?"

19 And I might even have felt a little bit of --
20 not unease--but maybe umbrage that the question was even
21 asked.

22 I think that was very typical throughout the
23 Government. I really have no doubt about it. Government
24 officials, Government agencies, kept and regarded records
25 and documents much as private businessman would.

1 They are kept for the purposes of the official
2 and the agency, and they were used for whatever purposes
3 the official or agency felt served its interests. That meant
4 showing them perhaps to individuals or other agencies on
5 request for the purpose -- it might even be favorable
6 publicity -- to advance the work of the agency, or what have
7 you.

8 And declining on other occasions to show the same
9 document to others who might not be on as friendly a basis
10 with the particular official or for reasons thought best
11 to that official, that his interest in having the document
12 was less warranted.

13 Now the Freedom of Information Act was designed
14 to turn this whole system upside down so that the question
15 ceased to be "why disclose," but rather, "why not?"

16 And it provides generally that documents shall be
17 made available for inspection and for copying, unless one of
18 various specific exemptions that are spelled out in the Act
19 apply and therefore permit the official to withhold
20 disclosure.

21 I think that five of those exemptions may be
22 of particular interest to you in the matters that you have
23 under study.

24 The first of those is numbered 3 in the Act, and
25 it provides that documents are records which are specifically--

1 for which disclosure is specifically prohibited or perhaps
2 non-disclosure specifically permitted -- will not be
3 disclosable, or the disclosure is not mandated by the
4 Freedom of Information Act.

5 In our Department, the most important category
6 of records -- certainly the largest -- to which this applies
7 are our Social Security records.

8 In the Social Security Act, there is a specific
9 provision imposing criminal penalties on the unauthorized
10 disclosure of any information that has been collected in
11 connection with the administration of the Act.

12 The Commissioner, however, is authorized by the
13 Social Security Act to permit disclosure pursuant to
14 regulations which he adopts. He has issued some regulations
15 which do permit some disclosure.

16 Exemption number four, under the Act, relates
17 to records and documents containing commercial or financial
18 information. I believe it is trade secrets, commercial,
19 financial information which is confidential by custom or usage.

20 The precise language is trade secrets and
21 commercial or financial information obtained from any person
22 and privileged or confidential.

23 In our Department, that applies perhaps most
24 frequently to records of the Food and Drug Administration,
25 which does have a lot of commercial information. But it has

1 also been applied, perhaps without any careful thinking out
2 of just how it applies, to information furnished the Public
3 Health Service and the National Institutes of Health in
4 connection with project grant applications for research
5 grants in medicine.

6 Another exemption, number five, applies to
7 internal communications, internal memoranda within the
8 Department or agency. The stated purpose for that being to
9 protect the decision-making process within the agency, to
10 disclose which might inhibit free expression of opinions,
11 views and judgments, and thereby suppress the integrity
12 and efficacy of the process itself.

13 Exemption number six applies to information,
14 the disclosure of which would constitute an unwarranted
15 invasion of personal privacy, personnel records, medical
16 records, personal information relating to named or identifiable
17 individuals.

18 And lastly, exemption number seven, which relates
19 to investigatory files compiled for law enforcement purposes.

20 This has been read to apply to files whether
21 the law enforcement they are directed to, or the investigation
22 was directed to, is criminal or civil in nature. Thus,
23 we have considered that it applies to our investigatory
24 files relating to civil rights violations.

25 Also some audits of grantees.

1 When the statute was enacted, in fact within
2 a day or two, the Justice Department released what is
3 titled "The Attorney General's Memorandum on the Public
4 Information Section of the Administrative Procedure Act."
5 That is what I have here.

6 It is a very general discussion and compilation
7 of the provisions of the Act, the committee reports and other
8 related documents, that pretty much make up the legislative
9 history relating to the Act.

10 I think this memorandum itself pretty well
11 epitomizes the governmental reaction to this enactment,
12 which was essentially to go on doing business as usual to
13 the fullest extent possible.

14 Our own Department of Health, Education and
15 Welfare published a regulation at the same time -- I think
16 most of the departments did -- and it was done -- the drafting
17 was done in consultation with the Department of Justice.

18 I understand that in our Department, the process
19 in part at least was to find out from the constituent agencies
20 essentially what they felt should not be disclosed.

21 And of course many of the agencies had deeply-
22 felt beliefs as to what sort of disclosures and disclosure
23 of what documents would impede the effective administration
24 of their programs.

25 These were fitted -- to the extent they could be

1 fitted -- under the exemptions of the Act, giving the
2 exemptions the broadest interpretation that would be possible.

3 For instance, in the exemption -- there is a
4 very important exemption that I failed to mention relating
5 to inter-agency -- I mentioned the exemption, but not the
6 particular point. -- the exemption relating to internal
7 memorandum, which actually refers to intra-agency memoranda,
8 and describes them as intra-agency, also applies to inter-agency
9 memoranda.

10 The Attorney General, and we, read inter-agency
11 to apply to communications between, say, the Department of
12 Health, Education and Welfare, and the Welfare Department of
13 the State of California. Both of them being indeed agencies,
14 our correspondence could be termed inter-agency memoranda.

15 Other of the exemptions were given equally broad
16 interpretation.

17 It was some time before the Courts got into the
18 act. It was, of course, inevitable that they would. And many
19 of the provisions in our present regulation, we find today,
20 in view of the court decisions, are without legal basis in
21 the Act.

22 We are in the process now of revising the regu-
23 lation. The Secretary has clearly announced on more than
24 one occasion that the policy of our Department is what the
25 Freedom of Information Act had indeed been intended to

1 legislate for the entire government, namely, that the rule
2 is disclosure, unless there is a specific, well-articulated
3 justification for non-disclosure which can be clearly supported
4 by law.

5 I think that this policy as it is further articu-
6 lated and implemented will have a very much broadening
7 effect in the disclosure of information by our Department.

8 Have I covered what you hoped I might?

9 MS. GROMMERS: Mr. Small is going to talk next,
10 speaking as a more or less voice of the public's rights on
11 the need to know.

12 MR. SMALL: Bureaucrats love secrets, and those
13 of you who are in the government love rubber stamps that
14 tell you you can mark it top secret or bottom secret or
15 confidential or whatever.

16 And newsmen hate them. And I think it's quite
17 true that many in government did not notice either the
18 signing of this law on July 4, 1966, or its implementation
19 eleven months later. Nor even the Ramsey Clark guidelines,
20 which of themselves are excellent until you get into the
21 particulars.

22 The law itself, I think -- and Sam is a much
23 better person to speak to this than I am -- but it strikes
24 me as sort of a typical case of a good idea that had too many
25 layers of good ideas imposed upon it.

1 And the result is that Lyndon Johnson, who had
2 no appetite at all for such legislation when it all began,
3 was perfectly willing to sign it by the time he saw the
4 finished product, and even -- if I remember correctly, Sam, -
5 didn't he sign it out at Johnson City on the steps of the
6 Post Office, or something like that, on the Fourth of July.--
7 even was able to say, which goes far beyond the Act -- "I
8 have always believed that freedom of information is so
9 vital that only the national security, not the desire of
10 public officials or private citizens, should determine when
11 it must be restricted."

12 Well, this Act goes far beyond simple national
13 security, even if anyone could define it. I think the best
14 story I have heard in a long time about how privacy in
15 government works was all that happened during the Calley
16 trial.

17 There is at the Associated Press something called
18 the special team. I think there are ten reporters who do not
19 cover day-to-day news, but tackle special investigative
20 reporting, or they will look for a special angle to a going
21 story of consequence.

22 And Gaylord (Shaw) who is the head of that
23 group, tells about some of the things that went on during
24 the Calley trial. And a young lady worked for him and
25 called the Pentagon and said, I am submitting a list of --

1 in the Pentagon, you submit the questions and they come back
2 to you -- she submitted a list of fifteen questions, and they
3 came back, and she called the man at the Pentagon and said,
4 "You marked thirteen of these confidential, and I have not
5 been given a reply."

6 And he said, "correct." And she said, "I'd
7 like to point out that one of the items simply asked in
8 what year was Fort Benning founded."

9 He said, "That's classified."

10 She called Fort Benning, got a young Lt. in the
11 public information section, and said, "Could you tell me in
12 what year Fort Benning was founded?"

13 He said, "Of course I can, it was 1870" -- or
14 whatever it was, he gave her the date.

15 She said, "Thank you." He said, "Boy, the AP
16 has money to burn."

17 She said, "What do you mean?" He said, "You
18 called long distance, you could have called the Pentagon."
19 She said, "They said it was classified."

20 He said "What?" She said, "They said it's
21 classified information."

22 "Oh," he said, "Well, don't tell them where you
23 got it."

24 (Laughter.)

25 I think you will find all through government --

1 and I must say, the defense establishment is probably the
2 worst offender of all, except perhaps CIA because they
3 won't even accept the questions -- you find all through
4 government people who are determined to keep as many secrets
5 as they can from anyone except the man at the other end of
6 the inter-agency memo or their boss. Even from each other.

7 The the violations, if you will, of the intent
8 of this Act occur daily. And when a newsman tries to get
9 the information, he finds it extremely difficult, because while
10 indeed, as Ramsey Clark points out in these guidelines,
11 it is the intent to turn the system upside down, and that
12 revolution should come before the hiding of any fact, it hasn't
13 changed the bureaucracy in Washington.

14 It's not likely to change it in my lifetime. And
15 the only resource that a newsman has with public officials
16 who just won't budge is to go to court.

17 Now there are two things wrong with this. One,
18 it is expensive.

19 Now while CBS can afford to go to court, this
20 Act is not meant only for media giants, conglomerates such
21 as CBS. After all, we own the Yankees and a guitar factory,
22 and we have lots of money.

23 But it is also meant to protect the guy who
24 works for the Virginia Sun or the Montgomery County news-
25 papers, who has very little money, and indeed finds himself

1 hardpressed to pay the charges -- which is another aspect
2 of the money end of it -- the charges to duplicate documents
3 once they have been released to you.

4 But far more important than the difficulties
5 in going to court is the question of time.

6 As we all know, anyone who has had any experience
7 in the courts, with good lawyers -- and the government has
8 lots of lawyers, even if it doesn't have lots of good
9 lawyers -- there is a waste of delay, endlessly.

10 And of course in the newspaper business, your
11 purpose is to get information as quickly as you can, because
12 it is a story you are working on. It doesn't do us any good,
13 normally, to, for example, get information ten years late
14 on My Lai, the Calley business. Obviously, it's something
15 you want to get quickly.

16 And the ability of bureaucrats to delay is
17 phenomenal.

18 The greatest use I have made of the FOI act is
19 to use it as a threat. I shouldn't let the secret out to
20 too many of you in the government. You will go back and
21 say that's a hollow threat at 2020 M Street, and indeed, I
22 guess that's what I am.

23 But frequently we will just say, "Look, what you
24 are doing is a violation of the FOI Act, you must give us
25 that information." It sometimes works.

1 I am grateful for that, because before we had
2 that threat, hollow or now, it didn't work. We used to
3 take the second step, which was, "No, it's not, our lawyers
4 tell us it's not."

5 Then you say, "Well, I'm going to go to the
6 Moss Committee"-- when Sam was there, and now it's Congress-
7 man Moorhead who heads the committee. And that is sort of
8 a threat on a threat, and that occasionally works.

9 And finally you go to the Committee -- not often,
10 but sometimes -- if you look at the early years under Moss,
11 you find that the guy in the Justice Department, or whatever,
12 who wouldn't talk to CBS, finds it more threatening to hear
13 the same words coming from a member of the House of
14 Representatives.

15 So it has been somewhat useful in that way. But
16 when they don't want to give you information, and are
17 determined to hide it, the delays can be endless.

18 Even the first step, when you say this is a
19 violation of a five year old Act of Congress, and they say,
20 "you may be right, let us check legal counsel."

21 And you call back a couple of days later and they
22 say -- and this actually happened to me, involving Justice --
23 "the lawyers haven't decided yet." And this drags on for
24 days and weeks -- days, anyway -- and they try to get rid
25 of you that way.

1 When that has failed, and you remain persistent, --
2 and in some stories you can and sometimes you do it out of
3 meanness or principle or whatever you want to call it -- then
4 you find they get a lawyer's ruling and it's a little cloudy
5 and they want to run it by another set of lawyers, or maybe
6 they get a lawyer's ruling that says you are running under
7 the several exemptions Mr. Barrett named. We are clean and
8 you can't have that information.

9 But there is no question in my mind that the vast
10 majority of people in the Federal government will do whatever
11 they can to keep you from getting information, and that
12 probably a very significant minority, if not a majority,
13 don't even know that such an Act exists, because in their daily
14 word, it didn't pop up.

15 So they continue with the classification of
16 material, and they take the attitude he expressed earlier,
17 that of a private businessman -- "These files are mine, this
18 information is mine, it belongs to my little corner of"
19 whatever department they are in, and not to the public at large.

20 As you know, President Nixon this year, as a result
21 of the Pentagon Papers controversy, asked for improved
22 procedures in declassifying material. I talked to some
23 friends in the Defense establishment, and said, "Has this
24 really made much of a difference?"

25 He said, "Oh, yes, it's very exciting, now you

1 get stuff that is stamped, 'Do not declassify until the
2 year 2,002.'

3 That is a nice way to put the restriction on
4 certain material. Thirty years is most you can classify it,
5 and I guess it's exciting to come across their desk because
6 it sounds like Buck Rogers.

7 I said, "But is any more stuff being de-
8 classified?" And the answer is no. The fact of the matter
9 is, there are hundreds of people in this city who are filing
10 thousands of documents that ought to be in the public domain.

11 A man named Bill (Florence), who is the Pentagon's
12 declassification expert, you may recall testified after the
13 Pentagon Papers and said, "Ninety-nine percent should be
14 made public; there is no reason at all to hide it."

15 Well, why is it being hidden? Several reasons.
16 One is pride of ownership or authorship, that you are more
17 important if you have material that the fellow across the
18 room can't read.

19 A lot of it is to avoid controversy. The less
20 that is open to the public at large or the press, the less
21 likely you are to get in trouble.

22 A lot of it hides personal or bureaucratic
23 embarrassments. It covers the mistakes. It's a great way
24 to hide the errors. There are people in this world who don't
25 want to make decisions. They are eagerly looking around for

1 other people who will say, "That is my decision."

2 So in a place such as the one I worked at,
3 somewhere along the line the buck has to stop. But in the
4 Government, it never needs to stop because all you need to
5 do is stamp it classified and your mistakes are buried.
6 It's a wonderful way to cover things up.

7 But it's a lousy way to run a country, and it's
8 a lousy way for citizens at large to know what is happening
9 in their country.

10 Sam?

11 MR. ARCHIBALD: I have just been writing some
12 comments down here as we go along, and I hope you won't like
13 them.

14 The Freedom of Information Act was designed to
15 turn the government information practices upside down. It
16 wasn't supported by any government agency. Not one govern-
17 ment agency, of the eighty-three in existence at that time,
18 supported this legislation.

19 They were all in favor of the principle, sure.
20 "This is a sort of democracy, and the people have some
21 right to know. But we are not in favor of spelling out that
22 principle in law."

23 So when the law was reluctantly signed by
24 President Johnson -- isn't that a kind of a funny thing? The
25 guy who invented the credibility gap is the guy who signed

1 the Freedom of Information law -- when it was signed by him
2 and took effect, you wouldn't expect all of the agencies to
3 immediately rush out regulations spelling out, implementing
4 this law as it was intended, or even as it was spelled out.
5 You are right. They didn't.

6 Most of the agencies adopted regulations at the
7 very last minute. Some of them even refused to adopt regu-
8 lations until they were pushed.

9 Those that did adopt regulations, in almost every
10 instance just codified their past secrecy practices in
11 regulations.

12 And therefore, of course, since the law was a
13 generality and since the regulations didn't spell out how you
14 could enforce it yourselves, nothing would be expected to happen.

15 And that is what the agencies hoped. But that
16 wasn't the fact.

17 People began using this law. Now one important
18 point in this new law is that not only did it say public
19 records are available to any person without proving the need
20 to know or anything, but if you are refused public records
21 you can go to court.

22 And the agency has the burden of proof that
23 secrecy is necessary. It puts the burden of proof on the back
24 of the government for the very first time in the short, happy
25 history of our democratic process.

1 The courts have been exercising this prerogative
2 in the comparatively few times people have taken their case
3 to court. There have been, in the first four and a half
4 years of the law's operation, about 150 cases filed. And the
5 courts have said to the government --

6 The government, by the way, argued in every
7 case, "Well, you don't have to make us prove it, just accept
8 what we say." And they said, "Hell, no." Well, not exactly.
9 They said, "Heck, no, you've got to come into court and
10 prove this is necessary. You have to, in many cases, give
11 us the document even if you claim investigatory files" --
12 I almost said national security; they haven't unfortunately
13 forced them to prove national security -- "And if it's an
14 investigatory file and you can't disclose it, you show it
15 to us in camera and we will make the decision whether or not
16 it is."

17 As a result of this court enforcement provision,
18 as a result of putting the monkey on the agency's back, there
19 have been some interesting developments.

20 Among the more often used sections of this law,
21 sections which say you must make everything public except
22 under the nine exemptions, which are permissive exemptions, by
23 the way, I want to emphasize, and not mandatory -- among
24 the most used exemptions are, as Mr. Barrett pointed out,
25 one which says, "You need not make available information

1 privileged and confidential"-- trade secrets, so called.
2 All of the cases taken to court under this exemption -- every
3 single case -- the government has lost.

4 That is not a lot of cases, unfortunately. It's
5 six. But it's a pretty good percentage.

6 The other section says interagency memoranda
7 need not be made available. Whatever they are.

8 Of the ten cases which have gone to court in the
9 first four and a half years, under this exemption, the
10 government lost six.

11 By the way, we did a survey of government agencies,
12 asking them what sections they used most frequently. They
13 indicated that most frequently, when the law was brought to
14 their attention and when they were forced to cite a section
15 of law as authority for withholding, the two most often
16 used sections were these two: privileged and confidential;
17 inter-agency memorandum.

18 In 403 cases they cited inter-agency memoranda
19 as a cause. And people who took those cases to court, over-
20 threw the government.

21 375 times they cited inter-agency memorandum
22 as an excuse. 60 percent of the people who took those cases
23 to court won.

24 In the other major area, investigatory files --
25 by the way, for law enforcement purposes-- the government lost

1 only one of seven cases. So the trend is toward the court
2 making the government prove secrecy, and the government failing
3 to be able to prove secrecy when relying on trade secrets,
4 or interagency memoranda, the lawyer-client, doctor-patient
5 relationship.

6 But they were successful when they relied on
7 investigatory memoranda and other such things as national
8 defense and foreign policy discussions.

9 As a result of the early court losses, the
10 government's early losses in court, they realized there was
11 a law here afterall, and maybe we had better do something about
12 it.

13 So of course, like every major bureaucracy --
14 a campus, a government, or a news organization -- they
15 formed a committee.

16 The Department of Justice formed a committee
17 to advise the other council -- the council of other agencies --
18 on how to handle the law.

19 Because they said some of you general counsel
20 in other agencies are going to court and losing cases, which
21 hurts the government as a whole. We have to disclose things
22 which might be embarrassing.

23 The committee -- well, we don't know how well
24 they have done. They won't divulge their views.

25 But there is one thing apparent. This law which

1 is on the books only because the free and responsible press
2 fought for it, has been used by private interests to get
3 public records for personal gain.

4 So what? This is the name of the democratic
5 game, unless you are still back in high school civic textbooks.

6 The democratic system is that which permits a
7 clash of wills, a clash of interest. I see nothing wrong
8 with a guy using a law because it is to his benefit. I
9 would like to see, frankly, incidentally, more of the press
10 who supported the law use it to its fullest.

11 One of the reasons they don't--well, of course,
12 the explanation that Bill gave is very valid.

13 The other reasons -- many of them don't know
14 about it. I think probably, except for the Washington
15 press corps, this law is less known among reporters, the
16 press, and the publishers than anywhere else including the
17 government.

18 Incidentally, in the field I understand you
19 people are interested in, all this law says is that public
20 records are available. It does not identify public records.
21 Either because that is impossible or because we had too many
22 other problems to solve or create, depending upon your
23 attitude toward it.

24 The Attorney General's memorandum trying to
25 explain the law -- the memorandum, by the way, is four years

1 out of date; it will be revised because these new court
2 actions were brought to the Attorney General's attention rather
3 forcefully in a set of hearings -- does say that a public
4 record to which this law is applicable is not a document
5 but it is a record, regardless of the physical form or
6 characteristics. It may be a tape, a compilation of material,
7 and so forth.

8 Some of the other problems which are going to
9 be changed, if not solved, in connection with the use of the
10 law are the exorbitant costs that some of the agencies
11 charge, hoping that this will discourage users. Anywhere
12 from ~~nothing~~ to \$10 an hour to search the public records;
13 anywhere from nothing to \$10 a page to copy them.

14 This is going to be changed to a probably
15 uniform fee of \$3.50 a hour for search, and \$0.10 a page
16 for copying.

17 Unless you happen to be a reporter asking the
18 agency for information and it will be good for the agency
19 to get it out, then of course it is all for free, which
20 is probably the way it should be.

21 There probably will be legislation to require
22 the government to pay court costs and reasonable attorney
23 fees if they take the case to court and lose it. This is
24 not, of course, unusual in other fields.

25 There are a number of other things. In the

1 first four years, we contacted government agencies to ask
2 how much it had been used, and they listed 200,000 requests
3 for information under this law, and only 2,000 refusals.

4 Pretty good record. Except, of course, the
5 requests were as phony as a \$3 bill. Every time somebody
6 would request a copy of a speech or pamphlet or routine
7 document, they listed this as a Freedom of Information case.

8 The 2,000 refusals are refusals which were really
9 under the Freedom of Information. That is not much use of a
10 law that took eleven years to create, a lot of furor and a
11 lot of government time to unwind.

12 But it's a lot better -- 2,000 people getting
13 information better -- than it ever was before.

14 Well, there was a reason for this law. The basic
15 reason was the democratic process. We are supposed to have
16 a right to know what our government is doing, supposed to be
17 able to find out all those sorts of high-minded ideals.

18 And there was one exemption put in there, in spite
19 of or maybe because of these high-minded ideals. An agency
20 may withhold information that is contained in personal
21 and medical files or similar files, the disclosure of which
22 would constitute a clearly unwarranted invasion of personal
23 privacy.

24 That language was very carefully worked out. Not
25 an invasion of personal privacy. Not an unwarranted invasion.

1 But a clearly unwarranted invasion of personal privacy. So
2 if you refuse, you better be prepared to prove in court
3 that it is clearly unwarranted.

4 This whole idea of the right to know conflicts,
5 of course, with the right to privacy. One of the reasons
6 for putting this specific, permissive exemption in was that
7 the philosophy behind establishing the right to know law is
8 that you have a right to see what the government is doing, how
9 it is carrying out its job for you.

10 Just because the government collects some information,
11 does it make it a public record? Of course it doesn't.
12 It doesn't make my income tax a public record, except to
13 a select few in the White House, the FBI and on Capitol Hill.

14 It doesn't make my Social Security file a public
15 record.

16 But suppose I want to find out how the government
17 agency which has these things -- Social Security, income taxes,
18 those sorts of things -- is doing its job? I can only find
19 out by seeing what it does with the information it gets.

20 Right there is a conflict. Where does the
21 right to know, based on the philosophy of the democratic
22 society, end, and the right of privacy start?

23 Obviously, you people are here to solve that
24 problem. I hope you do. Can I help you?

25 MS. GROMMERS: Miss Cox would you like to start

1 off with questions?

2 MS. COX: Pass at this stage.

3 MS. GROMMERS: Mr. Davey?

4 MR. DAVEY: I'd like to ass for a moment,
5 because I am thinking.

6 MS. GROMMERS: Mr. Aronoff?

7 MR. ARONOFF: I'd like to start with a comment
8 that this whole issue, in the way it is presented here,
9 gives me a kind of a weird feeling. I think I said this
10 once before.

11 For one of the few times, I get the feeling on
12 this right to know and right to privacy, you can easily get
13 the ACLU and the John Birch Society on the same side of
14 either issue, whichever way you are going to argue, which
15 gives interesting implications all the way through.

16 But I'd like to just take the data that we have
17 had, and directing my question to either Mr. Small or Mr.
18 Archibald, if we used the right to know theory and extend
19 it to its fullest implication, as I think you both indicated
20 you would like to do, and if we then go over the kinds of
21 systems that we have examined here, I would think that you
22 would say that the records of the coal miner in West Virginia
23 having to do with Black Lung, for your purposes, in order
24 to show the public the issue, would be available, even if
25 you would find out specific people that would be involved,

1 so that you would go down there with the cameras and get
2 the typical example of the person that would build the
3 story to show the purpose that you had in mind.

4 I am suggesting it, and asking you to respond to
5 it.

6 Or in the vocational rehabilitation area, you
7 might very well find the counselor who was talking to the
8 welfare person, who in turn was rehabilitating that disabled
9 welfare person, in order to get a job, and that person then
10 was still on welfare, let's say.

11 In order to show the failure of that program, you
12 would want access to the records, and you would say the
13 FOI legislation should give you access to that information, I
14 think.

15 If you ever got to Mr. Gallati, you might have
16 a more difficult time, I would think. But nevertheless,
17 you might want to know whether he is able to crack the Mafia,
18 really, in New York, or not, and you would be interested
19 in making a heck of an interesting business there.

20 Or you might go down to Maryland and say, well,
21 we want to find out the success of whether people have mental
22 disorders or not -- or whether this whole program is working.
23 And there you might find some specific people that have
24 been treated, in order to find out how that program is
25 going.

1 I suggest to you that getting that record, and
2 then getting into individuals in order to make your point,
3 does cross the line and may very well get into the invasion
4 of privacy. And I'd like to have your response there in terms
5 of trying to help you.

6 MR. ARCHIBALD: I will accept your suggestion.
7 And tell you you are full of hog manure. Because there
8 is no intent to make a point.

9 Suppose the point were on the side of right,
10 virtue and the government agency? Suppose the point is that
11 the program is working.

12 Nobody is trying to get this information to prove
13 one point or the other, and the courts have already ruled
14 this.

15 I suggest you look at the American Tobacco case
16 vs. FTC. They have already ruled in this field -- not
17 directly, but quite related -- where the government said
18 in its cancer studies, "We can't show you this information,
19 we can't show you the basic case studies because it
20 divulges medical information."

21 The court said, "You must show them, with some
22 limitations."

23 I want limitations applied, but not by the
24 bureaucracy of the Executive Branch, but by the Judiciary. I
25 don't see why they can't make decisions. This is the process

1 we have to do it.

2 The reason for getting this information, at
3 lease from my prejudiced viewpoint, is not to show that a
4 program is not working, but to find out whether it is
5 working. To do that, it may entirely be possible that you
6 might have to invade somebody's privacy. You might. I beg
7 your pardon -- not have to -- but you might actually invade
8 somebody's privacy.

9 The trouble is that the privacy that has been
10 protected in the past is not, has not been, and I think is
11 not today personal privacy, but the government's privacy.

12 The reaction has been against disclosing things
13 that would embarrass the government. I am absolutely certain
14 that if an agency were sure that a program was working well,
15 it would welcome CBS -- even CBS -- with open arms. CBS
16 with its record of telling the truth about the selling of
17 the Pentagon.

18 Opposed to your example -- and of course it is
19 the hard case, the most difficult case -- let me explain
20 the most recent use of this law to protect a person's privacy.

21 The Interior Department hired a guy named
22 Harry (Trelvan). If any of you read The Selling of the
23 President, you remember him as the hero and/or anti-hero,
24 depending on your attitude toward Republican form of
25 government.

1 They hired him to study the public information
2 of the Interior Department. An important study, and a damn
3 good guy to do it.

4 \$125 a day -- \$12,000 it cost -- and well worth
5 it. Fifty pages. Eighteen pages of general comments on
6 how rotten their information operations were, and how they
7 could be improved in general. The rest specific comments
8 on departments, information operations, who was doing what,
9 and with which, and to whom.

10 And they wouldn't make this public. They said
11 this is not a public record. Why, it mentioned names, and
12 would invade their pravacy.

13 After a series of pressures -- newspapermen tried
14 to get it and couldn't -- the Congressmen tried to get it --
15 and finally, after a committee hearing, they said, "All right,
16 we will make the first eighteen pages public. This is
17 general comment about the information, public relations
18 shortcomings of the Interior Department."

19 "One paragraph we cannot make public because
20 it mentions a specific individual. It would embarrass him
21 unnec@ssarily, under the invasion of privacy section."

22 Using this Freedom of Information law, not
23 going to court, but you see, because the law says you may
24 go to court, it also requires a decision to refuse to be made
25 by the top level of an agency.

1 Usually, refusal comes from the lower administra-
2 tive working level. If you push, the decision to refuse
3 must be made by the top guy.

4 All right. The general counsel made the first
5 decision that the eighteen pages, except for one paragraph,
6 can be made public. An appeal was filed with the Secretary
7 of Interior.

8 The appeal started out, "Dear Mr. Secretary,
9 Secrecy minded bureaucrats in your department fear this letter
10 is going to embarrass you."

11 It laid forth all of the attempts to get this
12 eighteen pages, explained the censored paragraph, and explained
13 their statement that to disclose this would be embarrassing,
14 would invade the personal privacy.

15 Who was identified in this paragraph, and what
16 was so embarrassing? The letter told the Secretary who
17 was embarrassed. The letter was given to the press a couple
18 of days ago, and will be published, I hope.

19 Whose personal privacy? The Secretary of Interior.
20 It said, "He's a very photogenic guy and he ought to be used
21 in more publicity shots for television, so we can get better
22 publicity."

23 They weren't withholding that to protect personal
24 privacy. They were withholding it because it's obvious
25 gimmickry, and so forth.

1 Fine. I am on the side of Harry (Trelvan), but
2 that is the main reason for the use of personal privacy.
3 That is the case on the other side.

4 And I submit that more cases like that happen,
5 more misuse of this argument of personal privacy than the
6 cases you set forth in which there is some justification.

7 MR. ARONOFF: I am not trying to quarrel. You
8 through a question out -- "Can we help?" I am throwing
9 one back at you, because I don't know where this whole debate
10 goes.

11 By the way, I will wuarrel with one thing. I
12 don't think your opinion should be to either prove the good
13 or badness of an agency. You shouldn't be pre-judging. You
14 should be finding out and reporting what you find, not with
15 a predisposition either way.

16 MR. ARCHIBALD: Which is the way it is done, by
17 the way, believe it or not.

18 MR. ARONOFF: Now the other aspect, carrying it
19 a step further, you are saying really it is not the individual
20 right that usually is concerned here, it is the government
21 protecting its right.

22 But one of the reasons that this committee was
23 established is the fact that because of the government's
24 collection of vast amounts of information, and because of
25 various private agencies collecting vast amounts of informa-
tion, unwittingly you may get into the invasion of personal

1 privacy.

2 And it's a question of how far you go with your
3 right to know statutes, which may get into the area of privacy
4 that was collected by the government for one purpose, but
5 then is used by you for an entirely different purpose.

6 And I am suggesting to you that the very passage
7 of the statute on the one hand, the right to know statute
8 itself, has engendered a kind of counter-force there which
9 may in turn end up in some statutes to protecting privacy,
10 and that maybe what we are really looking to is protecting
11 a good wall on both sides and still giving the latitude in
12 the middle for the democratic process that you refer to.

13 MR. SMALL: If I may respond to the response.
14 Sam and I are both extremists. I hope I am not as extreme
15 in language as he is.

16 But we, I think, are pretty much, at least in
17 theory, in agreement with the late Hugo Black's concept of
18 the purity of the First Amendment.

19 And I feel very strongly that basically he is
20 right. That almost every protective device you see is not
21 really involving -- at least the ones I have experienced in
22 this business -- not involving the rights of individuals as
23 much as the individual in government.

24 And I find them fair game. I think anyone who
25 works in the government ought to be open to the eyes of the

1 people, be they the large media organizations, the small ones,
2 the family, whatever.

3 And I think our opening remarks would indicate
4 the failings of the FOI Act rather than its success, which
5 have been minimal. Important, but minimal.

6 I am not sure that we shouldn't be looking at a
7 lot of the things we traditionally kept as secrets, look
8 at them freshly. There is a reference made, for example,
9 to Internal Revenue.

10 I am not sure that all tax returns should be kept
11 private. Private in terms of the government and those within
12 the government -- that small group which apparently includes
13 Jack Anderson now, that have access to them.

14 Some years ago, when I was living in Kentucky,
15 I toured the state with a group of lawyers and judges,
16 debating Cannon 35, and the whole question of courtroom
17 coverage.

18 And in a particularly heated debate in Covington
19 one night, some judge rose and said, "You would defy the
20 sanctity of the jury. The next thing you know, you will want
21 to sit in with those twelve people."

22 And I finessed the answer, waffled, and escaped,
23 I thought successfully. And that night there was a lawyer
24 from Frankfort, Kentucky who was traveling with us who said,
25 "Boy, you are a coward, you evaded that question."

1 I said, "Well, I thought it wasn't relevant to
2 what we were discussing. I didn't want to get into the jury
3 system."

4 He said, "Why do juries have to be private?"

5 It was the first time I had ever heard someone
6 in the legal profession suggest that maybe juries should
7 meet in the open. And over the years, as I thought about
8 it, I am not so sure that he didn't have the germ of a very
9 good idea.

10 Why must twelve of our peers meet in private
11 to discuss a case which has been discussed in public? Now
12 admittedly, some cases do have aspects which are discussed
13 in chambers, in camera. But very few do.

14 And why should the jury have that protection?

15 Well, we know the historic defenses for the
16 jury system, and their right to meet in private, but I am not
17 sure it wouldn't help perhaps to have juries in the open.

18 I am not sure we wouldn't receive more justice
19 if those two people did not have to defend their views openly.
20 I certainly feel this way about the vast majority of what our
21 government does. I think there is an irony here in the question
22 of invasion of individual rights.

23 We have mentioned personal problems, medical
24 problems, all that. The ironic things being that ~~of all the~~
25 agencies we deal with, HEW is probably as open as any.

1 Certainly a good deal more open than most in this city.

2 But what would be wrong with having a lot more
3 of this information which we have traditionally and historically
4 said must be kept secret -- in having it open?

5 You know, the Democrats tried an experiment
6 a few weeks ago in having an almost open convention, and a
7 lot of people looked at it in different ways, and a lot of
8 people were appalled by it, but I found it refreshing, that
9 a good deal of that linen was washed in public. More than
10 I have ever seen at a convention, and I have been going to
11 every one since 1952.

12 I found it the most open of the conventions
13 I have seen, and I don't think that is unhealthy at all.
14 Maybe I am wrong. And certainly one can cite incidents
15 where an individual -- and in the case of many of the
16 individuals you deal with -- a poor and therefore generally
17 defenseless individual is the victim of this kind of
18 openness.

19 But I think you would find that in the long run
20 that individual would be the exception. That most of the
21 time, we are dealing with people who have a great many de-
22 fenses, their prime one being the right to classify
23 materials, to keep materials secret.

24 MS. GROMMERS: Mr. Gallati?

25 MR. GALLATI: A couple of questions. I think

1 we are talking a little bit on two different levels. We
2 are concerned primarily with the rights of individuals, most
3 of whom are not in government at all. These are the subjects
4 of the files.

5 And I think you probably would very much agree
6 with us that these people have some very important rights,
7 including the right to privacy.

8 For example, a person who, in order to get a
9 benefit to which he is legally entitled, is required by law
10 or administrative directive to fill out a certain amount of
11 data concerning himself, much of which may be very private
12 indeed; all of it private in one context.

13 Now we feel -- if I can speak for the group --
14 that this person and his data belongs to him, and should
15 be protected. Even as, perhaps, you write a story and you
16 copyright it. If you write a biography of yourself, even
17 if it's only three lines long, you can copyright it, can
18 you not, and this belongs to you, and nobody can print that
19 unless you give legal permission.

20 Likewise, this individual who has surrendered his biography,
21 if you will, in order to obtain a legal right, should be
22 protected. I think you would agree.

23 We are not talking now about the cabinet ministry,
24 not talking about the bureaucrats of the secretarial level.
25 We are talking about some poor person who has to get a few

1 dollars to support his family. These are the type of
2 person we are concerned with.

3 I don't think your stories are any better because
4 you necessarily get the information about individuals, per
5 se. You might decide that a good story can be built upon
6 a specific case, in which case you should go to that individual
7 get his permission, but not get it from the files of the
8 government agency that holds this information.

9 Well, that is a statement, not a question. But
10 I would like your reaction to it.

11 But one other question, that is, this whole
12 problem of public records, it seems to me, in the best
13 interest of society and very much in the best interest of
14 the media, somebody should take and wrestle with this problem
15 of what is a public record, and it should be keen definitions
16 of what is the public record.

17 And we can say that within the concept of public
18 record there are all kinds of public records; some of which
19 are by nature called public records but are today not truly
20 public records.

21 For example, the most obvious one, one which
22 I am acquainted with, is a conviction in court. That is
23 a public record and anybody can go to the court and obtain
24 the record.

25 But let the agencies of law enforcement, for

1 example, compile these records so that you now have what
2 amounts to a dossier of individual public records, it now
3 becomes a dossier on a person. I think we would all agree
4 that that is something more than the common definition of a
5 public record, even though it consists of units of a public
6 record.

7 And I suggest that this is a type of thing that
8 the press has in the past, as we all know, exploited, and
9 perhaps should not exploit, even though it is a public record.

10 Now if the press gets that from their own morgue
11 sources, there is very little can be done about it. Maybe,
12 Or maybe not, this should be used in stories.

13 But in any event, it should not be gotten from
14 the custodians of this record who have a responsibility to
15 protect the confidentiality of these records, even though
16 they are in individual instances public records, but as a
17 totality become a dossier.

18 MR. SMALL: One of the great concerns of all of
19 you, as well as people like (Sam Irving) --

20 MR. GALLATI: I am flattered by the comparison.

21 MR. SMALL: -- the exchange between all of you in
22 this line of work, particularly in the age of computers, is
23 such that the only ones who do not have access are people
24 in the public press.

25 That at least seemingly we are heading in a

1 direction where the police chief in St. Charles, Illinois
2 some day will punch a computer and find what every one in
3 the entire United States and welfare and law enforcement
4 knows about Sam Archibald. That is going to be a very fat
5 dossier when he gets it.

6 So there are serious questions which I know
7 you are grappling w-th. How much of that -- how do you
8 retrieve from the computer all of that kind of information,
9 much of it unevaluated.

10 I don't think many of us have seen the FBI files,
11 for example, but the stories one hears would indicate that
12 there is a lot of unevaluated information, because of the
13 nature of that agency.

14 Is that going to be shared freely and easily
15 with the other agencies which may be less scrupulous about
16 revealing what they found out back in St. Charles, Illinois,
17 or whatever?

18 I think you will find the thrust of what we
19 do in the news business is not directed at embarrassing single
20 individuals, but when you say close all their records, you
21 raise questions about the ability to report, for example,
22 on the success of programs.

23 One of the great dilemmas in our society right
24 now is the question of welfare. What are the right programs?
25 How are they working? How are they failing, etcetera.

1 If one does not have access to the welfare
2 records, or even parts of them, in individual states, we are
3 left with the rumors and the charges and the counter-charges,
4 many from political sources, which are hardly the same as
5 being able to go and study the records that you have, say,
6 on welfare programs in New York State or Ohio or whatever.

7 MR. GALLATI: May I suggest that you don't have
8 to have the personal identifiers. You can have statistical
9 data, or if you wanted to go that far, have the actual files
10 with the identifiers removed, and such files could not be
11 otherwise identified, and you could come to the same conclusion
12 in a need to know, right to know, or freedom of information,
13 without embarrassing or depriving the individual involved
14 of the right of privacy.

15 MR. SMALL: Let me just say it is not my right
16 to know, I work for CBS.

17 MR. WEIZENBAUM: It says freedom of the press,
18 to print whatever you can lawfully get your hands on.

19 We are just saying there are certain things
20 you can't lawfully get your hands on.

21 MR. SMALL: What we are suggesting is that
22 there really should be very little that -- not just me -- but
23 that anyone can get their hands on.

24 MS. GROMMERS: You must be familiar with the
25 Fair Credit Reporting Act hearings, where, for example,

1 the information came out on what kind of surveillance is
2 required of you when you are undergoing a test to pass your
3 insurance premium raise, and that information is unevaluated.

4 You, not you the press, but one can get one's
5 hands on that kind of information.

6 MR. SMALL: The gentleman in the corner suggested
7 in a different way earlier perhaps what we need is a
8 clarification of what kind of information should be gathered
9 in the first place.

10 I worry too about insurance companies and the
11 kind of material they are gathering. I am worried about the
12 day they get the FBI dossiers and freely exchange them.
13 Because one never has a chance to see what they say about
14 one.

15 But you are going to have problems -- individuals
16 always will -- for example, if I take you to court and charge
17 you with any kind of crime, that a trial may be very embarrass-
18 ing to you, even if you are innocent.

19 Or if we go to a quasi-judicial thing, such as
20 the Pepper crime hearings, and Frank Sinatra pops up. Well,
21 it was right embarrassing to Frank Sinatra.

22 But sometimes it is in the nature of the public
23 good that he be embarrassed. It is unfortunate, perhaps, in
24 our society that that accusation and defenses -- be they the
25 Fifth Amendment, as some plead before Pepper, or the Sinatra

1 counter-attack, or whatever, in the minds of the general
2 public raise more doubts than they resolve.

3 But public trials are public not necessarily
4 to protect the individual on trial, but also to protect his
5 society. We all have a stake when someone goes to trial in
6 seeing that the trial is fair, because we may be next.

7 MR. GALLATI: You are confusing the issue. Be-
8 cause you are talking about public figures. We are not
9 talking about public figures. They have already surrendered
10 their privacy by virtue of the fact that they are celebrities.

11 Also, you are comparing the press with the
12 judiciary, and I'm afraid the judiciary might be a little
13 put out by it.

14 MR. ARCHIBALD: Some of the press would object,
15 too.

16 MS. GROMMERS: Let me go on to Professor Allen.

17 MR. SMALL: I should say that I complained to
18 Sam on the way out on another issue. I said, "Sam, not
19 everyone in our business is honest and pure and good."

20 And he said, "No, no, your record is not much
21 better than doctors, and worse than lawyers."

22 MR. ALLEN: As lawyers you present a very
23 persuasive case for one side of what are the most interesting
24 legal questions, when you have two really fundamental values
25 that are coming in conflict.

1 Where do you really land between the right to know
2 on the one side, and the individual's aspirations for privacy?
3 And the statutory mechanism is set up, and it is set up
4 with competing sets of categories that ~~must be revealed also~~,
5 and then the sets of exemptions.

6 And we have a process for deciding on particular
7 cases whether they are within the exemptions.

8 But I guess the question comes down to whether
9 the thrust for legitimate right to know can occasionally
10 push really too far to where it intrudes unwarrantedly.

11 MR. ARCHIBALD: Clearly unwarrantedly.

12 MR. ALLEN: Clearly unwarrantedly, in the present
13 statutory language. But that is the interesting question,
14 whether it should be that strongly warranted if, when so
15 characterized, if people are required to register, for
16 example, with a governmental agency, if then in turn that,
17 for example, is made available as a commercial list with
18 names and addresses, with some identifying characteristic
19 available -- it it going too far then?

20 You suggested that perhaps not. I guess this
21 is where the judgments of reasonable people begin to perhaps
22 get -- recognizing the legitimacy of important values
23 in competition -- should the gun lists have been sold?

24 MR. ARCHIBALD: Yes. Mr. Gallati already drew
25 the line -- it's simple -- he drew the line very, very

1 clearly, and that is why I disagreed so strongly, or shook my
2 head in disagreement.

3 You said when a person gets a government benefit,
4 should his name and identification be made public.

5 MR. ALLEN: I was going one step beyond that.

6 MR. ARCHIBALD: He drew the line. You asked
7 where the line was. That was the premise for the statement.
8 You said a government benefit. When you get a government
9 benefit, you have a concomitant duty, you see.

10 MR. ALLEN: What is your answer?

11 MR. ARCHIBALD: Of course it should be.

12 MS. COX: Should be what?

13 MR. ARCHIBALD: What should be what?

14 MR. WEIZENBAUM: Are you saying if a person gets
15 a government benefit by virtue of that he has lost --

16 MR. ARCHIBALD: The right of privacy is diminished.

17 MS. COX: Why?

18 MS. GROMMERS: Professor Allen has the floor.

19 MR. ALLEN: I was trying to give you the next
20 stage on the continuum beyond where there is an application
21 for a benefit, of where there is a mandatory duty to
22 register and no benefit being derived. And even in that
23 instance, would you deem it appropriate that those who were
24 compelled to register with the Treasury Department should
25 have their names and addresses attached with the characteristic

1 as gun owners, that that should be distributed and should
2 there be a penalty attached if that kind of information
3 is released, and it is subsequently decided that it
4 shouldn't have been?

5 MR. ARCHIBALD: Are you from up-state New York?

6 MR. ALLEN: Does that make a difference?

7 MR. ARCHIBALD: Yes, it does.

8 MR. ALLEN: No.

9 MR. ARCHIBALD: Frank Horton, Congressman from
10 up-state New York, has introduced legislation just to
11 effectuate what you are setting forth, and I thought you
12 may have talked to him, because he started it because some
13 doctor who is also a gun nut -- collector, pardon me -- when
14 he registered, as he was required to do by law, he all of a
15 sudden began getting partisements and mail solicitations,
16 and so Congressman Horton imposed upon the Internal Revenue
17 Service, and they said, well, we won't make this public any
18 more, the name of the people who get a government benefit,
19 that is to say, a license to sell, which is also included,
20 antique guns.

21 Of course, a guy who gets a license to sell new
22 guns, which are easier to kill people with, we will make
23 public, because he is a businessman.

24 I think as far as a grant of a license to sell
25 guns, which is what the collector's license is, because

1 without the collector's license they can't sell even an
2 antique gun, which is twenty-five years old, and I know a
3 lot that have killed people -- I think if you grant them
4 the license to sell guns, I have a right to know to whom
5 you are granting that license.

6 If you are paid a government salary, I have a
7 right to know your name, government address, and how much
8 you are paid.

9 MS. GROMMERS: How about his religion?

10 MR. ARCHIBALD: That has nothing to do with it,
11 unless of course it is pertinent.

12 (Laughter.)

13 I have a right to know the name of, and religion
14 of, all government-paid chaplains.

15 MS. GROMMERS: Our point is that sometimes this
16 information is also on the list.

17 MR. ARCHIBALD: I didn't say anything about a
18 list. That gets back to the question of compilation, the
19 list and all the other junk.

20 MR. GALLATI: Sam, I'd like to know from you,
21 who are a loyal American, how many benefits you receive from
22 the government.

23 The day I was born, I received a benefit from
24 the government. Education, opportunity to be a veteran,
25 veterans benefits; I receive benefits every day of my life

1 from the government.

2 I am deeply grateful, and I don't think I should
3 be required to surrender all my privacy at all times in
4 all places for all purposes because I have been receiving
5 benefits.

6 MR. SMALL: But should those benefits be kept
7 confidential?

8 MR. ARCHIBALD: I never received a benefit from
9 the government.

10 MR. SMALL: Yes, you have, Sam.

11 MR. GALLATI: Oil depletion allowance,
12 charitable income.

13 MR. ARCHIBALD: That is not a benefit. I don't
14 receive from the government. The government receives from
15 me. This is my government.

16 I am subservient to a country, an ideal. I am
17 a loyal American, not a loyal citizen of the Federal or
18 state government.

19 The government happens to be a group of people
20 who banded together to keep us from killing each other. This
21 is the purpose of government.

22 I didn't receive the benefit of being a veteran.
23 The government received the benefit of my services. I
24 received benefits as a result of that -- I received educational
25

1 and home loan benefits. And when I received those, the public
2 has a right to know how much I was given as a special grant
3 from the government, has a right to look at my home loan;
4 has a right to look at the FHA appraisals on it.

5 MR. GALLATI: Who has?

6 MR. ARCHIBALD: The public.

7 MR. GALLATI: The media?

8 MR. ARCHIBALD: I am not the media, by the way.
9 Let me make that clear. I am not of the media.

10 MR. ARONOFF: How about the right to look at
11 your lungs as you are smoking a cigarette?

12 MR. SMALL: Don't you feel the public has a right
13 to know -- not your private life -- but about the benefits
14 you have received? If you receive a pension for a war wound,
15 if you receive a scholarship under the GI Bill, whatever,
16 don't you think that ought to be public?

17 MR. GALLATI: I don't think any application
18 which gave private data in order to obtain these legal benefits
19 should be made public.

20 MR. SMALL: I don't know what is on your
21 application, because I haven't seen it either.

22 I do know if you have received a war wound pension,
23 that that ought to be public. And the circumstances
24 surrounding it, I believe, should be public. Look at
25 General (LaValle). The question is still unresolved. He is

1 loan. They haven't gotten one cent from the United States
2 government. They guaranteed they would pay the government
3 if Lockheed fails.

4 MR. ARCHIBALD: All right. When Lockheed
5 fails and the government pays them.

6 MR. SMALL: More important, do we not have the
7 right to know the circumstances?

8 MR. SIEMILLER: Yes, but somebody in your
9 position has a right to state it correctly, too.

10 MR. ARCHIBALD: All right, that is one end of
11 the continuum.

12 MS. LANPHERE: I don't think we will have a
13 meeting of the minds, Madame Chairman.

14 MS. GROMMERS: Mr. Impara?

15 MR. IMPARA: I don't know if I have a related
16 question. You indicated it was your belief that restrictions
17 shouldn't be set by the agency which maintains or collects
18 the information, but rather they should be established by
19 the court.

20 My question is two-fold. Number one, why
21 shouldn't the restrictions on the deliverance of information,
22 particularly of personal information, be established by
23 the individual who provides this information?

24 And number two, if they weren't set by the
25 individual, then who is to protect the individual prior to

1 the release of the information? Because if it were a
2 decision of the court, then it would be after the fact, rather
3 than before the fact.

4 MR. ARCHIBALD: You mean after the fact of
5 deliverance to the government agency?

6 MR. IMPARA: Or to some sector of the public.

7 MR. ARCHIBALD: No, the court only gets to the
8 public if the court so determines --

9 MR. IMPARA: Assuming that all of the hearings
10 are held in camera.

11 MR. ARCHIBALD: Yes, that is the court decision,
12 too. But your question is, shouldn't the individual set
13 the restriction?

14 MR. IMPARA: Yes.

15 MR. ARCHIBALD: On access. This is sort of like
16 hiring a criminal as a copy. Whether it's a loan guarantee
17 or whatever that Lockheed would happily say it may be made
18 available, I don't think -- well, a better example --

19 MR. IMPARA: Let's get away from Lockheed
20 and talk about people. There may be an analogy.

21 MR. ARCHIBALD: How about a small group of
22 people?

23 MR. IMPARA: Let's talk about an individual
24 person, because that is what the committee is about, is
25 personal data systems.

MR. ARCHIBALD: I can't draw the line. I'm

1 sorry.

2 MR. IMPARA: Well --

3 MR. ARCHIBALD: A corporate individual is an
4 individual in the eyes of the law and in my eyes, as much
5 as another individual.

6 And if you are going to draw the line between
7 a corporate right as an individual and an individual right,
8 you have to draw it --

9 MR. IMPARA: Lockheed happens to be a public
10 company, and there are certain laws which regulate public
11 companies.

12 If you are talking about a private company not
13 in the public domain, your analogy may hold, but let's talk
14 about personal privacy for a moment.

15 MR. ARCHIBALD: Okay. Personal privacy. An
16 individual. What is the question?

17 MR. IMPARA: Should the individual have juris-
18 diction over the release of information to the media or some
19 other public resource?

20 MR. ARCHIBALD: No, I don't think so. I think
21 the government should.

22 MR. GENTILE: Who is the government?

23 MR. ARCHIBALD: Executive, Legislative, and
24 Judicial. All three.

25 MR. IMPARA: You said earlier the court should

1 make the decision, rather than the agency.

2 MR. ARCHIBALD: Under this law they do. They
3 do make the final decision.

4 MR. GENTILE: This is exactly one of the points
5 I want to follow up, because you said earlier that the
6 courts should decide and not the administrator, and your
7 colleague Mr. Small pointed out that perhaps even juries
8 shouldn't be private.

9 I propose that you gentlemen, who have been
10 extremely hard on bureaucrats, and the federal government.
11 -- I am with the state government --

12 (Laughter.)

13 -- are mixing a few things together here. You
14 are mixing different branches of government. You are
15 mixing public information, which you are not prepared to
16 define, and you are mixing private information, which we
17 are trying to define.

18 Now if you are complaining about the bureaucrats'
19 administration of Freedom of Information Act, and if at
20 the same time you are admitting that you can't even define
21 the public record, I don't see that you have a valid
22 complaint if you can't even define your terms -- how do you
23 find us guilty?

24 MR. ARCHIBALD: We left it up to the lawyers.
25 They define the term.

1 programs.

2 The chances of getting down to that individual
3 are extremely remote, if ever.

4 Very frequently, when one has access to the kinds
5 of records that you are talking about, one might say an
6 examination of records shows as follows.

7 If you read the New York Times, you have seen
8 them discuss, for example, the welfare program, and you can
9 talk about X, Y and Z, rather than John Jones or Peter Smith
10 or whatever.

11 What we are saying to you is, the thrust of the
12 information problem is not so much on those single individuals
13 but the problem is that the public at large does not have a
14 clear grasp of what it is government is doing, because so
15 much of it is clothed in secrecy.

16 MR. GENTILE: Fine. What we as a committee are
17 trying to do is strike that delicate balance between
18 having complete openness of public records and yet not
19 invading an individual's privacy.

20 And perhaps the news media -- CBS itself -- would
21 like to provide certain guarantees, if they need certain
22 information, that privacy would not be invaded.

23 But perhaps it is already invaded when it is
24 just passed on to you. I don't know. But it's a complex
25 problem, and what I take exception to is the broad

1 generalizations which kind of oversimplify the problem.

2 It's not a simple problem. It's a very complex
3 problem. And I think you gentlemen have oversimplified it,
4 carrying it, as you say, as extremists.

5 MR. SMALL: I would be happy to accept that
6 charge.

7 I think perhaps we have oversimplified, certainly
8 in our opening remarks, just as you have oversimplified the
9 case of what happens if public records are truly public, that
10 some poor devil sitting in Des Moines, Iowa has all his
11 emotional problems exposed to the world. That just doesn't
12 happen.

13 MR. GENTILE: But again, we haven't really defined
14 the public record yet.

15 Mr. Archibald, were you instrumental in writing
16 the legislation of the FOI Act?

17 MR. ARCHIBALD: I was involved, yes.

18 MR. GENTILE: Now if you can define what the
19 public record is --

20 MR. ARCHIBALD: I don't have to. It is already
21 defined.

22 What I say is the Freedom of Information law does
23 not define a public record. Public Law 44 U.S.C. 366, 1964 --
24 it's been recodified -- this is a Congressional enactment
25 redefining an official record or public record. It is in the

1 law itself there.

2 MS. GROMMERS: Senor Anglero has a different
3 viewpoint which might produce what we are looking for here.

4 I will speak to you all about what is in your
5 charge and the advisability of reading it before the meeting
6 ends.

7 MR. SMALL: Would you like it read? It's only
8 one paragraph.

9 MS. GROMMERS: No, I think we'd better go on to
10 Senor Anglero.

11 MR. ANGLERO: The only question I do have at this
12 moment -- I don't know that much about this law. What I
13 would like to know is how much -- from the discussion, I
14 get that it covers the federal government, but I cannot get
15 that it covers also the state and local governments.

16 Is this true?

17 MR. SMALL: No, it is a Federal law.

18 MR. ARCHIBALD: Only Federal. Now many states --
19 a few states have similar laws. Some of them much better
20 laws involving access to public domain, and more important,
21 access to the meetings and actions of governing bodies.

22 But this law covers only the Federal government.
23 But that is almost everything.

24 MR. ANGLERO: Not for me.

25 MR. SMALL: Not for me either. And we should

1 make clear that this refers to the Federal government and not
2 to the Congress, because the violations, if you will, of this
3 spirit in the Congress are far more common than they are in
4 the Federal government. The number of private committee
5 meetings in secret is astounding. What is the total now --
6 thirty-seven percent of all committee meetings -- something
7 like that -- that's over one-third, including the very
8 subcommittee that wrote this Act, when they met at the
9 beginning of this Congress.

10 MS. GROMMERS: Well, we are not looking at that.
11 We are only looking at private, personal information.

12 Mr. Siemiller?

13 MR. SIEMILLER: Yes, I have a couple of
14 comments, and two questions.

15 I come from the trade union movement, and I
16 charge you, Mr. Archibald, first with creating a jurisdictional
17 dispute by substituting the hog for the well-known bull.

18 MR. ARCHIBALD: You don't represent that
19 group, though.

20 MR. SIEMILLER: And you, Mr. Small, you are
21 guilty of a wrong classification of this committee, because
22 if you will look at the people and their backgrounds, you
23 will find the most heterogenous group you ever saw put
24 together.

25 So when you said "you all" as to one situation,

1 I think you were entirely wrong.

2 Then, Mr. Archibald, you said you knew a lot
3 of guns twenty-five years old that have killed people. I
4 challenge you to name one.

5 And then you, Mr. Small, does the public have
6 the same right to know the sources of your news programs
7 and the people -- background people -- involved, as you
8 contend the public has the right to know all other things
9 of individuals?

10 MR. SMALL: They do when those sources are public
11 records.

12 MR. SIEMILLER: It seems like we had quite a
13 court case recently about that too. That's all I have.

14 MR. ARCHIBALD: You don't mean, Mr. Siemiller,
15 that twenty-five year old guns don't kill people?

16 MR. SIEMILLER: I didn't say that. You said
17 you knew a lot of twenty-five year old guns that have
18 killed people, and I said name one.

19 MR. ARCHIBALD: Well, I've got a (Huntsinger)
20 380 at home. And an M-1.

21 MS. GROMMERS: Miss Cox?

22 MS. COX: No, I am completely squelched right
23 now. I feel I have no rights and privileges. I mean, just
24 because I am over sixty-five and draw welfare checks, that
25 means that the government has all my personal data, according

1 to you, and has all my personal medical data, you can do
2 anything with it, right or wrong?

3 Now remember, the government collects a lot of
4 information that isn't required by law. If you say if it is
5 required by law, I couldn't get paid for my Medicare if the
6 doctor doesn't write in.

7 And I still think it's in violation of my privacy
8 when I go into the hospital and have Medicare put on my door.
9 It discriminates me against those who are not
10 Medicare patients. That is in violation of my privacy.

11 MR. ARCHIBALD: I couldn't agree more.

12 MS. COX: I don't have to tell everybody that
13 I am a Medicare patient. It's known when you are over sixty-
14 five. But some of these things are just in violation of my
15 privacy.

16 MR. SMALL: I think the argument of what they
17 put on the hospital door is perhaps with the hospital or
18 the administration of the hospital.

19 But I'd like to make clear -- I keep saying that;
20 I sound like someone in the White House -- I'd like to point
21 out that, as heterogeneous as your group is -- and I admire
22 you for that -- that you are not the only protectors of the
23 rights of the individuals in this country.

24 And that if you look at the history of battles
25 for individual privacy, I think you will find the press has

1 been in the forefront. And I don't want to leave here
2 as the villain in that case.

3 The questions you raise are very difficult
4 ones, and when you narrow them down to the kind of question
5 you have just discussed, obviously they are not easily
6 dismissed by generalization from either me or from others
7 in this room.

8 They are difficult questions. It seems
9 to me you also raise questions about how much should the
10 government be asking you or others about your own private
11 life to receive these benefits.

12 MS. COX: Well, I am sure there is ten times
13 as much asked for than is needed in order to operate many
14 of these agencies. They put in every question they can
15 think of sometimes.

16 MR. SIEMILLER: Plus two.

17 MS. COX: I have property. I own property.
18 Of course, it's registered. I have a deed. It is public
19 to that extent. But isn't it my property?

20 MR. SMALL: Of course.

21 MS. COX: And I might have -- I don't look
22 like I ever had, and I don't -- a medical history. Isn't
23 that partly my property?

24 But I am forced to give some of that to the
25 government. Don't I get any protection on that? Because

1 if they let it go to an insurance company, I might not --
2 I mean I can, but I might not be able to get insurance, just
3 because there is some medical record.

4 MR. SMALL: Some of these questions really
5 should be raised, should they not, with the government
6 agencies that are seeking this information.

7 MR. ARCHIBALD: I'd like to go back to the line
8 Mr. Gallati drew. I don't think that under Medicare or
9 Social Security you are receiving any grant or benefit or
10 largess. You earned that. Just like with Social Security.

11 MS. COX: It's my right.

12 MR. ARCHIBALD: They earned that. That is not
13 a government benefit. Nobody is doing anything for you. You
14 did it for yourself.

15 That has nothing to do with what we are talki ng
16 about. There is where you draw the line.

17 MR. WEIZENBAUM: That goes even more to the
18 fact that it is private information.

19 MR. ARCHIBALD: Exactly. I agree.

20 MR. SMALL: How much of this private information
21 should government agencies have, and how much should they
22 share with other agencies?

23 MR. WEIZENBAUM: That is the issue we are trying
24 to wrestle with.

25 MR. SMALL: I wish you well.

1 MR. WEIZENBAUM: But you are subverting that
2 process by insisting the press can get access.

3 MR. SMALL: Well, to the press, but also to the
4 public at large. The press or individuals or insurance
5 companies. If this material is in the public records, it
6 should be open.

7 MR. WEIZENBAUM: But you just told me that cer-
8 tain information shouldn't be collected by government
9 agencies. So government agencies collect for a certain
10 purpose, and then carefully limit it to collecting the
11 right information, then you claim you can get it and
12 distribute it to anybody without control.

13 Don't you see an inconsistency?

14 MR. SMALL: If this were an easy question to
15 resolve, you wouldn't even want us here, would you?

16 MR. ARCHIBALD: Or you wouldn't be here.

17 MR. SMALL: One of the problems, if you examine
18 the guidelines on the FOI Act, is that the Members of
19 Congress sought to protect, if you will, these various
20 areas. Except their interest extended beyond just your
21 medical history or your insurance problems, but to the
22 question of the Pentagon and the CIA and the State Department.

23 And maybe some of these are indeed valid. I am
24 not sure.

25 MR. WEIZENBAUM: That is not a hard line to draw,

1 really.

2 MR. SMALL: It's a very difficult line to draw.

3 MS. GROMMERS: Mr. Davey, do you have a question?

4 MR. DAVEY: Yes, I'd like to --

5 MR. SMALL: But I would contend that individual
6 rights of privacy are disappearing, not because what little
7 there is has been revealed in the press, because it is
8 comparatively little about any great interest, but because
9 of what government is seeking.

10 MS. GROMMERS: His point was not what the press
11 was doing as much as to point out the inconsistency of the
12 position you had taken.

13 MR. DAVEY: I would like to look at this ques-
14 tion involving information which is given on a confidential
15 basis.

16 There are a number of forms and things which
17 people, either welfare recipients, medical people who gather
18 the information for research purposes, any number of
19 things, where it is stated explicitly on the form that this
20 information will be kept confidential.

21 Now is there any obligation that you would
22 feel in that type of situation -- I mean you -- I mean
23 representatives viewing the open information act, as having
24 any kind of responsibility to those individuals who gave
25 it under those circumstances, number one?

1 And number two, should that statement be taken
2 off if it does come against this? How would this be
3 defined? How would you see this? What would you like to
4 see? How would you like to see it structured?

5 MR. SMALL: Mr. Barrett, you haven't given
6 us any help for an hour.

7 MR. BARRETT: I'm not sure.

8 MR. DAVEY: I guess it's been raised as an
9 issue in the past, the right of privacy and freedom of
10 information just kind of impinging, and this is one area
11 where it really does come on into each other and where some
12 type of confidentiality has been expressed and promised.

13 And now we are afraid that that promise may not
14 be able to be observed or followed through. Now that is
15 one problem.

16 Then the second problem is how should it be
17 handled in the future. Should those statements be on there,
18 if indeed it cannot be kept secret or confidential?

19 MR. BARRETT: Well, I don't know exactly what
20 statements you are referring to, but I do have the impression
21 that we have in government given assurances of confidentiality
22 that we do not have authority to give.

23 And I think sometimes we have misled people.
24 And when it came down to the crunch, we weren't able to
25 deliver.

1 In the areas that I have worked in, that has
2 occurred in my experience, where we are getting information
3 from individuals regarding civil rights violations, and they
4 might say, well, I don't want to tell you what is going on
5 when we go down and try to vote, or at the school, if
6 anyone else is going to know that I told you. It's very
7 tempting to tell the person, "No one will know."

8 You simply can't do it. And although the exemp-
9 tion that a-plies to personal and confidential information
10 has been read, I don't think lately, as being in the
11 disjunctive, in other words, anything that we acquire under
12 a pledge of confidentiality was in fact confidential and
13 hence exempt under the statute , I think lawyers now will
14 tell you that is not the case, that it is not just any
15 confidential information the exemption is referring to, but
16 only trade secrets, financial, and for a while this was a
17 matter of law review debate, but now it is clear.

18 Now I think that addressed the first part of
19 your compound question.

20 MR. DAVEY: Now the second part is what we do
21 now for people who would still like to see some kind of
22 confidentiality existing in information he gives to whatever
23 source, and the inability to observe that. What do we do?
24 Do we state a statement on this thing that because of the
25 Freedom of Information Act, which has been published, we will

1 try to keep this confidential, but there may be some event
2 in which this whole thing may be opened up?

3 MR. BARRETT: Well, I will give you a personal
4 view, and that is that the confidentiality of the information
5 in the hands of the government, once received, should not
6 depend on what was said to the individual from whom it was
7 obtained at all, but should depend on the character of the
8 information itself.

9 And that for one thing will avoid slippage in
10 who said what and who is entitled to what.

11 It will tend to put the less alert, less smart
12 on the same basis as everyone else.

13 The tough question -- really two questions, I
14 guess -- what information indeed should the government
15 be obtaining or be able to force from individuals? And
16 secondly, having done so --

17 MR. DAVEY: I don't want to mislead anybody,
18 but those are very interrelated.

19 MR. ARCHIBALD: I wonder if I could answer the
20 second part with some examples in this field of what I think
21 to be the proper handling of so-called confidential,
22 trade secrets, privileged information.

23 The Environmental Protection Agency has
24 adopted the best system. Most of HEW has the second best.
25 And no other agency is in the whole ball park.

1
2 This came up a number of years ago in connection
3 with the Rural Electrification Administration. They accepted
4 requests for loans from small groups of farmers and so forth.
5 The investors owned tax-paying electric power companies
6 that objected to the government helping people get electricity
7 and they wanted to know -- they demanded to know -- who filed
8 for a government loan, an REA loan, how much they were
9 requesting, and for what purpose, and REA said, of course,
10 we can't.

11 Their purpose was to block the program, in
12 getting this information. We agreed. Incidentally, we were
13 on the side of right, virtue and REA.

14 And they said, "We automatically grant them
15 confidentiality. After we have finished and after we have
16 acted on the loan, then we will make public the information.
17 But there will be all sorts of pressures to prevent it if
18 we give it out before."

19 We worked out a compromise. Confidentiality would
20 not be automatically granted. Confidentiality had to be
21 requested by the agency or individual asking for confi-
22 dentiality, and would only be granted at the discretion of
23 the agency under some sort of conditions where there was some
24 decision that it was necessary.

25 It went to the content of the information, the
importance of the confidentiality, and not just to the
automatic request.

1 This is what EPA has adopted, the system they
2 have adopted in all the filings they require from businesses,
3 individuals, and so forth, on how badly they are polluting
4 the atmosphere and waters. We will make this public
5 unless you prove to us the need for confidentiality.

6 As a result of the REA experience and so forth, in
7 EPA's experience the number of requests for confidentiality
8 have dropped way, way down.

9 When they have to prove it, they don't ask for
10 it. And the grants -- well, it's been about half and half
11 in some cases, with REA, after they required them to request
12 confidentiality, they only granted it in four or five
13 cases compared to fifty or sixty each year before.

14 So the answer to your question is that a
15 government decision is not just an automatic stamp of
16 confidentiality.

17 MR. SMALL: Sam, what do you do when the lady
18 says, "I'd like my private medical history kept confidential"?

19 MR. ARCHIBALD: And the government refuses?

20 MR. SMALL: No, do you say her request is
21 enough?

22 MR. ARCHIBALD: No. Somebody must make the de-
23 cision. They must say this deserves confidentiality or
24 it doesn't.

25 Then if that decision is objected to, you can

1 go to court, through the Freedom of Information Act.

2 But right now, in too many cases, it's automatic.
3 I'd like it thoughtful.

4 MS. GROMMERS: Mr. Gentile?

5 MR. GENTILE: I have one little comment. It
6 follows what you just said about the route of appeals, et
7 cetera.

8 I'd just like to point out that the Secretary
9 has brought together a group from government, private
10 industry, and we plan on conducting public hearings. We do
11 not view that the people who make these determinations
12 and decisions should be the bureaucrats that you so
13 violently objected to earlier, but rather that we should go
14 to the people.

15 The government, you mentioned earlier, was the
16 three branches -- Judicial, Congressional, and Executive
17 Branch. And what we are saying is that that really is just
18 a vehicle for government. That we are going to the people
19 and that it should not be solely the Executive Branch or
20 the courts or the judiciary, nor any special interest group
21 such as the press or news media, but that we should go and
22 conduct hearings and do our own research and come up with
23 these kinds of value judgments that you are addressing.

24 That's no question, just a comment.

25 MR. SMALL: I don't understand. You are talking

1 about a panel?

2 MR. SIEMILLER: This panel.

3 MR. SMALL: To decide in terms of each of
4 the federal agencies? I lost your point, sir.

5 MR. GENTILE: Our point was in establishing
6 the value judgments to determine is this lady's medical
7 file private, we are going to the people, and will get a
8 fair cross section of the people.

9 MR. SMALL: You are talking about the standards
10 you will recommend?

11 MR. GENTILE: Right. And even perhaps a vehicle.
12 We are not that far along in our work that we could say
13 we would not recommend some board or panel that should review
14 special cases.

15 MR. WEIZENBAUM: I am so stunned by what I have
16 heard, I am almost speechless.

17 MR. SIEMILLER: Oh, Boy.

18 (Laughter.)

19 MR. SMALL: If so, you are unique in this room.

20 MR. WEIZENBAUM: It seems to me that the first
21 authors of the Constitution, when they wrote the First
22 Amendment, I think had in mind that if the government were
23 to always fairly, consciously, competently and in strict
24 observance of human rights conduct its affairs, probably
25 a free press would not be necessary. That they insisted on

1 freedom of the press, because they knew that the government
2 could not be counted on. They were very fearful of the
3 government, having an experience with King George the Third
4 and others, they were fearful that the government might not
5 fairly, consciously, competently, and in strict observance
6 of human rights, conduct its affairs.

7 And so consequently, it seems to me they in
8 effect charted the press, what the French call the Fourth
9 Estate, to in effect become another arm of government,
10 autonomous of the government machinery.

11 It seems to me, therefore, that in effect they
12 put a burden of responsibility on the press to fairly,
13 consciously, and et cetera, conduct its affairs.

14 I think in those terms, I move to say that you
15 have done a disservice to the press, to this committee,
16 and to our charge here, in having so over-stated your case
17 that you drive people like me, for example, who are enormously
18 in favor of very, very much more freedom of information
19 than we have today -- you positively drive us in the
20 opposite direction.

21 And I think we have to adjust to getting back
22 to our former position in favor of freedom of the press
23 and freedom of inquiry.

24 For example, well, you have already agreed it is
25 a much more complicated problem than your simple slogans

1 would lead us to believe.

2 For example, when you characterized what is a
3 public record, in effect you said anything the government
4 official writes down. Or let's restrict it to the eight
5 or ten or fifteen hours he might be in his office.

6 This then implies that if the man happened to
7 have been fool enough -- and there are lots of fools in the
8 government -- the man who turned over the Kissinger papers
9 to the press -- if he happened to make a note of that, perhaps
10 even a note of transmittal, that becomes a public document.

11 MR. SMALL: Of course, it should.

12 MR. WEIZENBAUM: Therefore, you would argue that
13 the government -- the right the press claims to protect
14 informers would disappear. And the press insists on certain
15 rights, and I agree the Supreme Court decision is tragic I
16 think. We understand that problem.

17 I just want to close with one personal observa-
18 tion, an axiom that I have long held to, which I call the
19 New York Times axion. Obviously it doesn't apply to CBS.
20 Or maybe it does.

21 It goes: The New York Times always tells the
22 truth and the whole truth about everything it prints, except
23 for those very, very few stories about which I happen to have
24 personal knowledge, in which case they are always substantially
25 wrong.

1 If I could trust the press to exercise considera-
2 bly more discretion than you have exercised here, then I'd
3 be very much in favor of opening the gates very much more
4 than they have been.

5 On the other hand, the press is just people, too.
6 Just like the government. And if I thought there was that
7 much discretion in a very large institution, then I would
8 hope that I could transform the government to have that much
9 discretion.

10 I am sorry that you have so vastly overstated
11 the case.

12 MR. SMALL: I am sorry we have offended you.
13 But let me say about the nature of a free press in our
14 society, that if you think that the New York Times is
15 providing you with the truth and the entire truth, you have
16 a poor understanding of what the news media does.

17 MR. WEIZENBAUM: I don't think you understood
18 my point. I said it provides -- I strongly believe it is
19 the truth, the whole truth, except in those instances where
20 -- it's a joke.

21 (Laughter.)

22 Do I have to explain the joke now?

23 MR. SMALL: No, I am delighted you have
24 identified it as such.

25 MR. WEIZENBAUM: My personal experience with

1 CBS is exactly to the same point.

2 MR. SMALL: That's fine.

3 MR. WEIZENBAUM: No, it isn't fine.

4 MR. SMALL: All right then, it isn't fine.

5 However, you like.

6 But let me say that what we do in the press
7 is to look for truth, and on any given day we don't necessarily
8 find part of it, any of it, or what you know to be true.

9 The reason we don't is that we are seeking
10 information from people, including many of them in the govern-
11 ment who don't want to give us information.

12 And so all we can report at any given moment is
13 as much as we can determine. And on occasion, our interpre-
14 tation of what we have discovered.

15 In the words of Walter Lipmann, it is a search
16 light working its way around in the darkness, and it can
17 only touch on this point or that point, and events keep
18 moving along, and there is a great deal that we will never
19 publish and never broadcast because we will never discover
20 it.

21 And there are some things we discover twenty,
22 thirty or forty years later that belong to historians, but
23 they appear in newspapers or on broadcasts.

24 But that is no reason for us not to continue
25 in search of this. And to seek every device possible to

1 make it easier to find out as much as we can.

2 The Pentagon Papers are a good example of
3 material that, had we known them at the time they were
4 written, would have been devastating to the course this
5 country was taking at that time, which I think most people
6 have concluded since was the wrong course.

7 And we did not have access to the Pentagon
8 Papers then. And if the man who released some secret
9 documents involving Henry Kissinger was fool enough to write
10 a note of transmittal, and we found it, it should also be
11 made public.

12 We are not in the business of trying to pre-
13 judge what Kissinger means or doesn't mean. We are in the
14 business of trying to tell as much as we can find out about
15 important events to our listeners and to our public.

16 And I don't feel that we have been engaging
17 in slogans here. You start from a different premise. You
18 state at one end and worry about the woman whose personal
19 life may be hurt by the press. That rarely happens.

20 We start at the other end, with the immense
21 body that we call government. But you are doing a great
22 deal of injury to that man and many more, and we can help
23 if we can tell as much as we can about what he does.

24 That was the purpose of this legislation. That
25 is the purpose of our being in the press.

1 And I don't see why you find this chasing you
2 to a new position. That is what we are all about. And we
3 are indeed an autonomous body. We are not part of the
4 government.

5 And we have failings and we make a lot of mistakes.
6 Of course there are errors in the New York Times. There are
7 errors on CBS.

8 But the only way a citizen can learn about what
9 the hell is happening in our world is to read and listen
10 to as many sources of news as he can, and begin to make
11 independent judgments. And this is more possible today,
12 than it ever has been in our history.

13 And if we open more government, it will be
14 still more possible for the individual citizen to make
15 judgments and to find out material on his own.

16 You know, I had lunch today with a man who used
17 to be at NASA, a very high executive. He's now in the
18 Defense Department. And he's very unhappy because he feels
19 the news media -- it was an argument over the bombing of
20 the dikes -- and he feel the government is treated badly
21 in all the reporting so far.

22 And at one point he stopped and said, "Do you
23 know (Curt Davis)?" I did not. He said, "He once told me
24 that he hates the press because they push around and distort
25 what he says, and he has all kinds of problems until he

1 remembers that when he was in Hitler's Germany, all he heard
2 was Goebbels and he believed it.

3 MR. WEIZENBAUM: I must say I agree with you. All
4 I was trying to say was that you should exhibit the kind
5 of humility that you have just done, to point out the
6 difficulty of the task, which is also the difficulty of our
7 charge.

8 That is all I was trying to say. And when I
9 mentioned the Kissinger thing, what I was suggesting there
10 was that if in fact those documents had come to the New York
11 Times with a transmittal slip, that would have been a
12 government document, that they would have chosen not to
13 publish in the interest of protecting their sources.

14 I think our charge is correct, that we should
15 worry about that one man, who has a record with the
16 Veterans Administration or the welfare people. We should
17 worry about him, because he is multiplied many times over.

18 There are many more people, and it is in our
19 charter. Someone has to worry about that one man. There
20 is too little of that worrying going on.

21 And I think the press has a function to bring
22 this problem to the attention of the people.

23 MR. SMALL: If I were humble, I didn't mean to
24 be.

25 (Laughter.)

1 MR. ARCHIBALD: May I add one minor point.

2 I find myself, as I said, often defending the press, but I
3 don't defend the press's right to know. I am talking about
4 the public right to know. The press is only a part of that.

5 And I think that you made the point very, very
6 clear when you said we know what was in the minds of the
7 authors of the First Amendment. What you don't know is
8 that it was an open debate that the amendment was kicked
9 around in Congress.

10 And you know why they had to kick it around?
11 Because we don't know what was in the minds of the men
12 who created the Constitution, because that was a secret
13 meeting.

14 We have a right to know what the government
15 is doing, and somebody has to be extreme, because everybody
16 else except me and Bill -- and sometimes I wonder about
17 him -- are on the other side.

18 MS. GROMMERS: Let me call on Miss Noreen.

19 MS. NOREEN: Pass.

20 MS. GROMMERS: Mr. DeWeese?

21 MR. DE WEESE: I guess I just have to follow
22 up for a second, for a little bit, what Mr. Weizenbaum
23 has said. Because I agree with him a hundred percent.

24 He is not questioning your goal. What he is
25 saying is that the means that you are using to get to that

1 goal have some side effects which I am not certain that
2 you have considered fully, or if you have considered them
3 for the sake of the record, you are passing over them to make
4 your case as strong as it possibly can be.

5 And I think really, in practice you are not
6 interested really in the kind of information that we are
7 trying to protect.

8 I read most of the cases under the Freedom of
9 Information Act, and there hasn't been a case where the
10 press has sought this kind of information. But there have
11 been people who have snuck in the back door.

12 This Act was passed to open up government to
13 the people, via the press, but the problem is that other
14 people have snuck in and abused this Act, and the result
15 has clearly been to invade people's privacy.

16 An example -- it wasn't the press that requested
17 the information about people in this country who own fire
18 arms under the 1968 Act. It was a mail order house and it
19 used the information to flood people with hundreds and
20 hundreds of circulars about guns.

21 This is an invasion of privacy. It wasn't the
22 press that sought this information.

23 And this brings me to my second problem, which
24 is sort of a comment which doesn't really refer to you, and
25 that is, for the benefit of this committee, I think of how we

1 can change the Freedom of Information Act.

2 The problem with the Act is that the government
3 is the advocate for the individual. And in those cases
4 where a party under the Act is seeking the kind of information
5 we are trying to protect, individual files of people outside
6 the government, the government acquiesces.

7 The Treasury Department that decided to give the
8 gun records to the mail order houses. The Treasury Depart-
9 ment said, yes, go ahead, take it. And this is the problem
10 that I think we face as a committee.

11 The way the Freedom of Information Act can
12 be changed around is by replacing the government with an
13 ombudsman-type of affair where the individual's right
14 will be litigated at the trial court level, which isn't
15 happening now under the Act because the Government acquiesces.

16 The government only puts up a strong defense
17 when it goes to government operations. That is the kind
18 of information you are concerned about. And when it concerns
19 information about people in government, then they put up
20 a strong defense. But when the request comes from a mail
21 order house, about individual records, there is no
22 defense. They acquiesce.

23 That is the real problem, and your position
24 and our position are not in conflict, I don't think.

25 MS. GROMMERS: Mrs. Hardaway?

1 MS. HARDAWAY: I thought all the years that
2 Huntley and Brinkley were taking the awards that it should
3 have gone to CBS.

4 MR. SMALL: That was unsolicited.

5 You know, the President spoke at the newsmen's
6 dinner this year, and he said the Vice President has three
7 television sets in his bedroom. One is tuned to ABC, one
8 is tuned to NBC, and the other is turned to the corner.

9 (Laughter.)

10 MS. HARDAWAY: My twenty-two year old daughter
11 at Vanderbilt University had an experience with your
12 station that I need to get clear in my mind.

13 On your Six O'clock News three months ago, the
14 statement was made that a source close to the President
15 told this reporter today thus and such.

16 It infuriated my twenty-two year old daughter
17 who was watching the news. She immediately went to the
18 telephone and put in a long distance call to your New York
19 office, and wanted to know who that source in fact was.

20 That began about a six week running battle with
21 CBS between Lynn Hardaway and CBS. During that time, she
22 talked with several people in the News Department. Her
23 question was always the same -- "Who was that source. If
24 you are going to tell me that as a matter of fact, then
25 I have a right to know is that an accurate source."

1 She was promised letters. She never received
2 one. She was promised return phone calls. She did not
3 receive those either.

4 Finally, on her last phone call, she may have
5 talked to the president. She was pretty determined. But
6 the gentleman told her to hold on just a moment -- on her
7 own money and her own time she held exactly thirteen minutes.

8 And at the end of that time, a young lady came on
9 the phone and read her a statement which said, in fact -- and
10 she did take it down on the tape recorder, and I don't know
11 if she still has the tape or not --

12 MR. SIEMILLER: Which is illegal. She'd better
13 not have.

14 MS. HARDAWAY: It said it was a reliable source
15 and that CBS had verified this source as being reliable.

16 However, in the interest of the security of their
17 source, they could not divulge that name.

18 Now, my question to you is, you are in the
19 business of keeping me, a citizen, informed, and I am glad
20 you are in that business, and I approve and I want you to
21 continue.

22 But I wan't to be very certain that you are
23 factual when you inform me. And in fact on that subject you
24 were not, because later news proved that you were not factual.

25 Now your president and vice presidents and

1 directors made that decision. Someone did on a high level,
2 for that young lady to read that statement, as perfect as
3 it was, to my daughter over the phone.

4 What is your prerogative in making that statement
5 that would make you any different from the President of the
6 United States of America, who would make that same decision
7 about a question of national security? And what would make
8 you wiser than he?

9 MR. SMALL: Let me say, for starters, I'd like to
10 hire your daughter. She's far more persistent than our
11 reporters.

12 You raise an entirely different question, which
13 was touched on earlier here. The question of sources involving
14 the news media.

15 And at the danger of sloganeering, and over-
16 simplifying, the first thing to note, of course, is that
17 the news media is not an arm of the government, that it's
18 not part of the government.

19 For example, if you want to know how I make
20 decisions, at the news desk here in Washington, I probably
21 would tell you because you are charming and you have this
22 great daughter.

23 But I don't have to tell you, and nothing in
24 the law says that I have to, no more than anyone in this
25 room if interviewed by reporters has to talk to them about

1 anything he wants, unless of course he is in the government.

2 MR. GALLATI: You have received the government
3 benefit. You are entitled to use the airwaves. You should
4 disclose everything. You have a very great government benefit
5 given to you.

6 MR. SMALL: Well, given to the stations affiliated
7 with us. Networks are not yet licensed.

8 But this Administration has five months to go, and
9 maybe four years more, so that could change, too.

10 But it's true that individual stations have a
11 license to broadcast. But --

12 MS. GROMMERS: I think if you could continue
13 to speak to Mrs. Hardaway's question.

14 MR. SMALL: Well, it is speaking to that, in that
15 they are not required, of course, to reveal their practices.
16 In other words, what I am saying is that we ask more of
17 government than government or individual citizens can demand
18 of us, but this is part of what the First Amendment is all
19 about.

20 And there are good reasons for that. Now I am
21 sorry about your daughter. I am particularly sorry she had
22 to wait thirteen minutes and pay for it on a long distance
23 line.

24 But CBS, for example, had no need even to read
25 that statement to her under law. As a matter of public

1 relations, that's something else.

2 The reasons for this are very good. The history
3 of freedom of the press in this country, going back far
4 before this became a nation, going back to the (Senger) trial --
5 the reason is that if you permitted as much publication
6 in those days as possible, and the newspapers were not
7 responsible then, most of them were pamphlets and they were
8 wild in their charges, but the thesis was that if you would
9 permit as much as possible that this meant information, even
10 though much was fraudulent, was getting out to the public,
11 and this was far better than having the voices restricted
12 to that of the government-subsidized newspapers, which we
13 had.

14 George Washington and Thomas Jefferson were
15 great spokesmen for freedom of the press, but they had
16 their own subsidized newspapers in this city that published
17 the Administration view.

18 But the contention of the First Amendment, and
19 these men in their support of it, was that as many other
20 voices that could be heard should be heard. There is no
21 compulsion other than the laws of slander and libel -- which
22 have been pretty much, I am afraid, dismissed by the Sullivan
23 decision -- but no compulsion on the press to identify
24 its sources. Or has not been.

25 MS. HARDAWAY: One follow up question. Obviously
for some reason the decision was made that that source

1 should be protected. Correct?

2 MR. SMALL: Yes.

3 MRS. HARDAWAY: You felt a need to protect your
4 source or your individual, because your reporter said "a
5 source close to the President" which would indicate one person,
6 so you felt a need to protect that person.

7 Then would you agree that, under some other
8 given set of circumstances, individual people would have a
9 right to protect their privacy? Or would you set yourself aside
10 in all other circumstances?

11 MR. SMALL: Of course people have. But we have
12 been talking about, today, matters of public record. Matters
13 involving the government.

14 Of course individuals have a right. I might say
15 that while CBS policy may tolerate it, my own personal view
16 is one of antipathy toward anonymous sources, and this city
17 is particularly bad in this regard.

18 I think it's dreadful, because the press is used
19 by the anonymous State Department spokesman, etc. It happens
20 even today.

21 MS. HARDAWAY: So if my individual record has
22 become a public record, you then feel you should not protect
23 it?

24 MR. SMALL: You lost me there. You mean --

25 MS. HARDAWAY: In other words, I asked you if

1 you felt there were given sets of circumstances where
2 an individual's right should be protected; you said yes, but
3 that public records should not be protected from privacy.

4 So that if my individual record has become a
5 public record, through welfare, mental health hospital, or
6 et cetera, I have then lost my rights under your --

7 MR. SMALL: What I am saying is the emphasis
8 should be at the other end. When government seeks this
9 information of a private nature from you, the restriction
10 should be on the government, at that end, and not the public's
11 right to look at it.

12 The reasons are very simple. Let's assume -- you
13 live in Nashville? Let's assume there are large federal
14 grants to Nashville's welfare system, or whatever. And that
15 the man who is running it is a crook. And he loads the records
16 with his relatives and friends and neighbors, and people
17 who are kicking back part of those sums.

18 Well, the way to determine that is to examine
19 the records. Now those records may include material that
20 is personal. And the nature of the press, I don't think
21 much of that would become public, but it's quite possible;
22 if a reporter has access to your records, he at least knows
23 that about you.

24 What I am saying is, at the other end, matters of
25 that nature, whenever possible, should not be assumed by

1 the government interrogator.

2 MS. HARDAWAY: One last question. Would you see
3 any set of circumstances, or would you give any President
4 the latitude, then, of making a decision about national
5 security so far as divulging information?

6 MR. SMALL: I have rather extreme views about what
7 national security is, but the answer to that question is
8 yes, but I think I'd be more likely to say it at the other
9 end, too. The welfare recipient in Nashville. I would think
10 it would be possible to protect his rights at the very source.

11 But on the question of national security, I
12 would see some extreme example. I don't think there are very
13 many, but I would see examples, certainly in the military
14 field, where this would be necessary.

15 MS. GROMMERS: We have one question. I have one
16 short question and we have a final question here, if we could.

17 MR. MARTIN: As far as I am aware, the use of
18 words in a United States statute speaking of privacy or the
19 right to privacy uniquely occurs in the Freedom of Information
20 Act.

21 Am I wrong, or do you know of any other instance
22 where that is the case?

23 MR. ARCHIBALD: I don't know of any.

24 MR. SMALL: I don't know of any.

25 MR. BARRETT: No.

1 MR. MARTIN: I thought your observation, Mr.
2 Archibald, about the way in which this is being abused, as I
3 understood the example you gave, is very illuminating for
4 the Committee.

5 There has been a lot of advocacy in this country
6 and a lot of other countries about creating a right to privacy,
7 and I think it's a highly controversial notion.

8 I wonder if you could squeeze out any more notions
9 about the efficacy of this provision and law. It sounds
10 as though this law is a double-edged sword, and this is a
11 sword which this Committee may want to be picking up some
12 way or other.

13 Are there any words of counsel on that?

14 MR. ARCHIBALD: Well, there was a hearing on
15 strengthening of the privacy exemptions. This was a hearing
16 resulting from the gun nuts experience. There will be
17 consideration by the House Operations in Government,
18 Information Subcommittee of strengthening the privacy
19 protection, particularly as it applies to the purchase or
20 sale of mailing lists and those sorts of things.

21 I don't think it's going to get anywhere. If
22 it were possible to do it by law, you people wouldn't be here.
23 The Congressmen would have been doing it already.

24 I don't know. This is an apparent clash -- and
25 I'm not sure it is a clear clash -- between (a) the right

1 of privacy which is even more undefined than the right of
2 access to the public record, at least by statutory enactment.

3 It's something I think that as we go toward 1984,
4 you are going to come up with, I hope, a solution of.

5 But what we are seeking is the public record,
6 the official record, the record of an action of a government
7 agency. If it impinges upon an individual, somebody is
8 going to get hurt.

9 Here's a case -- and maybe you read it in the
10 Nashville Tennessean, Ma'am.-- where a blind gentleman
11 receiving benefits -- among them the FHA loan appraisal and
12 loan for his house --

13 MS. HARDAWAY: Right.

14 MR. ARCHIBALD: He was sorely put upon, apparently,
15 by the Government. Now the newspapers, the Nashville
16 Tennessean, wanted to see the FHA appraisal of this house.
17 And the FHA did everything possible -- and I mean everything
18 possible -- to block their access to this FHA appraisal on this
19 gentleman's house, the blind gentleman, who worked for a
20 Federal agency and was receiving various sorts of aid and
21 including a special FHA appraisal, and help in buying the
22 house.

23 They were denied access to this record of FHA's
24 appriasal -- a government action -- an official action -- a
25 public record.

1 They went to court. This is one of the newspapers
2 which did go to court. They went to court and the court
3 ruled they had a right of access to this FHA appraisal of this
4 house.

5 So they got the appraisal. A completely illegible
6 copy. They had to go to court again to get a legible copy.

7 The court said all right, but the name of the
8 appraiser -- and the contention was that this government
9 appraiser was either playing footsy with somebody, or was
10 stupid for appraising a \$4,000 house at the \$10,000 level.

11 MS. HARDAWAY: \$2,000, actually.

12 MR. ARCHIBALD: All right. The court said you
13 can have the legible copy, but not the guy's name. So they
14 went to a higher court. The higher court said, yes, you
15 can have the guy's name.

16 They went to the appraiser, and he said, "I made
17 a mistake."

18 It took a couple of years to correct this mistake,
19 and they invaded this blind gentleman's privacy. They
20 invaded the hell out of it, and helped him in so doing.

21 MS. HARDAWAY: He requested the help. They
22 didn't get into that until he requested it. And I believe
23 that we need to make that point clear. He requested help
24 from that newspaper.

25 They did not invade his privacy. He went to the

1 newspaper and asked. As a matter of fact, it wasn't two years
2 ago, it happened during a recent campaign, political campaign
3 that I was involved in, and he went to the candidate that
4 was eventually elected Governor, and he turned him to the
5 newspaper, and that is how it came about.

6 But he asked for help. Therein lies the danger
7 of what I think we are all talking about. You did not state
8 that properly, and did not give the clear facts.

9 Now I happened to be here, and know that story
10 oh so very well, and you purposely left that out, Mr.
11 Archibald, and you did know that you left it out, because
12 when I corrected you, you immediately said that's right.

13 MR. ARCHIBALD: Yes.

14 MS. HARDAWAY: And you would not have done that
15 had you not known you mis-stated that from the conception.

16 MR. ARCHIBALD: That is true.

17 MS. HARDAWAY: Therein, I think, you and part of
18 the press let me down, and had I not been here, all of this
19 crowd would have had a different idea of that story.

20 MR. ARCHIBALD: But all of this crowd can go
21 to the official record, which is right here, and you are
22 absolutely right, but I am here as an advocate. I am here
23 arguing a point.

24 MS. HARDAWAY: What I am saying is, have you
25 mis-stated anything else to me this afternoon that I was not

1 familiar with?

2 MR. ARCHIBALD: Certainly.

3 MS. HARDAWAY: Then I think you have done me
4 a disservice.

5 MR. ARCHIBALD: I wasn't asked to come here
6 and tell you what will make you happy. I was asked to tell
7 you background facts and have an opportunity to argue my
8 point.

9 MS. HARDAWAY: That wasn't my question to you. I
10 said did you mis-state anything else here this afternoon?

11 MR. ARCHIBALD: Yes. I have spoken for probably,
12 off and on, an hour, and I must have made at least a half
13 dozen mis-statements.

14 MS. HARDAWAY: Knowingly?

15 MR. ARCHIBALD: If I looked over the record, I
16 would probably know them, yes. Everybody does.

17 MS. COX: You didn't do it intentionally, you
18 mean? Or did you?

19 MR. ARCHIBALD: No. I don't think so. I don't
20 think so, but I have done enough investigating and running
21 investigations to know that anybody makes mis-statements all
22 the time.

23 Did I intentionally not tell you he asked for
24 it? I didn't intentionally, but the point I was making with
25 this case is that the gentleman said the newspapers

1 haven't gone to court to protect an individual. They have.

2 The argument of the government was, initially,
3 that this would invade his privacy, in addition to a lot
4 of other things. Whether or not he asked for it doesn't
5 change the point at all.

6 The point is that the newspapers have occasionally
7 -- very seldom; too seldom -- stood up for individuals,
8 and that it is difficult to fight against the government.
9 And that it does involve little people.

10 It involves little people not on your side only,
11 protecting them from invasion by free and occasionally
12 irresponsible use, but the people on the other side, the
13 little people who need access to information.

14 MS. GROMMERS: Could I just go on with that idea,
15 which is, if you have a freedom of information and a right
16 to know, would you also be in favor, Mr. Archibald, and Mr.
17 Small, of the right of the individual to know that this
18 information was being collected about him?

19 MR. SMALL: Yes.

20 MR. ARCHIBALD: Yes. No qualification. Can I
21 make it stronger?

22 MR. SMALL: Talking about the right of privacy,
23 I think you are hard put to cite very many cases -- and I
24 know of none -- where newspapers or broadcasting access to
25 public records have violated the right of privacy of

1 individuals. Maybe you have some that I am not aware of that
2 have come before you. But it seems to me the greater danger,
3 in terms of right of privacy, is what the government has been
4 getting from individuals, much of it not dictated by law,
5 but agency fiat, or at the whim of the guy at the bottom
6 of the ladder who interviews a welfare recipient, or whatever.

7 MS. GROMMERS: Where at the moment the individual
8 does not have the right to know, would you have any
9 intention of trying to extend the freedom of information
10 to the right of the individual to have freedom to his own
11 information?

12 MR. SMALL: Under this Act, the individual has
13 every freedom that a reporter has. This act is not designed
14 to help the press. It is designed to help anyone.

15 That is why you have the kind of violations that
16 upset the gentleman in the corner, where a business concern
17 got its hands on material and used it for trash mailing.

18 MS. GROMMERS: I think we didn't really mean
19 to be looking at all the things the press might be doing
20 bad, but this came out as a possible side issue here, whereas
21 most of our emphasis has been indeed on how the press has
22 been helping, and the right to know now has been established.

23 And this could help us even more with furthering
24 the right of the individual to know as much as possible.

25 MR. SMALL: When you ask for that, you are asking

1 for things I was accused of sloganeering about.

2 MS. GROMMERS: Well, we have mixed feelings on
3 this panel.

4 MR. SMALL: I understand. But under this legis-
5 lation, any individual -- you have a right to go to the
6 Justice Department and ask for the same thing that I can ask
7 for.

8 The First Amendment doesn't talk about CBS. It
9 didn't even conceive of broadcasters. It was talking about
10 the public, and what freedom of the press means to every
11 citizen.

12 MR. ARONOFF: Mr. Small, you, through the station,
13 have done somewhat more in terms of spotlighting the
14 individual right of privacy by a CBS documentary having
15 to do with a man whose right was invaded by a credit company.-

16 MR. DE WEESE: That was NBC.

17 MR. SMALL: CBS has done one like that, in any
18 case.

19 MR. ARONOFF: I hope you recognize the strong
20 feelings here.

21 MR. Archibald, in your capacity on the Fair
22 Campaign Practices Committee, do you permit the same freedom
23 of acquisition of all information that comes in to you that
24 you yourself have just advocated? Could I find out all of the
25 allegations that have been raised in terms of unfair practices

1 against various candidates for office throughout the country
2 upon request?

3 MR. ARCHIBALD: Let me clarify for the rest of
4 these people one thing. I am just playing around with the
5 freedom of information as a side thing. My full time job is
6 Executive Director of the Fair Campaign Practices Committee,
7 a private, non-profit corporation, which has --

8 MR. ARONOFF: Very definite government purpose --
9 Charlie Taft from Cincinnati --

10 MR. ARCHIBALD: Very definite.

11 Our purpose is, we get candidates to sign the
12 Code of Fair Campaign Practices. When there is a complaint
13 of a violation, we collect the facts and then make them
14 available.

15 We do a number of things in the campaign field.
16 We are private, non-profit, tax exempt.

17 The answer to your question is yes, including
18 every bit of correspondence I write internally, externally,
19 not to individuals but to all board members, including all
20 of our tax exempt filings -- the total filing, not just what
21 is regularly made public. Our budget, or contributors from
22 \$1 on up, everything in this committee is public record.

23 There is a very good reason for it. Our only
24 weapon in this committee is to collect the facts from both
25 sides and turn it over to the free and responsible press and

1 hope they will print the story. I wish they would print more
2 than they do.

3 This is our only weapon.

4 MR. ARONOFF: Am I correct in saying that until
5 you feel the facts have been collected, you build a wall
6 around them?

7 MR. ARCHIBALD: No.

8 MR. ARONOFF: You don't?

9 MR. ARCHIBALD: No.

10 MR. ARONOFF: Okay.

11 MR. ARCHIBALD: Well now, we receive a complaint
12 of a violation. That complaint is a public record. If the
13 guy wants to contact us, he does it in public.

14 If we go to the other side and ask for their
15 answer, their answer is a public record.

16 Now the FBI, and some other investigating agencies,
17 used to announce they were investigating an individual. Well,
18 of course, the story comes out that the good FBI is investi-
19 gating that guy, and therefore he is bad.

20 The fact that we are investigating, we do not
21 overtly make public, until the investigation is completed.
22 So maybe that is the hedge that you are talking about.

23 MR. ARONOFF: Thank you.

24 MS. HARDAWAY: If Mr. Small asked you if you
25 were investigating that man, would you tell him you were?

1 MR. SMALL: He is very difficult to deal with.

2 MS. HARDAWAY: You mean if CBS came to interview
3 you, and asked you if you were investigating Stan Aronoff
4 who is running for the Senate in Ohio, would you say to him,
5 "Yes, in fact we have had a complaint and we are investigating
6 him"?

7 MR. ARCHIBALD: We would say to him, "We have
8 a complaint, here is the complaint, which has already been
9 probably made public.

10 "Our usual procedure is to contact the other side
11 and ask for an answer. I will not tell you whether we are
12 following our usual procedure at this time." The answer to
13 your question is -- we give three or four days to answer,
14 then the fact that -- we will not disclose the fact that
15 we are investigating until the case is completed.

16 MS. HARDAWAY: Why?

17 MR. ARCHIBALD: It's a practical, political
18 reason. Because somebody could file a complaint with us
19 and have a reporter contact us to ask whether we are investi-
20 gating, and he then puts out a press release and the Fair
21 Campaign Practices Committee is investigating so and so.

22 This is our investigation. This is our practice.
23 When the investigation is completed, two or three days later,
24 you will have the public record, whether or not he answers.
25 But until we have completed the investigation, no.

1 MS. GROMMERS: That is Mr. Gallati's reason
2 for not wanting his files to remain public.

3 MR. ARCHIBALD: I don't think that is quite true,
4 if you are talking about a compilation of a dossier.

5 MS. GROMMERS: It's very late. I have one
6 announcement. We'd like to invite you to come back to the
7 Holiday Inn for a drink, and hopefully for dinner.

8 The announcement is short and brief. And I will
9 read from a prepared text.

10 Although the hearing forum the advisory committee
11 has been using yesterday and today appears to be a very
12 effective method for eliciting information about the data
13 systems being presented, it is likely the committee's
14 capacity to question the presenters closely would be even
15 further improved if all the committee members took upon
16 themselves the responsibility of reading carefully the
17 background material that has been prepared or assembled
18 by the staff, as you have all requested.

19 MS. COX: We didn't get it before. How could
20 we read it?

21 MS. GROMMERS: As I announced, they were out in
22 your folders last night, on your desk.

23 The ability to ask focused, precise questions
24 of presenters will be especially important tomorrow
25 afternoon when we will have before us the principal officers

1 of four HEW statistical centers, the Associate Director
2 for Research of the Bureau of the Census, and Mr. Julius
3 Shiskin, Director of the Statistical Policy Division,
4 Office of Management and Budget.

5 Some of the issues to be discussed are rather
6 technical. For example, the problems of statistical dis-
7 closure, which is of course right in your field.

8 Accordingly, I would be very grateful if you
9 all would make a very special effort this evening to read
10 the following items in your folders -- and if you will check
11 to see if they are there.

12 The first one is the collection and processing
13 of personal data by the Third National Cancer Survey.

14 The second is the checklist for information
15 regarding the statistical reporting systems,

16 This is a variation of the check list you have been
17 using for the other systems.

18 Three, the Federal-state relations in the
19 collection of educational statistics.

20 The important Federal records geographic analysis,
21 NCHS policy.

22 We will see you all back at the Holiday Inn. Thank
23 you all for a very interesting afternoon.

24 (Whereupon, at 6:35 p.m., the meeting was recessed,
25 to be resumed, the following day, Wednesday, July 26, at 9:00a.m.)